

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CRIMINAL APPLICATION No. 16 OF 2023

*(Arising from Economic Case No. 2 of 2023 of the Resident Magistrate
Court of Shinyanga at Shinyanga)*

THOMAS MAKOYE@ JUMA.....1ST APPLICANT
EMMANUEL N KINGA LYOGGOHYHA.....2ND APPLICANT
ONESMO ALEXANDER NYKISWAHILI.....3RD APPLICANT
ROGERS DEUS.....4TH APPLICANT
NZUNGU MASHAKA ZACHARIA.....5TH APPLICANT
MAGIDALENA ISDORY.....6TH APPLICANT
WARYUBA NYAHURYA @ CHACHA.....7TH APPLICANT
KANDUMILA THADEO MAUNDI.....8TH APPLICANT
WILSON LEOPARD @ MULIMA.....9TH APPLICANT
HAPPY ELIREHEMA KAAYA.....10TH APPLICANT
JOHN PETER ALPHONCE.....11TH APPLICANT
SUNDAY OHASSAN MWAMBE.....12TH APPLICANT
METHOD PASTORY MPINA.....13TH APPLICANT
ALBINUS CHACHA.....14TH APPLICANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

7th July & 4th August 2023

R. B. MASSAM, J.:

The Applicants one Thomas Makoye @ Juma, Emanuel Nkinga Lyagohya, Onesmo Alexander Nyakiswahili, Rogers Deus, Mzungu

Mashaka Zacharia, Magdalena Isdory, Waryuba Nyahyurya @ Chacha, Kandumila Thadeo Maundi, Wilson Leopard @ Mkulima, Happy Elirehan Kaaya, John Peter Alphonse, Sunday Sohassan Mwambe, Method Pastory Mpina and Albinus Chacha under section 148 (3) and 149 of the Criminal Procedure Act Cap 20 R.E 2022 through their chamber summons filed this application for this court to grant bail to the applicants pending the hearing of the Economic Criminal Case No. 2 of 2023 in the Resident Magistrate Court of Shinyanga at Shinyanga.

The chamber summons was taken out at the instant of the applicants and supported by the grounds and reasons set forth in the affirmation affidavit which would was advanced at the hearing in support of the application.

Before the merit of application called for hearing, the respondent counsel on behalf of the Republic notified the court to have a Preliminary objection on point of Law that, the Applicants' affidavit in support of the Application is incurably defective for having defective affidavit which contain defective jurat of attestation, and for that matter the PO was fixed for hearing on 5th June 2023.

At the hearing, Mr. Sanguya was for the Respondent, the Republic whilst applicants were appeared in personal without representation.

Submitting to the PO, Mr. Sanguya submitted that the application was brought before the court for grant of bail to the accused persons/applicants which their application was supported by affidavit. His submission, he challenged the affidavit of the applicant that the applicants' affidavit was defective for having defective jurat of attestation. He said the jurat attestation is bad in law as lacks essential ingredients of affidavit. He argued that affidavit must have a declaration of facts by the deponent also must have signature of the deponent and must have verification clause. He said that ingredients were not found in the applicants' affidavit, to support his challenge, he cited the case of **Salima Vuai vs Registrar of Cooperative society & 3 others**, TLR 75 1975 and again he cited the case of **Faith Chenga vs Group Seven Oty**, Revision No. 176 of 2017. Basing on those authorities, she argued the court to dismiss the application as the application was incompetent to stand before the court.

He went on submitting that it is general law that affidavit which brought to court, can stand as evidence to court, that affidavit will be brought by deponents according to facts which is within his/her knowledge which can be proved by him or herself. The support was in the case of **Jackson Sifan Mtares & 3 others vs DPP**, Civil Appeal No, 180 of 2019.

In reply, the Applicant responded the PO by starting with the 1st applicant, he said that they brought the affidavit in court which they prepared according to law as the said affidavit had all ingredients required by the law. he said the affidavit having their signatures. He said he prayed the court to admit the affidavit as it followed all procedures.

The 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th applicants they all supported the submission of the 1st applicant by averring that I support the submission of the 1st applicant.

In rejoinder, Mr. Suguya insisted the submission in chief that the affidavit is defective as the signature missing in the jurat of attestation. He also reminded the court to look the provision of Section 10 of the Oath and Statutory declaration Act Cap 34 RE 2019 which provide that every affidavit must be in the way directed and rules which made under section 8 of the said law. He again cited the case of **Ramadhan Pazi and Wambura Halima vs Civil Aviation Authority**, Revision No. 325 of 2013 at page No. 3 and 4.

From the submissions of the opposing parties, the main issue calling for my determination is whether an affidavit that is defective and clearly contravenes a mandatory statutory provision for being ***incurable defective***.

Indeed, it is undisputed fact that the law under the provision of section 10 of the Oath and Statutory Declaration Cap 34 RE 2019 states that,

Where under any law for the time being in force any person is required or is entitled to make a statutory declaration, the declaration shall be in the form prescribed in the Schedule to this Act: Provided that, where under any written law a form of statutory declaration is prescribed for use for the purposes of that such form may be used for that purpose.

In the light of the above provision and for the matter of consideration of the part's submission in support of the PO and opposition, I find it relevant to visit and read between the line the applicants' affidavit more specifically at the verification clause and the jurat of attestation as the PO led me to do so. In my reading the verification clause I found nothing to fault the same, it discloses, the applicants jointly verified their statement by stating that we do verify that whatever stated here above in para's 1-10, is true to the best of our knowledge and belief. The verification was signed in individually by thumbprint. The defect came in the jurat of attestation. As noted in the chamber summons, the applicants are 14 in number, in jurat of attestation no among the applicants signed it and the same have no space provided for deponent to sign. On its nature, the jurat

of attestation contravened the provision of section 10 and its schedules of the Oath and Statutory Declaration Act Cap 34. The schedules provide the format how jurat of attestation to be followed. I agree with the contention of the counsel for the respondent/Republic that the application is incurable defect which on its form renders the application incompetent to stand for the court to consider the prayer. The case of **Ramadhan Pazi & Wambura Malima vs Tanzania Civil Aviation Authority**, (Supra) at page 9 the court stated clearly that,

"The declaration shall be in form prescribed to the Act stated above ie. Cap 34 RE 2002. It is in the circumstance therefore mandatory and alleged skip by commissioner for oath in this case is worse and tantamount to undue diligence of the commissioner to perform his duties as the Commissioner for Oath."

In up short, I proceed to support the preliminary objection by the respondent that the jurat of attestation is incurable defective as it contravenes the law, with thus the PO is succeeded. The reason is stated, the defect cannot be cured in anyhow, with thus the application is subjected to struck out for being incompetent before this forum.

It is so ordered.

DATED at **SHINYANGA** this 4th day of August, 2023.



A handwritten signature in blue ink, appearing to read "R. B. Massam", is written over the printed name.

R. B. Massam
JUDGE
4/08/2023

COURT: Right of appeal explained.