

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

MISC LAND APPLICATION NO. 388 OF 2020

*(Arising from Miscellaneous Land Application No. 737 of 2017 which originated from
Award of Taxation of Bill of costs in Misc. Land Case Application No. 41 of 2015
Dated 25th October, 2016*

UTHUMAN MADATI *(Administrator of the Estate of the late*
JUMA POSANYI MADATI.....APPLICANT

VERSUS

TATU O. FARAHANI.....1ST RESPONDENT
SALIM MADATI.....2ND RESPONDENT

RULING

S. M. MAGHIMBI, J

The applicant has brought two applications at once, one, for extension of time to set aside abatement order of the High Court of Tanzania Land Division before Madam Judge Mgonya dated 01/04/2019 in Misc. Land Application No.737 of 2017. This application was lodged under the provisions of Section **14(1) of The Law of Limitation Act [Cap 89 R.E. 2002]**, and two, application to set aside the abatement order of the High court of Tanzania Land Division at Dar es salaam before Honorable Judge Mgonya dated 01/04/2019 in Misc Land Application No. 737 of 2017, made under the provisions of **Order XXII Rule 9(2) of The Civil Procedure Code, [Cap 33 R.E. 2002]**. The arguments are founded on the submissions of the parties. On her part, the 1st respondent has raised two preliminary objection namely:-

1. That the application to set aside the abatement order of the High Court of Tanzania (Land Division) at Dar Es Salaam (Hon. Madam Justice Mgonya) dated 01/04/2019 in Misc. Land Application No. 737 of 2017 is hopelessly time barred.

2. The Application is bad in law for being omnibus.

The substance of the application was argued by way of written submissions. Mr. Joseph Kipeche Advocate represented the Respondent and Daimu Halfani, Advocate represented the Applicant. I have given the rival submissions due consideration in line with the affidavit and reply thereto, I commend the Counsels for their well outlined submissions. However, before I go into the details of the objections raised, I have noted a serious irregularity in the affidavit of the applicant.

On para 5 of the affidavit of the applicant in support of the Chamber Summons, the applicant has deponed that the late Posanyi Juma Madati had instituted a Land Case No. 17/2013 against the respondent. On para 6 of the same affidavit he spoke of the day that the judgment of this court was pronounced and pointed out that the said judgment was attached as annexure "C" collectively and the annexure "B" collective averred b para 5. I then went on to peruse the said annexure only to find out that the Judgment that was attached to the affidavit, which indeed involved the parties to this case is for Land Case No. 18/2013 and not Land Case No. 17/2013 as pointed out by the applicant. The question is what is the effect of this mistake.

An affidavit duly notarized is a written statement under oath from an individual which is sworn to be true. It is nothing but an oath by the

deponent that what the individual is saying or what is contained in the affidavit is the truth. Looking at the affidavit at hand, what is deponed in para 5 and 6 of the affidavit does not match with the annexures that are attached to the affidavit.

As per the records of this Court, the deponed Land Case No. 17/2013 was between Debra Wilfred Malekia Vs. Alex Mhagama and neither the late Juma Posanyi Madati nor Tatu O. Farahani were parties to it. That being the case it is safe to conclude that the applicant's affidavit contains untrue statements. In the case of **Ignazio Msina v Willow Investment CPRA, Civil Application No. 21 of 2001 CAT** (unreported) the court held:

"An affidavit which is tainted with untruth is not an affidavit at all and cannot be relied upon to support an application. The rules governing the form of affidavits cannot be deliberately flouted in the hope that the court can always pick the seed from the chaff, but that would be an abuse of the court process. The only assistance the Court can give in such a situation is to strike out the affidavit."

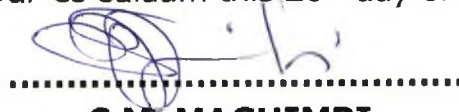
Further to that, while faced with the same situation in the case of **Ashura Salam vs Saza Gwasa Sebabili (Misc. Civil Application No. 133 of 2020) [2020] TZHC 4415; (16 December 2020)**, my Sister Judge, Hon Mgeyekwa had this to say:

I am in accord with the learned counsel for the respondent that an affidavit being a substitution for oral evidence, should only contain true statements of facts and circumstances which the applicant disposes her personal knowledge or from information

believed to be true. The fact that the applicant's affidavit contains untrue statements means it is not trustworthy and the same means that the affidavit is defective"

Having found that the applicant's affidavit contains untrue statement, it remains unworthy of trust hence incompetent, the remedy is to strike it out from the application. Consequently the affidavit in support of the application is hereby struck out from the records. This leaves the Chamber application incomplete, without any supporting affidavit hence making the whole application beforehand defective. The same is hereby struck out without any order as to costs.

Dated at Dar-es-salaam this 26th day of July, 2021.



S.M. MAGHIMBI.
JUDGE.

