

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

MISC. CRIMINAL APPLICATION NO. 231 OF 2019

(Originating from the decision of the District Court of Rufiji at Kibiti in Criminal Case
No.142 of 2019).

RAJABU OMARY MUKIA.....APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 17.12.2018

Date of Ruling: 19.12.2018

KALUNDE, J.

This is an application of extension of time within which to file a notice of appeal and petition of appeal against the decision of the of the Rufiji District Court at Kibiti in Criminal Case No. 142 of 2018. The application is made under section 361 (2) of the Criminal Procedure Act [Cap. 20 R.E. 2002] (CPA), supported by an affidavit of **Rajabu Omary Mukia** (the applicant). The respondent filed a counter affidavit of one Miss. Fidestas Arumani Uisso, learned State Attorney and a Notice of Preliminary Objection.

Before the District Court Rufiji at Kibiti, the applicant was charged and convicted of rape contrary to section 130(1), (2) and 131 (1) of the Penal Code [Cap.16 R.E. 2002] and sentenced to 30 years imprisonment. The application was argued orally.

When the application was called for hearing of the preliminary objections, the applicant appeared was unrepresented whereas the Respondent/Republic was represented by Miss. Fideestas Uisso learned State Attorney.

The Notice of Preliminary Objection raised three preliminary objections on points of law: -

- 1 That the affidavit is incurably defective for lack of jurat of attestation;*
- 2 That the affidavit is incurably defective as it contains prayers;*
- 3 That the Court is not properly moved.*

At the commencement of the hearing the respondent abandoned the points maintaining the remaining two. In support of the first preliminary objection Miss. Uisso submitted that, the affidavit supporting the affidavit was incurably defective for lack of *jurat* as required by section 8 of **the Notary Public and Commissioner for Oaths Act, [Cap. 12 R.E. 2002]** read together with **the Written Laws (Miscellaneous Amendment) Act, No. 2 of 2016**. She also cited the case of **DPP vs .Dodoli Kapufi & Another, Cr. Appn. No. 11 of 2008, CAT at Dar es Salaam (unreported)** which was cited in **Darusi Gidahosi vs. Republic, Cr. Appn. No. 1 of 2011 (CAT at Arusha) (unreported)**.

Submitting on the second point, Miss. Uisso argued that an affidavit is, by law, required to contain facts which the deponent is able to prove. She said, paragraph six (6) of the applicant's affidavit contained prayers. She prayed that, the affidavit in support of the application is incurably defective rendering the entire application a nullity and prayed that the application be struck out.

In response, the applicant stated that he was a lay person and did not apprehend any defects in his application as such he left it to the Court to decide the application in the manner allowed by the law.

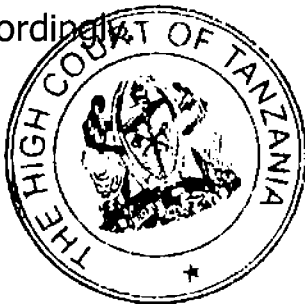
As rightly pointed out by the learned State Attorney, "*Affidavits intended to be used in judicial proceedings, are by law required to be confined to facts as the deponent is able of his own knowledge to prove and should be properly verified*". See **Mantrac Tanzania Ltd vs Raymond Costa, Civ. Appn. No. 11 of 2011 (CAT at Mwanza) (unreported)**. Paragraph six of the applicant's affidavit contains a prayer, however, the defect does not render the whole affidavit a nullity, it only serves to strike out the said paragraph and in effect the remaining affidavit stands.

Coming back to the issue of *Jurat*, there is a plethora of authorities to the effect that total absence of a *jurat*, or omission to show the date and place where the oath was administered or the affirmation taken, or the name of the authority and/or the signature of the deponent against the *jurat*, renders the affidavit incurably defective. See **Wananchi Marine Products Ltd vs. Owners Motor Vessels, Civ. Case No. 123 of 1996 (HCT at Dar es Salaam) (unreported)**; **Aziz Bashir vs. Ms Juliana John Rasta & Two others, Misc. Civ. Appn. No. 23 of 2003 (HCT at**

Arusha) (unreported) Zuberi Mussa vs. Shinyanga Town Council, Civ. Appn. No. 100 of 2004 (CAT, unreported) and most recently DPP vs. Dodoli Kapufi & Another (supra).

Fortunately, there is no dispute that the affidavit in support of the applicants' application is defective for lack of a *jurat*. This defect renders the affidavit incurably defective and that in turn renders the entire application incurably defective. In the circumstances, the application is defective for not being supported by an affidavit. The application is struck out for incompetence.

Order accordingly.

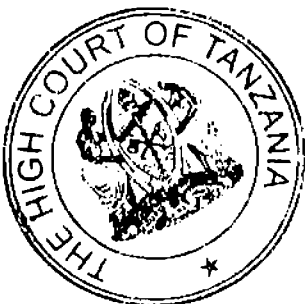


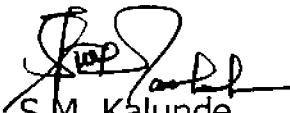

S.M. Kalunde

JUDGE

19/12/2018

Court: Ruling delivered in chambers in the presence of applicant in person and in the presence of Candid Nasua, State Attorney for respondent.




S.M. Kalunde

JUDGE

19/12/2018