

**IN THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**MISC. LABOUR APPLICATION NO. 13 OF 2021**

(Originating from the Commission for Mediation and Arbitration for Musoma in  
Employment Dispute No. CMA/MUS 180 OF 2017)

**1. MAJUTO O. CHIKAWA**

**2. GEORGE S. SAINA**

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..... **APPELLANTS**

**VERSUS**

**TRUSTEES OF TANZANIA NATIONAL PARKS ..... RESPONDENT**

**RULING**

*Date of last order: 19.05.2021*

*Date of Ruling: 19.05.2021*

**A.Z.MGEYEKWA, J**

The applicant applied for an extension of time to file an application for revision against the CMA Award in Labour Dispute No. CMA/ MUS/ 180/ 2017. The application is supported by an affidavit sworn by Majuto O. Chikawe and George S. Saina, the applicants.

The application has hit a snag. It has been objected to by the respondent's Advocate by way of preliminary objection whose notice was filed in this court on 27<sup>th</sup> April, 2021 which sought to impugn the application on one point, which is conveniently paraphrased as follows:-

*That, the affidavit supporting the application is incurably defective for want of verification, endorsement attestation.*

The Preliminary Objection was argued via audio teleconference whereas the first applicant and Mr. Ochina, learned counsel for the respondent were remotely present.

The contest on the matter pitted Mr. Ochina, learned counsel, who represented the respondent. In his brief submission, contended that the affidavit is defective for lacking the names, signature, and address of the applicants. He added that the affidavit must be sworn before the Commissioner for Oath but the applicants did not show to whom they have sworn. Mr. Ochina spiritedly argued that the same renders the affidavit defective, thus, it means there is no proper application before this court. He referred this court to the case of **Abdul Issah Bano v Maruo Daolio**, Civil Application No. 563/02 of 2017 that the applicant was required to sign the jurat of attestation to declare that the applicant has taken an oath.

It was Mr. Ochina further submission that the applicant has repeated the same mistake since in 2020 he filed an application of the same kind before Hon. Tiganga, J, it was struck out for being accompanied by a defective affidavit. He argued that litigations must come to end.

On the strength of the above argumentation, Mr. Ochina beckoned upon this court to dismiss the applicant's application.

In reply, the first applicant had not much to say rather he conceded that the Commissioner for Oath did not sign the affidavit. He said that the learned counsel who draws their application came to learn later that he has uploaded an affidavit that was unsigned by parties. The first applicant urged this court to allow them to file a proper application.

In his rejoinder, Mr. Ochina argued that although the first applicant has conceded, however, he urged this court to dismiss the applicant's application because they were given another chance by Hon. Galeba and Hon Tiganga, J to refile proper applications but they have repeated the same mistake.

After careful consideration of the submission of learned counsel for the respondent and the first applicant, the main issue for consideration in



this preliminary objection is the validity of the affidavit deposed by the applicant.

A cursory perusal of the applicants' affidavit which was taken on 6<sup>th</sup> April, 2021, specifically on page 7 of their affidavit visibly shows that the jurat of attestation did not include the name, date, and address. This is contrary to section 8 of the Notaries Public and Commissioners for Oaths Act, Cap.12 [R.E 2002] as amended by the Written Laws (Miscellaneous Amendments) Act No.2 of 2016 which read:

*" Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his **name and state truly in the jurat of attestation at what place and on what date** the oath or affidavit is taken or made." (Emphasis added).*

The requirement of section 8 of the Act was not adhered to, the Commissioner for oath did not insert the date at the jurat of attestation. As observed by the Court of Appeal of Tanzania in the case of **D.B. Skapriya and Co. Ltd v Bish International B.V**, Civil Application No. 53 of 2002 (unreported). The requirement under section 8 is mandatory, it is not a sheer technically. It ought to have been complied with in the Applicant's affidavit.

Similarly, in the case of **Director of Public Prosecution v Dodoli Kapufi and Another**, Criminal Application No.11 of 2008, the Court of Appeal of Tanzania discussed the effect of an affidavit which was lacking the date and place. It held that:-

*"Total absence of the jurat, or omission to show the date and place where the oath was administered or affirmation taken, or the name of the authority and/or the signature of the deponent against the jurat, renders the affidavit incurably defective."*

Applying the above provision of the law and authority, it is clear that the applicant's affidavit does not contain the name of the authority, date, and place where the affidavit was administered.

In the upshot, I sustain the preliminary objection. The application, accompanied by an incurably defective affidavit is declared incompetent, and accordingly, I strike it out with leave to refile within 21 days from today. No order to costs.

It is so ordered.

DATED at Mwanza this 19<sup>th</sup> May, 2021.

  
A.Z.MGEYEKWA

**JUDGE**

19.05.2021

Ruling delivered on 19<sup>th</sup> May, 2021 via audio teleconference whereas Mr. Ochina, learned counsel for the respondent and the first applicant were remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

19.05.2021