

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

MISC. LAND APPL. NO.954 OF 2017

(From the Decision of the District Land and Housing
Tribunal of Temeke District at Temeke in
Land Application No. 249 of 2014)

THOMAS JOHN PAIZON.....APPLICANT

Versus

KHALID A. NONGWA.....RESPONDENT

RULING

Date of Last order: 13.07.2018

Date of Ruling: 10.08.2018

S.A.N WAMBURA, J.

The applicant **Thomas John Paizon** made this application under Section 41 (2) of the Amendment of the Land Disputes Courts Act Cap. 216 praying for the following orders;

- (i) That time enlarged within which to appeal against the whole decision of TEMEKE District Land and Housing Tribunal for Temeke in Land Application No. 249 of 2014.*
- (ii) That costs be paid by the respondents.*
- (iii) Any other reliefs be granted as may to the Honourable Court may deem fit and just.*

The application was supported by the applicant's sworn affidavit.

The Respondent **Khalid Nongwa** filed a counter affidavit bitterly challenging the application.

Both parties appeared in person unrepresented.

However before the hearing of the application, the respondent raised a preliminary objection on point of law to the effect that:-

That the application by the applicant is incompetent as it supported by incurable defective affidavit.

With leave of this court, the application was disposed of by way of written submissions. I thank both parties for adhering to the schedule.

In support of the objection, the respondent averred that the jurat of attestation by the applicant's affidavit is defective as there are two different names in respect of the attesting officer and the name on the rubber stamp. It was signed on 13/10/2017 by one

Faraji A. Mangula and stamped with rubber stamp of Faraji Festo Mangula which are two distinctive different names. He therefore prayed for the application to be struck out as it has no affidavit to support it.

In response, the applicant conceded to the preliminary objection raised and prayed for time to amend the said application.

As correctly submitted by the respondent, this court finds that the jurat of attestation is defective as it did not show how the attesting officer knew the deponent.

It has to be stated fully in the jurat of attestation and the information of identification for purposes of commitment.

Failure to indicate such an important statement in the jurat of attestation renders the affidavit incurably defective for lack of disclosure of the identity of the deponent. The defect is fatal and cannot be amended as it goes to the root of the merit of the application.

Under Section 10 of the Oaths and Statutory Declarations Act Cap.34 R.E. 2002 it is mandatory that the statutory declaration complies with the form prescribed in the schedule and it must be stated and specified in the jurat of attestation whether the deponent was known to the Commissioner for Oaths personally or whether he was identified to him by a person personally known to the Commissioner for Oaths.

This position was also reiterated in the case of **Emirates Airlines Vs Ifan M. Dinani and Another**, Civil Appl.No.7 of 2009 FCT at DSM (unreported) which this Court held that:- I quote;

".....A specific statement of identification has to be given in the jurat. Failure to state/indicate in the jurat of attestation whether or not the deponent is known to the Commissioner for Oaths or how he identified the deponent is a material omission which has rendered the affidavit incurably defective".

This was also held in the case of **Peter Mziray Kuga Vs Anne Kilango Malecela & 2 Others**, Civil Appl.No.7 of 2006 (unreported).

Having said so, the preliminary objection raised by the respondent is sustained. The application is accordingly struck out with no Order as to costs. This is because the respondents counter affidavit is also incompetent for not being dated though it has been verified.


S.A.N. WAMBURA
JUDGE
10.08.2018