

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

**MISC. LAND CASE APPLICATION NO.637 OF 2021**

*{Arising from Misc. Application No. 761 of 2017 by the District Land and Housing for Kinondoni at Mwananyamala, before Ho. R.B Mbilinyi}*

**BUILD DSM (T) LTD.....APPLICANT**

**VERSUS**

**SAID MASHARUBU LUHOLI.....1<sup>ST</sup> RESPONDENT**

**KINONDONI MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of Last Order: 23.05.2022*

*Date of Ruling: 31.05.2022*

**T. N. MWENEGOHA, J.**

The applicant is seeking for an order of extension of time so that he can lodge his application for leave to the Court of Appeal out of time, against the judgement and decree of this court delivered by Hon. R.B Mbilinyi, vide Misc. Application No. 761 of 2017. The application was brought under section 93 of the Civil Procedure Code, Cap 33 R. E. 2002 and accompanied by the affidavit of the applicant, Hassan Badhela, the Principal officer of the applicant.

On the other hand, the 1<sup>st</sup> respondent objected the application based on two grounds:-

- 1. The application is bad in law for being supported by a defective affidavit which bears a defective jurat of attestation contrary**

**to Order XIX Rule 3(10) of The Civil Procedure Code, Cap 33 R. E. 2019.**

**2. The court has been moved by a non-existing law.**

The parties were ordered to argue the two preliminary objections by written submissions. The 1<sup>st</sup> respondent complied to the order, but the applicant did not comply. Therefore, the objections were heard ex-parte against her. Advocate Mbakileki appeared for the 1<sup>st</sup> respondent.

On the 1<sup>st</sup> objection, it was argued by the 1<sup>st</sup> respondent's counsel that, the affidavit is incurably defective as the jurat doesn't show if the commissioner for oaths knew the deponent personally or the deponent was identified to him by someone else. This is contrary to section 10 of the Oaths and Statutory Declarations Act, Cap 34 R. E. 2019. Also, the case of **Nelson Mwankenja vs. Mbaula David, Misc. Application No. 65 of 2018, High Court of Tanzania at Mbeya (unreported)**.

On the 2<sup>nd</sup> objection, the 1<sup>st</sup> respondent's counsel maintained that, section 93 of the Civil Procedure Code, Cap 33 R. E. 2002 does not exist. The Civil Procedure Code was Revised in 2019, hence all applications filed after that are to be referred to the current Revised Edition. The instant application was filed in 2021. It has to be brought under the existing law which is Revised edition of 2019 as per. That, it is a trite law that, wrong citation of law, section or subsection and or paragraphs will not move the court to do what it was asked of it. The same renders the application incompetent. This was the position of court in **M/S Afriq Engineering and Construction Ltd versus The Registered Trustees of the Anglican Church of Tanzania (Contracted as Diocese of Central Tanganyika, The Anglican Church of Tanzania) and Another, Misc. Application No. 99 of 2018 (unreported)**

Having gone through the arguments by the 1<sup>st</sup> respondent's counsel, I will not labour much in deciding on the merits or otherwise of the objections in question as the same were not contested by the applicant. Starting with the 1<sup>st</sup> objection, I will dwell on the provision of section 10 of the Oaths and Statutory Declarations Act, Cap 34 R. E. 2019, which provides that;-

*10. "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"*

This provision takes us to the schedule where the law has given directions as to how a jurat should appear. Under the said law, it is mandatory for the person making the declaration to specify in the jurat if he or she knows the deponent personally or the said person before him or her was identified to him or her by someone else. Failure to do so by person entitled to make the said declaration, renders the authenticity of the whole document affidavit in our case to be questionable. See **Nelson Mwankenja vs. Mbaula David**. The 1<sup>st</sup> objection is sustained. The instant application is incompetent before this court

Having so observed in the 1<sup>st</sup> objection, I will not proceed to discuss the 2<sup>nd</sup> objection. My findings in the 1<sup>st</sup> objection are capable of disposing the application to its finality.

Eventually, the application is struck out with costs.

  
**T. N. MWENEGOHA**  
**JUDGE**  
**31/05/2022**

