

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 12 OF 2018

(Arising from Civil Case No.11 of 2017 of the District Court of Shinyanga at Shinyanga)

HINDU ABDALLAH KAGOMA.....APPLICANT

VERSUS

RAJABU SALUMU.....RESPONDENT

Date of Last Order: 06/03 /2020

Date of Ruling: 03/04/2020

RULING

C. P. MKEHA, J

The applicant had filed before this court, an application seeking extension of time within which to file petition of appeal out of time. The Chamber Summons indicates that the applicant's name is Hindu Abdallah Kagoma. The affidavit in support of the Chamber Summons is affirmed by a person in the name of Hindu Abdallah Kagoma who also introduces herself as the applicant. However, in the introductory paragraph of the said affidavit, the deponent introduces herself as Hindu Abdallah. As such, in the same

affidavit, the deponent appears to be one Hindu Abdallah on one hand and Hindu Abdallah Kagoma on the other hand.

The respondent has taken up a point of preliminary objection to the effect that, the application is incompetent on account that the affidavit has been affirmed by two different persons contrary to what the law permits.

The respondent further objected the application for failure of the applicant to verify paragraph No.9 of the affidavit in support of the application. Whereas the respondent argued the two points of objection in person, Ms. Mwaselela learned advocate appeared for the applicant.

When the respondent was invited to argue the two points of preliminary objection, he was brief that, whereas the affidavit shows in its heading that the applicant is one Hindu Abdallah, at the end of the day, the same was affirmed by one Hindu Abdallah Kagoma as the deponent. The respondent added that, the applicant had failed to verify the contents of paragraph 9 of the affidavit supporting the application.

Ms. Mwaselela learned advocate conceded in her reply that, indeed, the deponent is at the first instance referred to as Hindu Abdallah and later on as Hindu Abdallah Kagoma in the same affidavit. While maintaining that

the deponent is one and same person, the learned advocate attributed the differences to typing errors. The learned advocate submitted that, consistency could be seen through reading the whole document.

The learned advocate went on to concede that it was an omission not to verify the 9th paragraph. She however maintained that the omission ought not result in striking out of the application. The respondent had nothing to submit in rejoinder.

While conceding that the applicant is referred to through the use of two different sets of names in the same affidavit, the learned advocate for the applicant maintains that, the two sets of names refer to the same person, the applicant. However, the principle has always been that, an affidavit should be consistent throughout. It should not say one thing in one place and something that contradicts it in another place. The body of an affidavit must if practicable be in the deponent's own words who ordinarily commences by introducing himself in his full name. It is this name that is expected to be filled against the place left for the deponent's signature.

In the affidavit supporting the present application, one Hindu Abdallah introduces herself to be the applicant. Later on in the same affidavit, one

Hindu Abdallah Kagoma signs the affidavit as the deponent. There is nothing in the said affidavit, that suggests that, Hindu Abdallah is one and same person with Hindu Abdallah Kagoma. It is therefore logical to hold in the respondent's path as I do that, the affidavit was affirmed by two different persons not being a joint affidavit. The affidavit is thus defective. Such an affidavit is to be expunged from the record and when that is done, then, there remains no evidence to support the application and an application without supporting evidence can not stand as it must be struck out. The affidavit supporting the present application is for the reasons offered hereinabove, expunged.

Following that course, there remains no evidence upon which the application is pegged. That suffices to be a reason of not dealing with the second point of objection in a any other way.

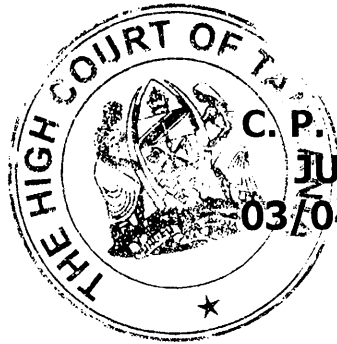
For the foregoing reasons, the first point of preliminary objection is held to be meritorious. The application stands struck out. Each party to bear own costs.

Dated at **SHINYANGA** this **3rd day of April, 2020.**



C. P. MKEHA
JUDGE
03/04/2020

Court: Ruling is delivered in the presence of the respondent.



C. P. MKEHA
JUDGE
03/04/2020