

TANZANIA / JUDGMENT

makoye kintoki vs hussein khan

2016 tzhc 2293 21 april 2016

COURT
TZHCDECIDED
21 April 2016

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

IN THE HIGH COURT OF TANZANIA A TTA BO RA MISC. CIVIL APPLICATION NO. 65 OF 2014
(Arising from Civil Application No. 4 of 2011 in the District Court of Kahama District, at
Kahama). MAKOYE KINTOKI.....APPLICANT VERSUS HUSSEIN
KHAN.....RESPONDENT

RULING

21st & 21/4/2016. Utamwa, J. This is a ruling on an issue raised by the court suo motu. When this application (for extension of time to appeal out of time against the decision by the District Court of Kahama District, at Kahama) came before me I noted that the affidavit supporting the application was not signed at the jurat of attestation and the verification clause. Upon viewing the court records in court both Messrs. Mussa Kassim and Audax Constantin learned counsel for the applicant and respondent respectively agreed that the affidavit was in fact not so signed. They however, informed the court that unlike the copy of the court, their respective copies were duly signed. Page 1 of 7 When I invited the counsel for the parties to address me on the legal effect of the omission in the affidavit they were in agreement that the position of the law is that, failure by the deponent of an affidavit to sign the verification clause and the jurat of attestation renders the affidavit incurably defective, hence the application becomes also incompetent. Mr. Mussa learned counsel for the applicant however, contended that the omission in the matter at hand is not fatal since all other copies of the affidavit held by the parties were duly signed. He submitted that all the copies were submitted in this court, endorsed by court officials and then returned to the applicant and then copy served to the respondent. Once the copies were endorsed they all become court records and one remained in court. He thus prayed for the court to permit the substitution of the unsigned affidavit (in court) by a signed affidavit from the records of the parties. Mr. Audax learned counsel for the respondent countered Mr. Mussa's proposal. He argued that it was equally fatal for the copy of the affidavit in court to remain unsigned. The court cannot substitute it by a copy from the parties' records since that course is improper. He submitted that only court records are the controlling records and not the records of the parties. He expressed his doubts that the applicant might have filed in court unsigned affidavits, and later he might have discovered the slip and signed the copies thereafter (before service to the respondent). He also contended that substituting Page 2 of 7 court documents with copies from

the parties is a strange practice. He thus urged this court to declare the affidavit in court record incurably defective and the application incompetent and the same be struck out. In his rejoinder submissions Mr. Mussa learned counsel reiterated his submissions in chief. He added that it cannot be argued that the copy of the affidavit in court record is the only reliable one since other copies in parties' records were also endorsed by the court before they were returned to the applicant. He further argued that the contention by Mr. Audax that the copies of affidavits held by the parties might have been signed later (upon the applicant discovering the omission after filing the documents in court) is a mere speculation that may need to call the court officer who received the document to verify on that statement. Having considered the parties arguments I am of the view that parties do not dispute that the affidavit in court record was in fact not signed as demonstrated above. They do not also dispute on the stance of the law regarding an affidavit that is not signed at the verification clause and the jurat of attestation. I, in fact join hands with them that failure by a deponent of an affidavit to sign the verification clause and the jurat of attestation of his/her affidavit is a lethal omission that renders the affidavit incurably defective. The application is also rendered incompetent, hence liable to be struck out, see the Court of Appeal of Tanzania (CAT) decision in the case of the Attorney General v. Mugesu Anthony and 2 others, CAT Criminal Page 3 of 7 Application No. 220 of 2011, at Mwanza (unreported) and many others. The only issue here is thus, whether or not the unsigned affidavit in court record can be substituted by a signed copy from the parties' records. In my settled view I agree with Mr. Audax learned counsel for the respondent that always it is court records which are trusted and which control the proceedings of matters in court. It is for this understanding that the law is trite that court records are presumed to be serious and genuine documents that cannot be easily impeached unless there is evidence to the contrary, see *Halfani Sudi v. Abieza Chichili*, 11998| TLR. 527. I also agree with Mr. Audax that if courts allow the course of substituting its records by the record held by parties injustice may be occasioned since tempering of court records by dishonest parties will be easily committed. It is thus the duty of parties, especially those legally represented, to ensure that all documents filed in court are duly signed. In fact the anxiety harboured by Mr. Audax learned counsel is genuine. The procedure of filing court documents like applications is this; when parties file them court officials accept and accordingly endorse them to acknowledge receipt. A party who files the same pays the necessary court fees, collects the document for service to the adverse party and for his/her own record and leaves one (original) with the court. Page 4 of 7 It is therefore, possible for a party to file all copies of the unsigned affidavits, pay fees for them, and collect them from the court upon being endorsed by the court officials. It is further possible that a party may file in court unsigned documents and discover the omission later. A dishonest party may thus sign the copies of the document returned to him by the court official after filing them in court. He may also keep a signed copy and serve another signed copy to the adverse party. Such a party may not easily sign the copy left in court for lack of access. It must be noted that I am not holding that the applicant in the case at hand was dishonest to the extent just envisaged herein above. I am only alerting that the proposal by Mr. Mussa learned counsel for substituting court records with parties records, which are in fact not under the control of the court is not only a strange practice, but is also an unsafe game in justice administration through court litigations. Furthermore, the fact that the unsigned affidavit

was endorsed by the court officials together with the signed affidavits is in my view irrelevant since a court official may also inadvertently endorse on all the unsigned copies of the affidavits. The endorsement by court officials in my view does not signify conclusively that all documents are properly signed when presented in court. It only demonstrate an acknowledgement of receiving the filed documents. Having observed as above I answer the issue posed herein above negatively to the effect that the unsigned affidavit in court record Page 5 of 7 cannot be substituted by a copy of signed affidavit from the parties' records. For this finding the affidavit in court record remains incurably defective for want of the signatures of the deponent in the verification clause and the jurat of attestation. The application is thus rendered incompetent and I accordingly strike it out. I however, order that each party shall bear his own costs since the point that has disposed of the application was raised by the court suo motu. The general rule on costs commands that costs follow event : unless there are good reasons to be recorded by the court for departing ; from this rule, see s. 30 of the Civil Procedure Code, Cap. 33 R. E. 2002 and the case of Njoro Furnitures Mart Ltd v. Tanesco Ltd

[1995] TLR. 205. The single reason I have assigned above suffices in my view, to justify my departure from the general rule of costs. For the orders made above, parties need not file any further submissions regarding the preliminary objection that had been raised by the respondent earlier since the orders I have made dispose of the entire application. It is so ordered. JHK. UTAMWA JJ JUDGE 21/04/2016 Page 6 of 7 Court; ruling delivered in the presence of Messrs. Mussa and Audax learned counsel for the applicant and respondent respectively in court this 21st day of April, 2016. JHK. UTAMWA JUDGE 21/04/2016. Page 7 of 7

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.tanzlil.org/media/judgment/178982/source_file/makoye-kintoki-vs-hussein-khan-2016-tzhc-2293-21-april-2016.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/makoye-kintoki-v-hussein-khan-affidavitdefects-tzhc-2016>

Prepared on 13 October 2026 · Esheria