

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISCELLANEOUS LAND APPLICATION NO. 59 OF 2021

(Originating from Statutory Notice)

EDWARD KULWA & ANOTHERAPPLICANTS

VERSUS

**CHUO KIKUU CHA USHIRIKA
MOSHI(MOCU) & ANOTHER** } **RESPONDENTS**

RULING

23 March, 2022

A. MATUMA, J.

The preliminary objection to the effect that the jurat of attestation in the applicant's affidavit is defective because there are two deponents on a single jurat is devoid of any merit.

This is because there is no clear law or case law cited to establish that the single jurat is for the single deponent. Mr George Kalenda learned state Attorney has pointed out the schedule to the Oath and statutory declaration Act, cap. 34 R.E. 2019 and section 10 thereto to mean that it was intended the jurat to have a single deponent. He also cited the case of **Samwel Kimaro versus Hidaya Didas, Civil Application no. 20**

of 2012 (CAT) at Mwanza. The two cited authorities are not helpful for determination of the raised preliminary objection.

Starting with section 10 and the schedule to cap. 34 supra, there are no clear words or expressions that the jurat for the single deponent should look in a certain manner and where there are more than one deponent how the jurat of attestation should be or look like. I have asked Mr. George Kalenda learned states Attorney on whether the law forbids an affidavit to be sworn and deposed by more than one deponent, he quickly responded that the law does not forbid.

I then asked him if the law does not forbid then where is the schedule in the law prescribing the jurat or jurats of attestation of such deponents. He could not tell or argue. He ended stating that the law is silent in the area. In that regard, if the law does not forbid more than one deponent to depose an affidavit but has not prescribed the format of their jurat of attestation it is simply that there is a lacuna in the law itself.

Whenever there is a lacuna in the law then the interpretation thereof would favour the person who is likely to be affected by such lacuna, in this case the applicants. In that respect and bearing in mind the provisions of section 3A (1) (2), 3B (1) (a) and (e) of the Civil procedure code, cap.33 RE 2019 as amended by section 6 of the written laws (Miscellaneous Amendments) Act no. 8 of 2018, I benefit the applicants by employing the overriding objective of the law which is to facilitate the just, expeditious, proportionate and affordable resolutions of all matters governed by the Act, i.e., Civil procedure code. In the instant matter as I have said, there is no clear expression on how should the jurat of more

deponents be. I cannot therefore adjudge against them as the law has not given the directions.

The expression in the schedule of the law supra did not fore see the situation and hand at the learned state Attorney conceded that the law does not forbid more than one person to swear or depose a single affidavit. The practice has been two ways. One is for each deponent to have his or her own jurat and the second is for the deponents to depose on a single jurat of attestation. That is a practice and not the law. Such practice has been in place due to the available lacuna and thus the innocent deponents should not be punished for matters beyond their powers. Having said so, I join hands with Mr. Frank Samwel learned advocate for the applicants that the preliminary objection is without any merit.

I accordingly dismiss it.

No orders as to costs.

It is so ordered.



A. MATUMA
A. MATUMA
Judge
23/03/2022