

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**CIVIL REVISION NO. 27 OF 2015**

**(From Civil Case No.358 of 2004 at Dar es Salaam RM's Court at Kisutu)**

**GETEX LIMITED t/a HITECH DRY CLEANING ..... APPLICANT  
Versus  
INDIAN OCEAN HOTELS LTD t/a GOLDEN TULIP ..... RESPONDENT**

**Date of last Order: 23/11/2015**

**Date of Ruling: 01/02/2016**

**RULING**

**FELESHI, J.:**

This is a ruling in respect of an application for revision made under section 44(1)(b) of the Magistrates' Courts Act, [CAP. 11 R.E, 2002] that this Court may be pleased to call for the records in Civil Case No. 358 of 2004 in the Resident Magistrates Court of Dar es Salaam at Kisutu and revise the order dated 16/04/2015 for the same contains apparent errors causing injustice on the part of the applicant specifically in staying execution dated 06/09/2010 which had the effect of stopping accrual of interest on the decretal sum.

On 27/08/2015, the respondent's counsel raised two Preliminary Points of Objection to wit:-

- 1. The application is hopelessly time barred.**
- 2. The chamber summons is not supported by the affidavit contrary to the provisions of Order XLIII Rule 2 of the Civil Procedure Code, CAP. 33 R.E, 2002].**

The hearing of the Preliminary Objection was heard by way of written submissions whereas the respondent engaged the services of the M/S R.K. Rweyongeza & Co. Advocates while the applicant was represented by the M/S Decorum Attorneys.

Submitting for the Preliminary Objection, the respondent's counsel submitted for the 1<sup>st</sup> limb that, the application at hand was filed some forty (40) days after lapse of the time the application ought to have been filed as the law requires under item 21 of Part III of the schedule to the Law of Limitation Act, [CAP. 89 R.E, 2002] to be filed within sixty (60) days from the date of decision.

Regarding the 2<sup>nd</sup> limb of Preliminary Objection, the respondent's counsel submitted that the deponent in the supporting affidavit one GODWIN MUGANYIZI (advocate), is not the applicant as such thus rendering the application incompetent for want of a supporting affidavit in terms of Order XLIII Rule 2 of the Civil Procedure Code (supra).

In response, the applicant's counsel submitted for the 2<sup>nd</sup> limb of Preliminary Objection that, stating in the affidavit that the deponent is the applicant (instead of—an advocate for the applicant) is not a material error occasioning miscarriage of justice for the same is curable. He thus urge for substitution of the said words in the interest of justice.

As to the 2<sup>nd</sup> limb of Preliminary Objection, the applicant's counsel submitted that the application under scrutiny is within the prescribed time limit because the time in applying for certified copies of ruling and

drawn order which was availed to the applicant on 10/07/2015 should be excluded. He urges the Points of Objection to be overruled.

Regarding the 2<sup>nd</sup> limb of Preliminary Objection on defective affidavit, truly and as conceded by the applicant, the same refers to GODWIN MUGANYIZI as the applicant instead of referring GODWIN MUGANYIZI as an advocate for the applicant. Thus, since an affidavit is evidence which cannot be amended and considering that the applicant has not sought leave to file a Supplementary Affidavit (for he could not so pray after the raise of the Preliminary Points of Objection), then, that renders the application incompetent for want of a supporting affidavit in terms of Order XLIII Rule 2 of the Civil Procedure Code (*supra*).

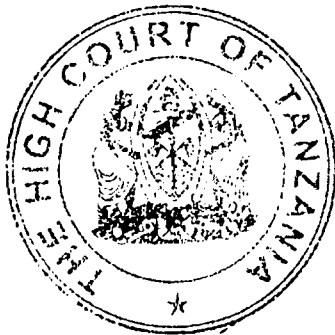
Besides, notably, the *jurat* of attestation in the affidavit sworn by GODWIN MUGANYIZI does not make clear whether the deponent was either known or introduced to the Commissioner for oaths by somebody. Such failure to disclose renders the application incurably defective as held by the Court of Appeal of Tanzania in **SIMPLISIUS FELIX KIJUU KISAKA vs. THE NATIONAL BANK OF COMMERCE LIMITED**, Civil Application No. 24/2003 where the Court underscored to the effect:-

**"The affidavit does not show whether the Commissioner for Oaths knew the applicant personally or whether the applicant was identified to him by somebody whom the Commissioner for Oaths knew personally. This is contrary to the requirement of section 10 of the Oaths (Judicial Proceedings) and Statutory Declaration Act No. 59 of 1966. This being the case, it is evident that the applicant's affidavit in support of the Notice of Motion is defective. The crucial issue is as to what is the effect of a defective affidavit in support of a notice of motion. In my view, a defective affidavit in support of a Notice of Motion renders the**

**application incompetent. It leaves the application without legs on which to stand. Since the application is incompetent for being supported by a defective affidavit, it must be struck out".**

From the above in consequential, the application in wholesome is incompetent for being fatally defective. Thus, the application at hand is fatally defective and deserves to be struck out for being incompetent. Being the case, there is no reason to address the 1<sup>st</sup> limb of Preliminary Objection. Considering the circumstances, I make no order as to costs.

Order accordingly.



**E.M. FELESHI**  
**JUDGE**  
**01/02/2016**

Ruling delivered in chambers this 26<sup>th</sup> day of January, 2016 in presence of Ms Fatma, Advocate for the Applicant and Ms. J.Rweyongeza, Advocate for the Respondent.

**E.M. FELESHI**  
**JUDGE**  
**01/02/2016**