

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. LAND APPLICATION NO. 03 OF 2021**

(Arising from Land Appeal No. 94/2016 of the District Land and Housing Tribunal - Kigoma, Before F. Chinuku – Chairperson, Originating from Land Case No. 8 of 2016 Kigondo Ward Tribunal)

**EVANSI S/O BUGALE..... APPLICANT**

**VERSUS**

**JIMI S/O MODESTI.....RESPONDENT**

**R U L I N G**

24<sup>TH</sup> March & 23<sup>rd</sup> April, 2021

**A. MATUMA, J.**

The applicant herein Evance Bugale is seeking extension of time within which to appeal out of time against the decision of the District Land and Housing Tribunal for Kigoma. This is unusual application as it is a second application of the same nature for the same prayer between the same parties as I had previously granted him 45 days within which to appeal vide Misc. Application No. 32/2020.

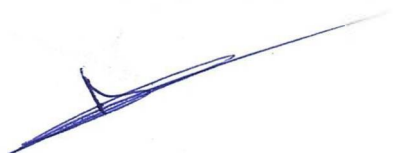
In the course of preparation for hearing of the application, I became curious of the contents of the applicant's affidavit which contained serious allegations against his previous advocate for failure to act on his instructions to appeal within the forty-five days previously extended.

The contents of such affidavit is as follows;

"AFFIDAVIT

*I, Evansi Bugale, an adult, Christian and resident of Kasulu District within Kigoma Region do hereby swear and state as follows:-*

- 1. That, I am the applicant herein and hence very conversant with the facts I am about to depone hereunder;*
- 2. That, the Applicant appealed in the Land appeal No. 94/2016 in the District Land and Housing Tribunal for Kigoma which decided the same in favour of the Respondent herein.*
- 3. That, the said decision was delivered on 26/06/2019 but the copy of the said judgment was supplied to the Applicant on 20/07/2020 after several follow-ups, however the time of Appeal has already elapsed.*
- 4. That, on 14<sup>th</sup> August 2020 the Applicant filed application for extension of time in this Honourable Court before Honourable Matuma, J and the same was granted on 26/08/2020 under the services of Advocate M.M. Copy of the said ruling is attached herein to form party of this Affidavit.*



5. *That, the Applicant was given forty-five (45) days within which to file the Appeal and engaged the same Advocate M.M who failed to file Appeal within the time given despite several follow-ups by the Applicant.*
6. *That, the Applicant was told by the above Advocate that the Appeal was already filed but the Applicant has checked in the District Land and Housing Tribunal for Kigoma and High Court of Tanzania at Kigoma registry there is no any Appeal filed and found that was out of time to Appeal.*
7. *That, the Applicant apply again to this hounourable court for extension of time to Appeal out of time for the reasons that the Applicant made follow up despite his fault failed.*
8. *That, the Appellant Appeal has chances of success and the deny of extension of time will cause irreparable loss to the Applicant."*

The affidavit was then verified and deposed by the said Applicant. The accused advocate is "M.M" the name of which I have created myself to hide the identity of the real advocate for his reputation purpose as he has not been heard on the accusations.

From such contents of the Applicant's affidavit which was **drawn and filed by** another advocate who also entered appearance for the applicant at the hearing of this application, I was of the view that the

same are allegations of misconduct against his previous advocate who is not a party to this application nor his affidavit has been filed either to affirm or deny the allegations. I became suspicious whether I could at the end affirm the allegations against the advocate without hearing him and conclude that the same constitutes good cause for the delay. I therefore ordered personal attendance of the applicant to answer some few questions from me including whether he has taken any action against the advocate to the relevant authority and what was the results if any.

On his appearance, I first required him to tell me whether the allegations in his affidavit were real from him and if it is him who signed such affidavit. At first, he positively stated that it was his affidavit sworn and signed by him. Employing my prosecution skills which I acquired for the past twelve years as the Senior State Attorney, I realized that the applicant was lying to me. I therefore asked him to produce his identity which bears his signature and produce his previous court documents bearing his signatures. I also, took his specimen signatures, and realized that it was not him who signed the affidavit in the instant application. I thus asked him to tell me who signed the same purporting to be him otherwise I take the appropriate measures

as I was sure that the affidavit was neither verified nor deposed by him. This time he changed and decided to confess that it was not him who verified and deposed such affidavit. He was however not aware as to who exactly signed and deposed it but stated that his current advocate might know because he only instructed her to act in his behalf. Later he was informed that the application is already filed. He stayed waiting for the outcome until when he was summoned that I was in need of him.

I then asked his advocate to tell me who deposed the affidavit and signed it purporting to be the applicant. The learned advocate whose name, I will not disclose in this ruling for the same reason of protecting reputation as well, did not want to struggle against the naked truth. She strait forward informed me that it was her legal officer (name withheld as well) who signed the affidavit, as the applicant was far away to reach and the time was not in their favour.

Having been informed as such by the learned advocate, I ordered the said legal officer to appear before me. He appeared and apologized after he confessed to have signed the affidavit purporting to be the applicant stating that he acted on the instructions of his firm.

Having so realized, I decided to call for the previous application and satisfy whether it was the applicant who signed the affidavit or not. It transpired that he was not him but someone else in the previous firm. I thus realized that, I acted on the false affidavit and granted the application on the false affidavit and on the application fraudulently drawn. The applicant himself confirmed that it was not him who signed nor he knew who signed it. The current advocate did not also know who signed it as such application was not drawn and filed by her firm.

