

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 6 OF 2005**

**MADIBIRA AGRICULTURAL MARKETING  
COOP. SOCIETY LIMITED.....APPLICANT  
VERSUS  
D.N. BAHRAM & OTHERS.....RESPONDENTS**

Counsel: Mr. A. T. Kingwe for Applicant  
Mr. Msala for Respondent

**R U L I N G**

**Dr. BWANA, J:**

1. On 3 April 2006, the Applicant filed an application for the following orders:-
  - 1.1. This Court be pleased to direct the Respondent to furnish security to produce any property belonging to him and to place the same at the disposal of the court up to the date of final payment of the remaining amount.
  - 1.2. This Court be pleased to order the respondent to give repayment schedule for the remaining period of ten months granted.
  - 1.3. Costs.

1.4. Any other relief.

The application was supported by what appears to be an Affidavit of one Kennedy Francis Lutambi, a Chief Accountant of the Decreeholder/Applicant.

2. That Affidavit attracted a preliminary objection raised by the judgment debtor/respondent couched in the following words:-

2.1. That Applicant's application has been brought under the wrong/inapplicable provisions of the law.

2.2. That the application is premature and bad in law.

2.3. That the affidavit supporting the application is incurably defective for –

(a) It does not have a clearly set out and dated verification clause.

(b) Its jurat of attestation does not state:

i- Where the oath was taken

ii- Whether the deponent was personally known or was identified to the commissioner for oaths before whom the same was taken.

3. It is my view that this application can be disposed of by considering paragraph 2.3 (a) and (b) above. It is apparent that the purported affidavit of Mr. Lutambi does not have the elements stated in (a) and (b) (i) and (ii) of para 2.3. above.

Those defects are fatal to any document purporting to be an affidavit. In Wananchi Marine Products (T) Ltd vs Owners of Motor Vessels ( High Court civil Case No. 123 of 1996) it was rightly stated thus:

**“..the acceptable style is to have the facts in an affidavit put in numbered paragraph and to have a separate verification clause immediately following the last paragraph.....headed by the words “VERIFICATION”. This clause is then signed and dated....the clause must be signed by the deponent....”**

4. Although Mr. Lutambi appears to have signed the document, “the acceptable style” referred to above in the Wananchi case has not been followed. It is a gross omission. Not only that, but the purported jurat of attestation does not state where the oath was taken and further, it does not show whether the deponent was personally known to or was identified to the commissioner of oaths. It is apparent therefore, that the requirements of section 8 of the Notaries Public and Commissioners for Oaths Ordinance, have not been complied with. That section states:

**“ Every Notary Public and Commissioner for**

**Oath before whom any oath or affidavit is taken or made under this Ordinance shall state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made". (emphasis provided)**

In D. B. Shapriya Vs Bish International (C. A. No. 53 of 2002) the Tanzania Court of Appeal (per Ramadhani, J.A) made the following important observation:

**"...the requirements to be contained in an affidavit have all to be observed to make it authentic. Here that has not been the case. It is not for a deponent to pick and choose what is and what is not important.." (emphasis provided)**

5. I concur with Counsel for the Respondent that the jurat is incurably defective. As such, the purported affidavit is struck out. Consequent to that, the application remains unsupported by an affidavit which is a fundamental requirement. Therefore it is also dismissed with costs. It is accordingly ordered.

Dr. S. J. Bwana

**JUDGE**

5/6/2006

643 words