

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

MISC. LAND APPLICATION NO. 10 OF 2022

*(Originating from the decision of the District Land and Housing Tribunal for
Kilombero, at Ifakara in Land Appeal No. 145 of 2019)*

DONATI KYEVECHOAPPLICANT

VERSUS

HUSSEIN MKUMBA RESPONDENT

R U L I N G

12th July, & 26th August, 2022

M. J. CHABA, J.

This ruling is in respect of a preliminary objection raised against the instant application for extension of time to set aside *ex-parte* judgment. When the respondent was duly served with the Chamber Summons, supported by an affidavit sworn by the applicant himself, he filed a Notice of Preliminary Objection on a point of law that the affidavit is incurably defective.

At the hearing of preliminary objection, parties agreed to argue the raised P.O, by way of written submissions. Both parties adhered to the court's scheduling order by filling their respective submissions in time.

Submitting in support of the raised P.O, the respondent stood firm to his point (objection) by stating that the applicant's affidavit is incurably defective and contravened section 10 of **"The Oaths Judicial**

Proceedings) and Statutory Declaration Act No. 59 of 1966” (Sic), the proper cited is **The Oaths and Statutory Declarations Act [Cap. 34 R. E. 2019]** and stated that the applicant’s affidavit did not state whether the attesting officer knew the deponent or was introduced by someone else. He cited legal authorities which points out that the purpose of preliminary objection is to serve time of the court.

On his part, the applicant through the learned advocate Ms. Josephine Mbena responded by arguing that the affidavit is not defective at all and thus the P.O has no merit. He referred this court to the case of **Beatrice Mbilinyi v. Ahmed Mabkhut Shabiby**, Civil Appeal No. 475/01 of 2020 - CAT DSM (Unreported) to buttress her stance on the interpretation that when the attesting officer failed to indicate that the deponent was introduced by someone else, it means that he knew the deponent personally.

In rejoinder, the respondent had nothing useful to add.

Having seriously considered and examined the rival submissions advanced by the parties, the main contention is whether or not the affidavit is defective.

Upon scrutiny and examination of the affidavit in question, I have observed that the jurat of attestation was designed in a way that the attesting officer has the option of cancelling or crossing some words not needed and at the same time would fill in the blanks accordingly when necessary. This form of jurat did not contravene section 10 of **The Oaths and Statutory Declarations Act [Cap. 34 R.E. 2019]**. The attesting officer cancelled or crossed the unwanted word namely;

"identified" but by mistake as it appears on the applicant's affidavit, he left the rest of corresponding words. Despite the fact that he failed to cancel or cross all the words required of, but it can be gathered therefrom, as far as my understanding is concern, that the attesting officer meant to show that he personally knew the deponent. I wish to quote part of the jurat as hereunder shown:

"SWORNED at Ifakara by the said DONATI KYOVECHO Who is known to me personally/identified to me by

.....

The latter being known to me personally this 26th Day of January, 2022".

On the other side, I have had the grace of going through the cited authorities, I am as well obedient to them. What I have observed in my meditation of the law governing statutory declaration and interpretation of section 10 of **The Oaths and Statutory Declarations Act** (supra) it gives a conclusion that the minor omission by the attesting officer cannot at any rate affect the validity of this application. On this facet I am not in agreement with the respondent's averment that the denoted defect is incurable.

This court was faced with a similar situation on failure to cancel or cross the unwanted words when the clause is couched in the prescribed form. In the case of **Lazaro Bajuta and 18 Others v. Daniel Awet Tewa**, Misc. Land Application No. 97 of 2021 (Original Land Case No. 23 of 2019) where the attesting officer failed to cancel the unwanted words in the jurat, the court had the following to state:

"It is undisputed that there was no cancelling of the word to show if the attesting officer knew the deponent or was just introduced by someone else. However, I do not agree with the respondent's contention that such defect is incurable. In my view, it does not go to the root of the matter hence can be cured by the overriding objective principle by allowing the parties to do the needful and rectify such an omission. I therefore, find no merit in this objection and proceed to dismiss the same."

Also having considered what the Court of Appeal of Tanzania decided in the case of **Beatrice Mbilinyi v. Ahmed Mabkhut Shabiby** (Supra), I am of the settled mind that failure by the attesting officer to state whether the deponent was known to him, automatically means that the officer knew the deponent personally. I rule that it would be more in our case, the attesting officer actually cancelled or crossed part of the words, only that he failed to cancel all other relevant words.

In the circumstance of this case, I would accept the proposition advanced by Ms. Mbeni, learned advocate that the pointed defect was not material, I may also add that, it needs no amendment or rectification. That being the position, this P.O bears no merit and it doesn't even meet the threshold underscored in the case of **Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributor Ltd (1969) EA 696**. In my view, what the respondent wished this court to believe is totally against the spirit of the law. Conversely, the provisions of the law under sections 3A and 3B of the Civil Procedure Code [Cap. 33 R.E. 2019] is necessary to be invoked in the circumstance of this case for

one reason that it does not go to the root of the matter and therefore, as alluded to above, this can be cured by the overriding objective principle.

In the result, and to the extent of my findings, I therefore, find no merit in this objection and consequently, I proceed to dismiss the same with costs. The matter to proceed on merits. **I so order.**

DATED at MOROGORO this 26th day of August, 2022.



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

M. J. CHABA

JUDGE

26/08/2022

Court:

Ruling delivered at my hand and Seal of the Court in Chambers this 26th day of August, 2022 in the presence of both the applicant and respondent who appeared in persons, unrepresented.



A handwritten signature in blue ink, appearing to read "M. J. Chaba".

M. J. CHABA

JUDGE

26/08/2022