

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC. CIVIL APPLICATION NO. 37 OF 2020

JANETH GODFREY.....APPLICANT

VERSUS

JOSEPH BUKWIMBA..... RESPONDENT

(Application from decision of the District Court of Singida-E.E Kisoka, RM)

Dated 29th of September, 2020

In

Matrimonial Civil Appeal No. 08 of 2020

.....

RULING

8th April, 2022

MDEMU, J

In the morning today when this application was called for ruling, I directed parties to address the court on want of jurat of attestation in the affidavit of the Applicant in support of the application. Parties complied. On that account, I did struck out the application for being incompetent and reserved reasons for so doing which I am now prepared to give.

The Applicant moved this Court under the provisions of Section 14(1) of the Law of Limitation Act, Cap. 89, R.E.2019 praying for the following orders:

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- 1. That, this Honourble Court be pleased to grant an order for extension of time to file Petition of appeal out of time.*
- 2. Any other orders this Honourable Court shall deem fit to grant.*

Briefly, in Matrimonial Appeal No.08/2020 before the District Court of Singida, the Applicant appealed against the decision issued by Sepuka Primary Court in Matrimonial Cause No.04/2020. Essentially, the Applicant was aggrieved by the said decision on division of matrimonial assets and custody of children. Being further aggrieved by the decision of the first appellate Court, the Applicant, lodged this application seeking leave of this court so that she can appeal out of time.

On 14th March, 2022, this application was heard. Both parties appeared in person. As said, when composing this ruling, it came to the knowledge of the Court that the Applicant's affidavit lacks verification clause and jurat of attestation. The question asked is whether this omission is fatal. Parties were invited to address on this. The Applicant on this stated to have not annexed a relevant portion and prayed to have time for a follow-up. The Respondent on his part did not concede on reasons for the omission.

On the pointed omissions, this Court having gone through different decisions, have reached to the conclusion that, an omission to comprise jurat of attestation in an affidavit is incurable. In the case of **Attorney General, Zanzibar vs. Alghubra Marine Services Ltd, Civil Appeal No. 175 of 2017** (unreported), it was held that: -

"..in our view , the omission to incorporate the page containing the verification clause and the jurat of attestation in supporting affidavit cannot be taken as a technicality envisaged under Article 107A(2) of the Constitutionindeed , the role of the rule of procedure in the administration of justice is fundamental"

Again, there is a parathora of authorities to the effect that, total absence of jurat, omission to show a date and place where an oath was administered or an affirmation was taken, or name of authority and/or signature of a deponent against the jurat, renders the affidavit incurably defective. See **Zuberi Mussa vs. Shinyanga Town Council, Civil Application No. 100 of 2004** and **Rajabu Omary Mukia vs. Republic, Misc. Criminal Application No. 231 of 2019** (both unreported).

Equally, non-inclusion of jurat of attestation in an affidavit contravenes the provisions of Section 8 of the Notary Public and Commissioner for Oaths Act, Cap. 12. The provision categorically provides that: -

Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made.

That said and done, I find the affidavit incurably defective and such defect renders the entire application defective. This was the reason I did struck out the application of the Applicant.

It is so ordered.



Gerson J. Mdemu

JUDGE

08/04/2022

DATED at DODOMA this 8th day of April, 2022



Gerson J. Mdemu

JUDGE

08/04/2022.