

TANZANIA / JUDGMENT

Fatuma

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM MISC. LAND CASE APPLICATION NO.8656 OF 2024 (Arising from Land Case No.8538
of2024) FATUMA MACHINGA NGOMA..... APPLICANT VERSUS CRDB BANK
PLC..... 1st RESPONDENT ALLIANCE ACADEMY LIMITED..... 2nd
RESPONDENT

RULING

Date of Last Order: 16.05.2024 Date of Ruling: 28.06.2024 T.N, MWENEGOHA, J The Ruling is in
respect of preliminary objections raised by the 1st respondent against the determination of the
Application as follows; -

1. The Application is untenable for being brought under wrong enabling provision.
2. The Application at hand has been accompanied by a defective affidavit.
3. The affidavit is bad in law for containing hearsay statements.
4. The affidavit is bad in law for having a defective verification clause. i The objections were heard through written submissions. Advocate Mathew Ngaga appeared for the 1st respondent while the applicant was represented by Advocate Privat Rugambwa. In his submissions, the 1st respondent abandoned the 3rd and 4th objections and remained with the 1st and 2nd objections. Arguing on the 1st objection, Mr. Ngaga insisted that, the affidavit in support of the Application contains a defective jurat of attestation. That, the deponent being a Muslim ought to have affirmed in the jurat and not swear. This is contrary to sections 4(a) and (b) and 5 of the Oaths and Statutory Declarations Act, Cap 34, R.E 2019. To cement his position, the 1st respondent's counsel cited the case of Moses Gilbert Kitime & 4 Others versus The Registered Trustees of Evangelist Assemblies of God Tanzania, Revision No.7 of 2023, High Court of Tanzania, (unreported). In reply, Mr. Rugambwa insisted on the 1st objection that, the same is devoid of merits. The affidavit in question is not defective and the affidavit is capable of supporting the Application. In his submissions the applicant's counsel relied on the case Asha Haruna versus R, Criminal Appeal No. 75 of 2005, Court of Appeal of Tanzania (unreported). Rejoining on the 1st objection, the counsel for the respondent insisted that, the jurat is defective as stated in Zuberi Mussa versus Shinyanga Town Council, Civil Application No. 100 of 2004, Court of Appeal of Tanzania(unreported). Having heard the

parties, I had to determine merit of the objections. I examined the alleged offending part of the Affidavit and my findings were that the same appears to be different from the oath administered. The 2 deponent affirmed in his affidavit, she cannot afterwards be sworn in the jurat. It looks like the deponent took two different oaths in the same document. One being administered according to Islamic religion and the other as a Christian. A peculiar fact in this case is that the applicant affirmed and swore at the same time. At this juncture I have to say I agree with the counsel for the respondent that the jurat of attestation of the applicant's affidavit is defective. The 1st objection is sustained. For these findings, I see no need to discuss the 2nd objection, as the same are capable of disposing the entire Application to its finality. In the event, the Application is struck out with costs. Ordered accordingly. 28/06/2024 3

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/319234/source_file/549c050b08cea06a/Fatuma.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/fatuma-machinga-ngoma-Affidavitdefects-tanzlii-2024--6a3ea5243b1caa9129819d25

Prepared on 14 October 2026 · Esheria