

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA LABOUR DIVISION**

**IN THE LABOUR COURT ZONE CENTRE**

**AT TABORA**

**REVISION NO 13 OF 2014**

**ISSA MAULID MANGARA  
& SALEHE KITAPWA ..... APPLICANTS**

**VERSUS**

**TANZANIA RAILWAYS LTD..... RESPONDENT**

**RULING ON PRELIMINARY OBJECTION**

*16/03/2015 & 18/03/2015.*

**MIPAWA, J.**

The Respondent Tanzania Railways Limited raised two Preliminary Objections, to the application for revision filed by the applicants that:

- i. The application is incompetent for improper citation of the enabling provisions of the law*
- ii. The affidavit is incurably defective*

The Preliminary Objections were argued *viva voce* (with live voice), the respondent being represented by Mr. Mwangazambili Advocate, and only one applicant Issa Maulidi Mangara defended the case, though there was no any leave granted by this Court allowing Mr. Issa Maulidi Mangara to represent Saleh Kitapwa. This Court takes recognizance of a letter filed by the other applicant Salehe Omary Kitapwa dated 06/03/2015 allowing Mr. Issa Maulidi Mangara to represent him **[that is not a proper procedure prescribe by the law on representation].**<sup>1</sup>

Mr. Mwangazambili submitted that the application is under provisions of the law which do not move the Court properly. That the applicants cited section 79(a), 95 Order 42 of the Civil Procedure Code Cap 33 R.E 2002. He submitted that since the applicant has used a notice of application he ought to have cited section 91(1) and (2) of the Employment and Labour Relations Act, also rule 24(1) and (3) of Government Notice No 106/2007 so as to move the Court.

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<sup>1</sup> See rule 44(1)(2) and (3) of the Labour Court Rules Government Notice No 106/2007.

Mr. Mwangazambili concluded that wrong citation of the enabling provisions of the law does not move the Court hence the application be struck out.

In response, Mr. Mangara confidently and forcefully argued that non-citation of the law can be amended and that the Labour Court Rules provide for the application to be filed by Notice of Application, and the above are summed up by Article 107(A) of the Constitution of the United Republic of Tanzania which calls upon the Courts of law when dispensing justice not to put into place legal technicality which may hinder a person to get his right.

He went on to submit that he was not agreeing with all what was raised by the respondent as it has been the tendency of respondents to raise Preliminary Objections in order to hinder their rights and that the same could not hinder the hearing of the application and prayed to proceed with the hearing of the application.

In reply Mr. Mwangazambili insisted on what he had submitted earlier in support of their raised preliminary objection.



After going through the submissions of the parties and careful perusal of the Court records ***ex-abundant cautela*** (with extreme eye of caution), coupled with an open legal eye, it is undisputed that the filed application by the applicants suffers from non citation as well as wrong citations of the enabling provisions of the law as rightly submitted by the Advocate for the Respondent.

The application for revision is made under Section 91 of the Employment and Labour Relations No 4/2004; Section 79(a) and 95 and order 42 of the Civil Procedure Code Cap 33.

The above provisions of the law have two limbs, first, non citation and wrong citation of the law. The cited section 91 of the Employment and Labour Relations Act No 6/2004, has sub-sections and sub-paragraphs thereto which make this court to have ***Dunamis*** (GK-power) to revise the awards issued by the Commission for Mediation and Arbitration. In calling for this Court to revise awards issued by the Commission for Mediation and Arbitration one has to cite section 91(1)(a) and (b), 91(2) (a) or (b) or (c) of the Employment and Labour Relations Act No 6/2004. The same are to be cited ***in tandem*** (*together*) rule 24(1)(2)(3); 28(1) with its applicable paragraphs thereto of the

Labour Court Rules Government Notice No 106/2007. On the other limb, there is wrong citation of the enabling provision of the law, section 79, 95 ad order 45 of the CPC do not move this Court to revise awards issued by the CMA.<sup>2</sup>

In conjunction with what above, this Court finds it worthy and legally demanding to stress that the issue of proper citation of the enabling provisions of the law originates not only from this Court but from the highest Court of our Land, namely the Court of Appeal of Tanzania in its very numerous decisions on the issue. One of those decision is the famous and celebrated case of **China Henan International Cooperation Group Versus Salvand K.A Rwegasira**,<sup>3</sup> into which the CAT made it clear that not citing the proper provisions of the law or wrong citation of the applicable provisions of the law **is not (emphasis mine)** a technicality falling within the scope and purview of Article 107(A) rather it goes to the very root of the matter, not a technical error.<sup>4</sup>

