

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TEMEKE SUB-REGISTRY

(ONE STOP JUDICIAL CENTRE)

AT TEMEKE

MISC. CIVIL APPLICATION NO. 5267 OF 2024

*(Originating from the Matrimonial Cause No. 68 of 2023 at the District Court of
Temeke at One Stop Centre-Temeke)*

ABIBU RASHID NTAHIGIYE.....APPLICANT

VERSUS

SUBIRA MAULID ABDALLAH.....RESPONDENT

RULING

14th May & 21st June, 2024

BARTHY, J.:

The applicant moved this court with an application for leave to extend time to appeal to this court against the judgment and decree in Matrimonial Cause No. 68 of 2023 of the District Court of Temeke One Stop Judicial Centre, delivered on 15/11/2023. The application also sought costs for the appeal and any relief deemed fit and just to be awarded by the court.

The application was made under Section 14(1) of the Law of Limitation Act, Cap 89 R.E. 2019, and was supported by the affidavit of Juma Nassoro, the advocate for the applicant. The application was heavily resisted by the respondent, who filed a Preliminary Objection on a point of law based on the following grounds;



1. That, the affidavit supporting the purported application is incurably defective for violating the mandatory Provisions of Section 8 of the Notaries Public and Commissioners for Oaths Act Cap. 12 R.E. 2019.

2. That, this honourable Court is not properly moved as the purported application for extension of time is bad in law for failure to cite Temeke High Court Sub-Registry as required by the law.

The hearing of the preliminary objection was conducted by way of written submissions. The parties filed their written submissions timely according to the schedule of this court.

In her submission in support of her preliminary objection, the respondent stated that the affidavit in support of this application is incurably defective for violating the provisions of Section 8 of the Notaries Public and Commissioner for Oaths Act, Cap. 12 R.E. 2019 (The Notaries Public and Commissioner for Oaths Act), 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"

To support this assertion, the respondent cited the case of Mabao Yung vs. Mbeya City Council, Civil Appeal No. 97 of 2013, Court of Appeal at Mbeya Registry (unreported), which cited the case of Mantract Tanzania Ltd vs. Raymond Costs, Civil Application No. 11 of 2010, at page 4.

The respondent pointed out that the applicant's affidavit in support of the application lacked some legal requirements. She stated that the jurat of attestation was not dated, as the attestation section was left blank without inserting the date on which the attestation was made by the Attesting Officer. Consequently, this renders the whole affidavit incurably defective.

Submitting in favor of the second objection, the respondent argued that this court was not properly moved, since the Chamber Summons supported by the affidavit indicated that the applicant lodged his application in the High Court of Tanzania, One Stop Judicial Centre, at Temeke, Dar Es Salaam. It was further submitted that, based on the High Court Registries (Amendment) Rules, 2024 G.N. No. 61A, published on 29/01/2024, it is now a legal requirement that all High Court-District Registries must be cited as High Court-Sub-Registry instead of High Court-District Registry.

The respondent further stated that G.N. No. 61A was published on 29/01/2024 and came into force on the 30/1/2024, whereas the instant

application was lodged in this court on the 13/3/2024. This implies that the applicant lodged his application after G.N. No. 61A was already in place. Thus, the applicant did not comply with the above legal requirement by citing an incorrect title of this court. The respondent was firm in her assertion that the affidavit in support of the application was fatally defective and prayed for this application to be struck out with costs.

On the applicant's side, he enjoyed the services of Ms. Faudhia Kajoki, a learned advocate, who submitted that the jurat of attestation of the affidavit in support of the application is clearly and properly dated 7/3/2024, in compliance with section 8 of the Notaries Public and Commissioner for Oaths Act. She added that the affidavit was properly signed and dated.

She went on to state that the chamber summons was filed online under the Judicature and Application of Laws (Electronic Filing) Rules of 2018. It was her argument that the attestation was properly made and that the first preliminary objection is devoid of merit and ought to be dismissed.

Addressing the second objection, the applicant's counsel submitted that the preliminary objection is frivolous since the application was properly filed and the court should hear and determine the application.

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She added that the omission to write the title cannot render the application incompetent before the court.

Therefore, she urged the court to abide by Article 107A of the Constitution of the United Republic of Tanzania, which demands that courts should deal with substantive rights. There is also the principle of overriding objectives which provided under sections 3A (1) (2) and 3B (1) (a) of the Civil Procedure Code Cap 33 R.E. 2019, to have just determination of the matter. Thus urging the objections to be dismissed.

In rejoinder submission, the respondent stated that the applicant did not dispute the grounds raised, as the place of date was not filled in the affidavit, and the applicant should not mislead the court. Regarding the second objection, she insisted the same was admitted by the appellant. Therefore, it was the respondent's prayer that the court should uphold the objections raised.

