

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**

**MISC. LAND CASE APPLICATION NO. 412 OF 2023**  
(Originating from Land Appeal No. 17 of 2022 of the High Court of Tanzania)

**GAMA JUMA GAMA.....APPLICANT**

**VERSUS**

**MOHAMED H. JAGWA.....RESPONDENT**

**R U L I N G**

*Date of Last Order: 02.08.2023*

*Date of Ruling: 21.09.2023*

**T. N. MWENEGOHA, J.**

Before me, is an Application for setting aside an *ex parte* Judgment of this Court, delivered on 26<sup>th</sup> September, 2022 by Hon. Makani, J. vide Land Appeal No. 17 of 2022. It was brought under **Order XXXIX Rule 21 and Section 95 of the Civil Procedure Code, R. E. 2019**, being supported by the affidavit of Gama Juma Gama, the applicant herein.

The same was heard by way of written submissions. Advocate Gwantwa Kasebele, appeared for the applicant, while the respondent was represented by Advocate Rose Charles Nyatega.

Unfortunately, as I was going through this Application, I noted that, the affidavit accompanying the Application has defects, which need the

attention of this Court. The same has not been verified and contain arguments. The parties, through their Advocates, were duly notified and ordered to address this Court on the competence of the instant Application, owing to the defects noted on the affidavit in question.

I appreciate the response from the parties however I will not reproduce the same herein, however, the same will be reflected in this Ruling.

According to **Order XIX Rule 3(1) and 2 of the Civil Procedure Code, Cap 33, R. E. 2019** it is stated that; -

***"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory Applications on which statements of his belief may be admitted."***

In a plain language, in an affidavit, a deponent was supposed to only state facts showing why he preferred the instant Application. However, looking at the affidavit in support of this Application from paragraph 4-12, the deponent appears to argue his case, instead of stating the facts as required in law. Therefore, he went against what is given by the provision of the law cited above. Hence, his affidavit is defective. The same position was emphasized in the case of **Uganda versus Commissioner of Prison Ex parte Matovu (1966)**.

Worse enough, even if I expunge the defective paragraphs as listed above, the remaining paragraphs, 1-3 are incapable of supporting the instant Application, see. **Phantom Modern Express (1985) Ltd versus DT Dobie (TZ) Ltd, Civil Reference No. 15 of 2001 and 3 of 2002** (unreported).

Further, even if expunging the defective paragraphs was an acceptable option in this case, the affidavit is still incurable as it has not been signed.

For these reasons, I find this Application to be untenable, for being accompanied by a defective affidavit.

In the end, I strike it out with costs.

It is so ordered.



  
**T. N. MWENEGOHA**

**JUDGE**

**21/09/2023**