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<sup>2</sup> CMA is an acronym for Commission for Mediation and Arbitration established under Section 12 of the Labour Institutions Act No. 7 of 2004

<sup>3</sup> Civil reference No 22/2005 CAT at Dar Es Sa laam, Ramadhani, Lubuva, Mrosso JJA, delivered on 21/03/2006.

<sup>4</sup> *ibid* at p 10



The Contention of the applicant that wrong citation is contrary to Article 107(A) of the Constitution is rejected and dismissed. And the raised Preliminary Objection is upheld.

Before ordering the application struck out, of great interest to be made clear by this Court is that, the applicants have been always knocking on/at the doors of this Court so as to get in and get their rights /claims knowing that ***ubi jus ,ibi remedium*** (where there is a right there is a remedy) or where there is an interest there is a right (***ubi interesse ibi jus***) But that has been done un procedurally and the Court has ceaseless given the applicants more time to refile proper application knowing that ***justitia nemine negand est*** (*Justice is to be denied to no one*),the applicants filed Miscellaneous Application No 1B/2013 which was struck out by this Court on 16/06/2013;but granted leave to refile.

When that application came for hearing again it suffered procedurally defects. Again this court stretched up its hands of equity knowing that in performance of its function this Court is a court Equity,<sup>5</sup> though (***aequus sequitur legem***) equity follows

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<sup>5</sup> See rule 5 of the Labour Court Rules Government Notice No. 106/2007

that the law, and as the same was consented too by the Advocate for the respondent Mr. Mtaki, this court granted another leave for sixty days to the applicants to refile the proper application, hence the application also defective from its roots.

Even though the Advocate for respondent did not speak much on the defects found in the affidavit in support of the application, that affidavit is extremely defective even if the defects are overlapped. It is an affidavit with verification clause with no name of the one who verified the information;<sup>6</sup> date on when the information were verified; and empty jurat of attestation with no name of the deponent; lastly not endorsed at all contrary to the law.<sup>7</sup>

From the above procedural defects the applicants putting into mind the two times the applicants being given time by this Court to refile proper application; the immediate intelligent question that one can ask is that, should the hearing of the application proceed as prayed for by the applicant under the umbrella of article 107(A) of the Constitution?;The answer is NO,

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<sup>6</sup> B.M. Gandhi (2011), Legal Language Legal Writing & General English, at p. 220.

<sup>7</sup> Section 44(1) of the Advocates Act Cap 341 R.E 2002.



as earlier elaborated from the decision of the CAT.<sup>8</sup> To stress on the same since **Judex est lex loquens** [Judge is the law Speaking], procedural justice and substantive justice are two inseparable wings which fly together into which the absence of the other makes the other meaningless. **Procedural justice acts as a complement to substantive justice; it gives life to substantive justice hence procedural justice cannot be overlapped under the umbrella of substantive justice.**

If the Preliminary objection of the respondent is not given life by this Court and put into place the submission and contention of the applicant that *technicalities* hinder one's rights and therefore allow the hearing of the application to proceed with those defects it will amount into turning this Honorable Labour Court into a **Kangaroo Court** and thus burring the inherited legal status of the Court as the High Court of Tanzania. In addition it is tantamount to turning the law an ass and a scare crow of the law, as one distinguished poet had put it.

Having said as I have done above the preliminary of objection is ***in toto*** sustained and the application is hereby

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<sup>8</sup> CAT refers to the Court of Appeal of Tanzania. The highest court of the land.



ordered struck out. But this Court grants **LAST CHANCE** automatic leave to the applicants to file a proper application within 28 days from today.

It is so ordered.


  
I.S. Mipawa  
**JUDGE**  
18/03/2015

**Appearance:**

1. Applicant: Only first applicant present in person
2. Respondent: M/s Theresia Fabian Advocate

**COURT:** Ruling has been read today inter-parties as shown in the appearance above.



  
I.S. Mipawa  
**JUDGE**  
18/03/2015