

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.22 OF 2023

*(Originating from the District Court of Kilwa at Masoko in Criminal Case
No.24 of 2022)*

MAJANI TENGA MBOJE.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

12/7/2023

LALTAIKA, J.

When this application came for hearing today, the Republic was represented **by Mr. Melchior Hurubano**, learned State Attorney, while the appellant appeared in person and unrepresented.

Before proceeding further, the learned State Attorney raised a preliminary objection regarding the verification clause and attestation clause of the applicant's affidavit, which bear two different dates. The learned State Attorney averred that this implies that the applicant did not attest before the commissioner for oaths.

Mr. Hurubano further argued that this anomaly renders the applicant's affidavit defective and consequently affects the competence of the entire application.

In response, the applicant stated that as an inmate, he is not knowledgeable about the matter and claimed that the admission officer was the one who handled his documents.

In consideration of the arguments presented, it is important to note that the jurat of attestation is governed by the **Notaries Public and Commissioner for Oaths Act [CAP 12 RE 2019]** under section 8, which states:

"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."

The Labour Court Division of the High Court of Tanzania, in the case of **THABITHA MUGWANI VS. PANGEA MINERALS LTD, LAB. REV. NO. 48 OF 2014**, stated:

"The identity of the deponent in supporting the affidavit must be stated truly in the jurat of attestation. Whether the Commissioner for Oaths knew the deponent in person or has been identified to him by x, the latter being personally known to the Commissioner for Oaths, all that has to be stated truly in the jurat of attestation. That information of identification has to be clearly shown in the jurat."

In the present case, the applicant attested to his affidavit without appearing before the Commissioner for Oaths. Based on the aforementioned observation, it appears that the applicant did not personally attest to his affidavit, but rather it was attested by the admission officer who appeared before the Commissioner for Oaths on a different date from the one on which the applicant had verified the affidavit.

business reengineering process ahead of the paperless court in the advent of the fourth industrial revolution stand to add value to all stakeholders, including prisoners if unnecessary procedures are done away with.

All said and done, the objection is upheld, and I hereby strike out the application.

It is so ordered.




E.I. LALTAIKA
JUDGE
12.07.2023

Court: This ruling is delivered under my hand and the seal of this court on this 12th day of July 2023 in the presence of Mr. Melchior Hurubano, learned State Attorney and the applicant who has appeared in person, unrepresented.




E.I. LALTAIKA
JUDGE
12.07.2023

Although I am going to strike out this application for purposes of ensuring that it decided similarly with other applications that came through this chamber earlier today, I must not allow this opportunity to pass by without indicating that the mandatory provision for attestation of affidavits of inmates before a commissioner for oaths is archaic and unjust. These are laws that must be amended to improve criminal justice in our country. The Court of Appeal of Tanzania in **MUSTAPHA RAPHAEL V. EAST AFRICAN GOLDMINES LTD CIVIL APP NO 40 OF 1998 (Unreported)** stated that an affidavit is not some sort of a superior evidence. I think adds nothing in what is narrated in the affidavit by an inmate.

Another reason that I think this 19th century practice is unnecessary especially to a prisoner is that usually anyone mentioned in an affidavit must also swear an affidavit. See **BENEDICT KIMWAGA V. PERMANENT SECRETARY, MINISTRY OF HEALTH CIVIL APPLICATION NO. 31 OF 2000 (Unreported)**. An affidavit that which mentions another person is considered hearsay and unless the source of information is disclosed an affidavit should not be acted upon see **SALIMA VUAI FOUM VS. REGISTRAR OF COOPERATIVE SOCIETIES AND 3 OTHERS** [1995] TLR 75.

It goes without saying that such technicalities related to collection of *written evidence* in the form of an affidavit is too heavy a burden to inmates trying to appeal against their conviction and sentences while their freedom is highly restricted. I know such minor defects can be simply rectified as per recent decisions of the Apex Court, but the long-term goal is to do away with such a requirements for appeals preferred by prisoners. The ongoing