It is from such background, I decided that I compose the ruling as a warning to the learned advocates, Solicitors or legal Officers and or law officers or even State Attorneys who fraudulently draws or might draw documents and file them in court. To remind them their roles as officers of the court and their role to the general public in the administration of justice and the rule of law. In terms of the provisions of order VI Rule 17 of the CPC, **the duty of the court is to determine the real question in controversy between the parties.** In so doing the court needs to be availed with true facts and evidence and the advocates are duty bound to assist the court as such. It is not expected that an advocate duly enrolled in the Roll of advocates can either by himself/herself falsify the pleadings/documents

or collude with his/her client so to falsify. By doing so the advocate shall be committing a serious misconduct against various provisions of the Advocates Act as well as various regulations of the Advocates (Professional Conduct and Etiquette) Regulations, 2018. Thus, for instance; regulation 92 (2) of the Etiquette supra prohibits an advocate;

- i. to institute proceedings which are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring another party.*
- ii. to assist or permit the client to do anything which is dishonest or dishonourable.*
- iii. to deceive or attempt to deceive or participate in the deception of a court or influence the course of justice by offering false evidence.*
- iv. to present in court a false or deceptive, exaggerated or inflammatory affidavit.*
- v. to assist in any way the commission of fraud, crime or illegal conduct.*
- vi. to permit any one to impersonate another.*



There are so many other prohibitions under the regulation but I have chosen the herein above which have been infringed in the instant application. The learned advocate filed **a false affidavit** injuring the **reputation** of her fellow learned advocate, permitted and or instructed her legal officer to **impersonate the client** thereby causing attestation of a false affidavit, committed **fraud** in the application which is both **a crime and illegal conduct**, tried to deceive and **influence the court** to give decision on a false evidence by affidavit and **dishonestly** presented in court **a deceptive affidavit**. My intent here is to draw the attention of advocates and other officers of the court; that as administrator of justice, the court is not there as a mere observer to litigations. I once held in the case of **Angelina Reubeni Samsoni and Another versus Waysafi Investment Company**, (DC) Civil Appeal No. 4 of 2020, High Court at Kigoma, that;

*'Judicial officers who stands as mere observers of trials without reminding the parties to adhere to certain requirements of the law for their proper presentations of their respective cases would not be discharging their duties for the administration of justice and if that is to happen then good technical litigants would always be using the courts to win cases to the detriment of justice'*



The advocates are therefore required to act professionally and ethically as one may find him/herself in trouble for unprofessional or unethical conducts as we (the court) are always keen on the presented documents for the sake of justice. It is from these fake, false and fraud documents which damage the reputation of the court once they go undetected as the opponent parties would not be positioned to know that the courts have been deceived. It is the reputation of the court that would be put to inquiry. The reputation and dignity of the court must therefore be protected for judicial officers not only to act impartially, but also to make sure that they act on pleadings/documents which have been properly filed, scrutinized sufficiently to the satisfaction of the court that they contain nothing but only the truth, and not to allow good technical advocates to use the court to the detriment of justice. I actually once held in the case of **Patrick s/o Ezron versus The Republic**, (DC) Criminal Appeal No. 51 of 2020, High Court at Kigoma that;

*'I call upon trial magistrates to be curious to justice. They should inquire into every fact that transpires to them as a detriment to justice. They should not stand as mere observers but as administrators of justice.'*



I thus draw the attention of learned brothers and sisters in the legal profession that the court is there to administer justice and they are there to assist the court for such role. They should not dare and or attempt to mislead courts by filing false documents to the detriment of justice. As I have said they might find themselves into trouble, and if that is to happen one should not trace a witch. A witch would be no one but his/her own unethical and illegal conducts.

To wind up, I asked the three; the learned advocate, the legal officer and their client to tell me in their own handwritings to be put on record as what should I do in the circumstances of the matter as herein stated. Each of the three wrote;

The Advocate;

*'My Lordship in the presence of the above action I feel very bad as it is a serious mistake. I pray before this honourable court to forgive me and also to withdraw the defective affidavit with leave to refile and on behalf of the office we pray for your mercy and promise that the above mistake won't be repeated again'*

*Sgd and dated.*

The Legal Officer;

*'My Lord in the continuing situation, I do not feel okay, as is the mistake done in our office, but it was after consultation with the client. I pray for forgiveness before this Honourable Court and I promise not to repeat the same by insisting other clients not to act similar things together with my fellow office members. Now I pray for your mercy my Lord'*

*Sgd and dated*

The Client;

*'Mimi Evance J. Bukulu naomba msamaha kwa makosa yaliyofanyika. Pia naomba nifanye masahihisho bila kujali ghalama au usumbufu uliojitokeza. Nami nitafanya yale nitakayokuwa naelekezwa yakiwa ya kweli ili kupata haki yangu. Ndimi'*

*Sgd and dated*

It is from the herein above apologies, I have forgiven the three to further actions. The application is however incompetent before me for having been accompanied by a defective affidavit for want of proper attestation contrary to the provisions of Order XIX rule 3 (1) of the CPC which requires an affidavit to be deposed by a person who is able of his own knowledge to prove the deposed facts. In the instant matter he who allegedly deposed the facts was not the one who signed both the verification clause and the Jurat of attestation.

In the circumstances, this application is struck out with no orders as to costs since the respondent was not present nor had filed Counter affidavit.

I direct that this ruling be communicated to the TLS chapter Convenor for him/her to communicate other advocates in Kigoma Chapter, so that they become aware of this ruling and refrain themselves from similar misconducts and if any one of them is having a pending matter with a similar nature, takes reasonable steps to remedy the situations before the court itself discovers.

It is so ordered.



**A. Matuma**

**Judge**

**23/04/2021**

**Court:** Ruling delivered in chambers this 23<sup>rd</sup> April, 2021 in the presence of the Applicant's advocate M/S Elizabeth Oscar Twakazi Learned and in the absence of the Respondent

**Sgd: A. Matuma**

**Judge**

**23/04/2021**