

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND CASE APPLICATION NO. 16 OF 2012

KHALIDI NDEDE ----- APPLICANT

VERSU

ASHA DANIEL SANGA ----- RESPONDENT

**RULING**

P. F. KIHWELO, J.

This is an application which is supported by an affidavit affirmed by Khalid Ndede. Upon probing Mr. Khalidi on whether the affidavit was proper in particular the jurat attestation which did not show the place where it was attested and the date of attestation Mr. Khalid conceded that being a lay person did not know those requirement of the law.

Section 8 of the Notaries Public and Commissioner for Oaths Cap. 12 Revised Edition 2002 requires that an affidavit must show at what place and on what date the oath or affidavit is taken or

made. Unfortunately the affidavit by Mr. Khalid shows the date when it was attested but does not indicate the place where it was sworn. That is in contravention of the mandatory requirement of the law.

As regards the consequences of such a defect, we have the guidance of the Court of Appeal in Civil Application No. 53 of 2002, **D. B. Shamiya & Co. Ltd V. Bush International B. V** (unreported) wherein Ramadhan, J. A (as he then was) put in a nutshell in the following wording;

*“The Section categorically provides that the place at which an oath is taken has to be shown in a jurat. The requirement is mandatory ; Notary Publics and Commissioners for Oaths “shall state truly in the jurat of attestation at what place and what date the oath or affidavit is taken or made.” The use of the word “truly” in my considered opinion underscores the need to follow the letter of the provisions.”*

This decision was cited with approval by Kalegeya J. (as he then was) in the case of **Wananchi Marine Products (T) Ltd V. Owner of Motor Vessels**, Civil Case No. 123 of 1996 High Court of Tanzania Dar es Salaam District Registry (unreported).

This position has been also taken by the Court of Appeal in various instances including in Civil Application No. 20 of 2012 **Samwel Kimaro V. Hidaya Didas**, Court of Appeal of Tanzania at Mwanza (unreported) also in the famous case of **Felix Francis Msokamali V. Jamal A. Tamim** Civil Application No. 4 of 2012 (unreported).

In effect therefore, there is an incompetent application before this court a chamber summons without an affidavit and for that reason the application is **struck out** with leave to file a fresh application.

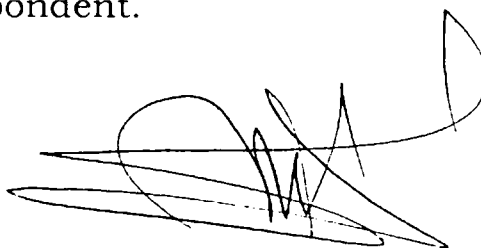


P. F. KIHWELO

JUDGE

03/11/2014

Ruling delivered on 03<sup>rd</sup> November, 2014 in the presence of the applicant and the respondent.



P.F. KIHWELO

JUDGE

03/11/2014

