

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISCELLANEOUS LAND APPLICATION NO. 67 OF 2019**

(Arising from Judgment of the High Court of Tanzania in Mwanza, in Land Appeal No. 37 of 2017, dated 28/3/2019, originating from the judgment and decree of the District Land and Housing Tribunal Geita in Land Appeal No. 49 of 2013).

**KIBUTA ELISHA.....APPLICANT**

**VERSUS**

**SOSPETER KAHINDI.....RESPONDENT**

**RULING**

31.3.2020 & 15.4.2020

**U. E. Madeha, J**

This is application for the certification of points of law to enable the applicant to appeal to the court of appeal, made by way of chamber summons under section 5 (2) (c) of the Appellate Jurisdiction Act Cap 14 (R. E. 2002), Section 47 (2) and (3) of the Land Dispute Courts Act Cap 216 (R. E. 2002), and any other enabling provisions of the laws. The application is supported by affidavit of Kibuta Elisha. The respondent raised the points of preliminary objection and submitted that:

*(i) The application is time barred.*

- (ii) *The affidavit in support of the chamber summons is fatally defective because the deponent therein didn't sign the statement of facts, the verification clause and the jurat.*

The respondent submitted that; The complained judgment of the High Court was delivered on 28/3/2019. This application was filed on 29/4/2019, which is after 32 days of the delivery of the judgment. But, according to Rule 45 (a) and 45 A (1) of the Tanzania Court of Appeal Rules, 2009, applications of this nature should be made within 30 days of the complained decision. Therefore, this application is time barred by 2 days. The court has no jurisdiction to entertain the same without extension of time. The only remedy for this application is to be struck out with costs. The additional point of law No. (ii) Reads as follows: -

*"The affidavit in support of the Chamber Summons is fatally defective because the deponent therein didn't sign the statement of facts, the verification clause and the jurat."*

The essential ingredients of any valid affidavit are as follows: -

- (a) *A statement or declaration of facts, by the deponent.*
- (b) *A verification clause,*

- (c) *A jurat, and*
- (d) *The signatures of the deponent and the person whom the law authorized either to administer the oath or to accept the affirmation.*

The first three ingredients above also do form the three main parts of a valid affidavit. In the statement of facts, the deponent gives the material facts in chronological order on which his case is based. Immediately after the last paragraph of his statement of facts, the deponent is required to date and personally sign the said statement. The omission to do so renders the whole affidavit defective.

Moreover, in the verification clause, the deponent shows the facts which are true of his own knowledge or based on information or beliefs. The verification clause must show the date and place of verification. The same clause must also be signed separately by the deponent in person. In this case, the affidavit in support of the chamber summons was deponed by Kibuta Elisha, the applicant in person. The affidavit contains a statement of facts in six paragraphs. But that statement is neither dated nor signed by the deponent. So, the affidavit is fatally defective. In the verification clause, the said affidavit shows only the date and place of verification. But

it is not signed at all by the said deponent. That amounts lack of the verification at all. Therefore, the said affidavit is again fatal defective.

Cited the case of **Jamal Msitiri @Chaijaba Versus Republic** Court of Appeal of Tanzania Criminal Application No. 1 of 2012 (unreported).

**Section 8 of the Notaries Public and Commissioners for Oaths Act, Cap 12 (R. E. 2002)**, has to certify three matters, namely: -

- (a) That, the person signing the document did so in his presence.*
- (b) That, the signer appeared before him on the date and at the place indicated thereon and*
- (c) That he administered an oath or affirmation to the signer, who .... Affirmed the contents of the documents.*

Total absence of the jurat, or omission to show the date and place where the oath was administered or affirmation taken, the name and/or the signature of the deponent against the jurat, renders the affidavit incurably defective: See again the case of **Jamal Msitiri @ Chaijaba** (Supra). In this case, the deponent didn't sign at all against the jurat. The original point of law in the Notice of Preliminary Objection reads as follows;

*"The application is fatally defective because it is not supported by the affidavit of Bahati James as indicated in the chamber summons"*

In the chamber summons, the applicant stated, inter alia as *follows*: -

*"This application has been taken out at the instance of the Applicant ad supported by the affidavit of Bahati James and other grounds to be adduced during the hearing."*

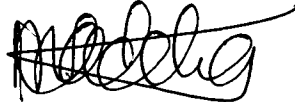
Unfortunately, the affidavit of Bahati James is not attached to the chamber summons. Instead, there is only an affidavit of Kibuta Elisha, the applicant himself. According to the additional point of law No. (ii), the affidavit of Kibuta Elisha is fatally and incurably defective. In the absence of the mentioned above the affidavit of Kibuta Elisha, which could probably save the application, the Chamber Summons is not supported by any valid affidavit. The whole application is left with no legs on which to stand. The court cannot deal with it for being incurably incompetent. The respondent humbly prays that this application should be struck out with costs.

The applicant stated that since the sale agreement can either be oral or in writing, he submitted that, the sale agreement to be considered as a

point of law. There is no evidence that the respondent claims for the land on behalf of his father. He did not provide the document of the administration of the estate and he prayed for the certification of points of law.

Accordingly, for those reasons, I overrule the points of preliminary objection and order that the affidavit be amended so as to cure the defects as to the signature of the deponent and to insert a proper verification clause. The application is hereby struck out with costs. Order accordingly.

**DATED** and **DELIVERED** at **MWANZA** this 15<sup>th</sup> day of **April** 2020.



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**U. E. Madeha**  
**Judge**  
**15/4/2020**