

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

**LAND CASE NO. 47 OF 2013**

**SILVERSTONE PROPERTIES CO.  
LIMITED.....APPLICANT/PLAINTIFF**

**VERSUS**

**DAR ES SALAAM CITY  
COUNCIL.....1ST RESPONDENT/ 1ST DEFENDANT**

**KINONDONI MUNICIPAL  
COUNCIL.....1ST RESPONDENT/ 1ST DEFENDANT**

**RULING**

**Latifa Mansoor, J:**

The Plaintiff/Applicant raised a point of preliminary objection that the counter affidavit filed by the 1st Respondent/1st Defendant sworn by one Jacqueline Mosha is incurably defective in law as it does not show whether the Commissioner for Oaths knew the deponent personally or whether the deponent was identified to her by somebody whom the Commissioner for Oaths knew personally. The Advocate cited the case of **Simplisius Felix Kijuu Issaka vs. The National Bank of Commerce Limited, Civil Application No. 24 of**

**2003**, saying that the Commissioner for Oaths must state whether he knows the Deponent to affidavit personally or he was introduced by someone else, and if the Commissioner does not state this, it renders the affidavit defective and hence incompetent. He said this is contrary to the requirement of Section 10 of the Oaths (Judicial Proceedings) and Statutory Declarations Act No. 59 of 1966.

In response, the Advocate for the Respondent has submitted that the preliminary objection is in itself defective as it was brought without properly moving the court as it did not cite any provision of the law which was violated. He also submitted that the objection is not pure point of law, and this is against the tests set in the case of **Mukisa Biscuits Manufacturing vs. West End Distributors LTD (1969) 1 EA 696**, and the case of **Mwanachi Engineering and Contracting Corporation vs. Khalifa Msangi t/a Msangi Enterprises, Civil Appeal No. 89 of 2009** (unreported).

The preliminary objection raised by the Applicant/Plaintiff in this case is a pure point of law, and it is not mixed with facts. The issue is whether Section 10 of the Oaths (Judicial Proceedings) and Statutory Declarations Act No. 59 of 1966 was violated in the affidavit of Jacqueline Mosha, the officer of the 1st Defendant.

In practice Notices of Preliminary Objections are not brought by way of chamber summons in which the Applicant is required to cite the provisions of the law under which it is brought. Notice of preliminary Objections are brought before

the Court and served on the other party by way of a mere Notice signed by the person who brought it or his/her representative. The notice of preliminary objection filed by the Applicant/Plaintiff is proper before this Court.

I have looked into the counter affidavit sworn by Jacqueline Mosha , the City Solicitor, and I shall reproduce the swearing part of it for ease of reference: It reads like below:

SWORN at Dar es Salaam by the  
said Jacqueline Mosha who  
is identified to me by.....  
This 23 day April 2013

(SIGNED)  
.....  
DEPONENT

Before me  
signed and stamped  
.....

COMMISSIONER FOR OATHS

It is true that the affidavit does not show whether the Commissioner for oaths knew Jacqueline Mosha personally neither does it show if Jacqueline Mosha was introduced or identified to the Commissioner for Oaths by somebody else whom the Commissioner for oaths knew personally. The space in which the name of the person who has identified Jacqueline Mosha to the Commissioner for oaths was left blank.

This is a violation of Section 10 of the Oaths (Judicial Proceedings) and Statutory Declarations Act No. 59 of 1966, and therefore this renders the affidavit of Jacqueline Mosha

sworn at Dar es Salaam on 23rd April 2013 defective, and it is hereby stricken out and expunged from the records of the Court.

Consequently, the preliminary objection is upheld with costs.

DATED at DAR ES SALAAM this 10th day of June, 2013.

**LATIFA MANSOOR**  
**JUDGE**  
**10 JUNE 2013**