Having heard the arguments of both sides regarding the preliminary objection raised, the court must determine two issues:

1. Whether the affidavit supporting the application is incurably defective.
2. Whether the case is improperly before this court due to bearing an incorrect title of the court.



I will begin with the first issue, as to whether the affidavit in support of the application is incurably defective. The respondent, in her submission, she argued that the jurat of attestation of the applicant's affidavit was not properly dated and signed, thereby contravening section 8 of the Notaries Public and Commissioner for Oaths Act. In contrast, Ms. Faudhia contended that the affidavit was properly signed and dated.

Before delving into the core of this issue, I wish to state at the outset that an affidavit is a written statement confirmed by oath or affirmation, and it is used as a substitute for oral evidence. In the case of **Abdul Issa Bano vs. Mauro Daolio**, Civil Application No. 563/02 of 2017, the Court of Appeal of Tanzania at Arusha held that the affidavit should have four essential elements:

"The essential ingredients of a valid affidavit are;

one, the statement or declaration of facts, by the deponent;

two, a verification clause;

three, a jurat;

four, the signatures of the deponent and the person who in law is authorised either to administer the oath or to accept the affirmation. [Emphasis is supplied].

— [Signature]

In the quoted case above, they also referred to the case of Director of Public Prosecutions vs. Dodoli Kapufi & Another, Criminal Application No. 11 of 2008, Court of Appeal of Tanzania (unreported), the court went further to state;

"Matters which make an affidavit to be incurably defective in case of the jurat as; Total absence of the jurat, or omission to show the date and place where the oath was administered or the affirmation was taken, or the name of the authority and/or the signature of the deponent against the jurat, renders the affidavit incurably defective". [Emphasis is supplied].

The respondent pointed out that in the jurat of attestation of the affidavit, the date of the attestation was not inserted as required by law, leaving it blank. Upon viewing the said affidavit in the file of the case on case management system, it is clear that the affidavit supporting the chamber summons is dated 7/3/2024. Then the requirement of section 8 of the Notaries Public and Commissioner for Oaths Act was complied with.

It is also noted that, the same was signed and dated by Juma Nassoro and witnessed before the commissioner of oaths, Thomas Richard Gida. Therefore, I find that the first limb of the objection has no legal basis and is dismissed.



The second limb of the objection is based on citing the wrong title of the court. The chamber summons is titled "HIGH COURT OF TANZANIA, ONE STOP JUDICIAL CENTER AT TEMEKE DAR ES SALAAM," as seen on the supporting affidavit. According to the High Court Registries (Amendment) Rules, 2024 G.N. No. 61A, published on 29/1/2024, High Court-District Registries are now required to be cited as High Court-Sub-Registry.

The error in the title is evident, but it does not affect the substance of the matter. Considering the spirit of the Overriding Objectives, which require courts to deal with cases justly and focus on substantive justice rather than procedural technicalities. See case of **Yakobo Magoiga Gichere v Peninah Yusuph**, Civil Appeal No. 55 of 2017, Court of Appeal of Tanzania at Mwanza), where the court is empowered to minimize over-reliance on procedural errors.

Thus, the court finds merit in the second limb of the objection. However, the error in the title does not go to the root of the matter and does not lead to a miscarriage of justice. This principle was also affirmed in the case of **Alliance One Tobacco Tanzania Limited & Another vs. Mwajuma Hamisi (as administratrix of the estate of the late Philemoni R. Kilenyi) & Another**, Misc. Civil Application No. 803 of 2018, High Court of Tanzania at Dar es Salaam.



Additionally, in the case of Omari Ally Omary vs. Iddi Mohamed and Others, Court of Appeal of Tanzania, Civil Revision No. 90 of 2003, Dar es Salaam, the court held that;

"...As a general rule a defective affidavit should not be acted upon by a court of law, but in appropriate cases, where the defects are minor, the courts can order an amendment by way of filing fresh affidavit or by striking out the affidavit but if the defects are of substantial or substantive nature, no amendment should be allowed as they are nullity, and there can be no amendment to a nothing." [The emphasis is supplied].

Procedural errors that do not prejudice the substantive rights of the parties should not result in the dismissal of the application. Therefore, while acknowledging the error, it is clear that it does not affect the core issues of the case or the administration of justice. I find merit in the second limb of the objection, but since the defect in the title is minor, I hereby order an amendment by way of filing a fresh chamber summons and the affidavit within seven days from this ruling.



It is so ordered.

Dated at Dar es Salaam this 21st day of June, 2024.



G. N. Barth

G. N. BARTHY

JUDGE

Delivered in the presence of Ms. Fauzia Kajoki learned advocate for the applicant, the respondent in person and RMA. Ms. Bernadina