

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 426 OF 2022**

**PMM ESTATES (2001) LIMITED ..... APPLICANT**

***VERSUS***

**ANGELICA NGONYANI t/a KINDI MINING ..... RESPONDENT**

**(Arising from the decision of this Court in Civil Case No. 8 of 2019)**

**RULING**

18<sup>th</sup> January & 22<sup>nd</sup> February, 2023

**KISANYA, J.:**

This is an application for extension of time within which to file a notice of appeal to the Court of Appeal against the decision of this Court (Kakolaki, J) dated 29<sup>th</sup> July, 2022 in Civil Case No. 8 of 2019. The application is preferred under section 11(1) of the Law of Limitation Act [Cap. 141, R.E. 2019] and is accompanied by two affidavits deposed by the applicant's principal officer one, Judith Irungu Mhina and her counsel, Mr. Gabriel Bartholomew Masinga. On the other side, the respondent, Angelica Ngonyani t/a Kindi Mining filed a counter-affidavit deposed by Angelica Ngonyani.

The application was heard by way of written submissions file by Mr. Gabriel Masinga, learned advocate for the applicant and Mr. Mashaka Mfala, also learned advocate for the respondent.

In his written submission in reply, Mr. Mfala raised issues of law on the competence of this application. The first issue was to the effect that both affidavits in support of the applicant are incurably defective for want of the date on which the oath was taken or affirmation made and thus, contravening section 8 of the Notary Public and Commissioner for Oaths Act [Cap. 12, R.E. 2019] (the NPCA). As regards the second issue, Mr. Mfala argued that both affidavits contravene section 10 of the NPCA on the ground that the deponents were not identified to the Commissioner for Oaths. On the third issue, the learned counsel submitted that both affidavits were signed by one and the same person namely, Judith Irungu Mhina as the signatures thereto look the same. Therefore, he invited the Court to make comparison of signature under section 75 of the Evidence Act [Cap. 6, R.E. 2022].

Relying on the case of **Chesem Z. Mkinywa vs Pangea Minerals Limited**, Misc. Labour Application No. 36 of 2016, HCT (Labour Division) at Shinyanga (unreported), the learned counsel moved the Court to strike out the application with costs for being supported by the affidavits which are defective.

The applicant did not file her joinder submission. Therefore, he did not respond to the foresaid issues. On that account, when the matter was called on for mention for orders on 18<sup>th</sup> January, 2018, this Court resolved to make a ruling basing on the written submissions filed by the parties.

Given the fact that the issues raised by the respondent go to the root of this application, the Court finds it appropriate to dispose of the same before considering the application of merit.

Starting with the third issue, it is Mr. Mfala's contention that the affidavits in support of the application were signed by one and the same person namely, Judith Irungu Mhina. This issue should not detain the Court. It is elementary principle set out under section 110 of the Evidence Act (supra) that he who alleges must prove. That being the position, the respondent was duty bound to prove the allegation that the supporting affidavits were signed by Judith Irungu Mhina. However, this was not done. The fact that the affidavits were signed by one person was not deposed in the counter-affidavit. This implies that respondent's contention is not supported by evidence. For that reason, this Court finds no basis of holding that both affidavits were signed by Judith Irunga Mhina.

Reverting to the first issue on omission to show the date when the oath was taken, it necessary to quote the provision of section 8 of the NPCA as hereunder:

*"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."*

It is gleaned from the above quoted provision, the date on which the oath is taken or affirmation made must be shown in a *jurat* of attestation. The requirement to strictly comply with the above provision is not a technicality. That being the case, the regularities in the form of a *jurat* cannot be waived by the parties, as underlined in the case of **DP Shaprya & Co. Ltd vs Bishi International B.V** (2002) E.A. 47. The law is also settled that, omission to show the date on which the oath is made or affirmation made renders the affidavit incurably defective. [See the case of **DPP vs Dodoli Kapufi and Another**, Criminal Application No. 11 of 2008, CAT at Dar es Salaam (unreported).

After a careful consideration of the affidavits in support of the application, I agree with Mr. Mfala that, the date on which the oaths of Dr. Judith Irungu

Mhina and Gabriel Bartholomew Masinga were taken is shown in each affidavit. Being guided by the position stated in the case of **Dodoli Kapufi** (supra), this Court hold the view that both affidavits are incurably defective. In consequence, the application is incompetent before the Court for being supported by affidavits which are incurably defective. Since this issue is sufficient to dispose of the matter, there is no need of addressing the second issue and the merit of the application.

In the event, this application is struck for the reasons stated afore. The respondent shall have her costs.

**DATED at DAR ES SALAAM this 22<sup>nd</sup> day of February, 2023.**



A handwritten signature in blue ink, appearing to read "S.E. Kisanya".

**S.E. KISANYA**  
**JUDGE**