

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

MISC. CIVIL APPLICATION NO. 28 OF 2021

AMOSI MZUKA

(Engaged Attorney Abraham Mhoja.....APPLICANT

VERSUS

JOHN MATINYA..... RESPONDENT

**(Originating from High Court of Tanzania at Dodoma; E.J Nyembele,
Taxing Officer)**

Dated 27th of May, 2020

In

Taxation Cause No. 14 of 2020

.....

RULING

9th&27thMay, 2022

MDEMU, J:.

The Applicant filed this application supported by his affidavit sworn on 8th July, 2021 praying for extension of time to file application for reference. The chamber summons is made under the provisions of Order 8(1) of the Advocates Remuneration Order, GN. No. 264 of 2015. The Respondent didn't file counter affidavit but appeared when the application was heard on 9th of May, 2022.

Brief facts of this application are that, in Taxation Cause No. 14 of 2020, the Applicant urged this Court to tax in the sum of Tshs.

1,388,500/= being costs awarded in Misc. Land Application No. 19/2018 before Mohamed, J. in a ruling dated 12th of June, 2018. The application was heard and the Court certified that, costs payable to the Applicant be Tshs. 895,000/=. The Applicant was aggrieved by such decision but didn't file reference within time, hence this application.

On 9th of May, 2022, this application was heard. Both parties appeared in person. To persuade this court in his application, the Applicant submitted among other things that, he delayed because of being sick following at accident. This ground, he thought, also prevented his non-appearance on the delivery of judgement for he was admitted at Dodoma Referral Hospital. The other reason for delay was failure to be supplied with a copy of judgement in time. He said that, he was given on 25th June, 2021 and the days followed was weekends i.e. 26th and 27th June, 2021. Given this, he thought, the application has substance thus urged me to allow it.

In reply, the Respondent submitted that, there is no substance on what the Applicant submitted. He added that, the Applicant lied before this court. He thus prayed the application be dismissed with costs.

After considering parties' submissions, the records as well as applicable laws, I find the issue to be determined is whether the

application is competent before this Court. The reason is one that, there is no affidavit in the eyes of the law to support this application. The law under Order XLII, Rule 2 of the Civil Procedure Code, Cap.33 require every application be by way of chamber summons supported by an affidavit. As said now and then, an affidavit is a formal sworn evidence. In this therefore, the contents of affidavit must have statements of facts, which should be on the personal knowledge of the deponent or from information the deponent believes to be true and should not contain extraneous matters as was emphasized in the case of **Uganda vs. Commissioner of Prisons, ex parte Matovu [1966] E.A 514** where it was held that:

"As general rule of practice and procedure an affidavit for use in Court being a substitute for oral evidence should only contain statements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true, such an affidavit should not contain extraneous matters by way of objection or prayer or legal argument or conclusion".

The Court of Appeal of Tanzania in the case of **DPP vs. Dodoli Kapufi and Patson Tusalile, Criminal Appeal No. 11 of 2008** (unreported)

adopted the definition of affidavit as contained in Black's law Dictionary, 7th Edition at page 58, and the definition by Taxman's Law Dictionary D.P. Mittal at page 138, named ingredients of the affidavit as:

- (i) *The statement or declaration of facts, etc, by the deponent;*
- (ii) *A verification clause*
- (iii) *A jurat and*
- (iv) *The signatures of the deponent and the person who in law is authorised either to administer oath or to accept the affirmation".*

Does the affidavit in support of the instant application comprises of those ingredients? Let the records speak by itself as quoted herein below:

*AFFIDAVIT IN SUPPORT OF THE CHAMBER SUMMOUS
[Made under Order 7(1) and (2) of the Advocates
Remuneration Order, 2015 GN. No. 264 of 2015]*

*LET ALL PARTIES CONCERNED Appear before
Honourable.....judge sitting in chamber on the.....day
of2021 at O'clock in the afternoon/soon thereafter
on the following orders;*

1. *That, the Honourable Court be pleased to revise the Ruling of the Hon. Deputy Registrar in so far as it failed to consider and decide or disregard or reject the Taxation of the unrelated or incomplete transport*

tickets and of the instruction fees as presented in the bill of costs.

- 2. That, the honourable court be pleased to consider and grant the Taxation of unrelated and incomplete transportation tickets and of the instruction fees and other fees as presented in the Bill of costs or as otherwise assessed by Honourable court.*
- 3. Costs of this Application to be borne by the Respondent.*
- 4. That, this Honourable court be pleased to grant any other reliefs as it deems fit to grant.*

This application has been taken at the instance of MUHOJA the ATTORNEY and it is supported by affidavit of ABRAHAM LUCAS MUHOJA THE ATTORNEY for APPLICANT herein and further grounds to be adduced at the hearing thereof.

Given under my hand and seal of thisday of2021

.....
DEPUTY REGISTRAR

Verified at Dodoma this 8th day June 2021

.....
THE APPLICANT'S ATTORNEY

Sworn at Dodoma by the said

ABRAHAM L. MUHOJA

Who is known to me personally

Identified to me by....

The latter known to me personally at Dodoma

This 8th day of June 2021

BEFORE ME

NAME: Chrispo Nicholaus Lwila

QUALIFICATION: Advocate

ADRESS 1485 Dodoma

SIGNATURE: ...sgd.

DATE: 08/07/2021

Presented for filling this 15th day of July 2021

.....
REGISTRY OFFICER

As stated in the foregoing, the above quoted portion of affidavit is not an affidavit in legal terms and therefore cannot support the application at all. This is **one**. **Two**, there is no statement of facts on reasons for not filing taxation reference within time prescribed by the law. **Three**, the affidavit contains prayers under paragraph 1,2,3 and 4. This is not correct. In the case of **Mustafa Raphael vs. East Africa Gold Mines Ltd Civil Case No. 40 of 1998** (unreported), it was observed that, affidavit has to be factual and free from extraneous matters such as hearsay, legal arguments, objections, prayers and conclusion

The immediate issue is whether the defect is curable. In the case of **Ignazio Messina vs. Willow Investments SPRL, Civil Application No. 21 of 2001** (unreported), it was held that: -

"The rule governing the forms of affidavit cannot be deliberately flouted in the hope that the Court can always pick the seeds from chaff, but that would be abuse of Court process. The only assistance the Court can give in such a situation is to strike out the affidavit."

That being the position of law, the Applicant's affidavit is incurably defective and cannot therefore support this application. The application is therefore incompetent and is accordingly struck out with costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
27/05/2022

DATED at **DODOMA** this 27th day of May, 2022



Gerson J. Mdemu
JUDGE
27/05/2022.