

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF  
TANZANIA LABOUR COURT  
AT DAR ES SALAAM**

**REVISION NO. 222 OF 2014**

**BETWEEN**

**THE REGISTERED TRUSTEES OF  
BENJAMIN MKAPA FOUNDATION.....APPLICANT**

**VERSUS**

**OLIVER MUREMBO.....RESPONDENT**

*(ORIGINAL FILE CMA/DSM/ILA/239/2013)*

**RULING**

*17/09/2015 & 22/09/2015*

**Mipawa, J.**

This is a ruling in respect of the Preliminary Objections raised by both parties namely The Registered Trustees of Benjamin Mkapa Foundation(herein after to be referred to as the applicant),and Oliver Murembo(herein to be referred to as the respondent). The respond was opposing the application for revision of the award issued by the CMA,<sup>1</sup> filed by the applicant while the applicant was opposing the Counter affidavit of the respondent. The raised preliminary Objections by the respondent were that:-

*1. That this Honorable Court lacks jurisdiction to entertain this application.<sup>2</sup>*

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<sup>1</sup> CMA referrers to the Commission for Mediation and Arbitration, established under section 12 of the Labour Institutions Act No. 7/2004

<sup>2</sup> See notice of Preliminary objection filed by the respondent into this Court on 04/09/2015

On the other hand the preliminary objections by the applicant were that:-

- i. The respondent's Counter affidavit is incurably defective*
- ii. The respondent's reply failed to comply with the mandatory provisions of the law.*

The hearing of both preliminary objections went on **viva voce** [by live voice], into which M/s Vumilia Advocate appeared for the applicant while the respondent enjoyed the legal service from Mr. Kazungu Learned Counsel.

Arguing for the preliminary objections Mr. Kazungu Learned Counsel for the respondent submitted that in the application for Revision in this Court there should be a notice of application, chamber summons (*sic*), affidavit, and notice of representation. That the applicant's application has chamber application.

He added that even the affidavit in support of the application does not confirm to rule 24 (3) of the Labour Court Rules,<sup>3</sup> which provides for content of affidavit in support of the application before this Court. That the said affidavit does not contain reliefs sought by the applicant in the application. Hence there is nothing before the Court and that the application be dismissed.

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<sup>3</sup> Government Notice No. 106/2007

In response Ms Vumilia Learned Counsel for the applicant argued that the application has Notice of application, chamber summons and Notice of representation and that the reliefs sought are in the Notice of application as well in the affidavit in support of the application. Hence the application is competent before the court.

In rejoinder Mr. Kazungu argued that the applicant had filed chamber application instead of chamber summons. He also argued that the reliefs should be put in the affidavit in support of the application instead of being put in the Notice of application, contrary to rule 24 (3) (d) of the Labour Court Rules.<sup>4</sup> Thus there is nothing to be granted. That marked the end of submission on the preliminary objections by the respondent.

Arguing for their raised Preliminary objections, M/S Vumilia argued that the counter affidavit does not show how the Commissioner for Oaths knew the deponent. That makes the affidavit incurably defects hence the application becoming incompetent. She referred this Court to the case of **Arthur D. Seme Vs. NDC**,<sup>5</sup> into which the same defects were noted and the application was struck out.

Mr. Kazungu Learned Counsel for the respondent conceded to that preliminary objection so as not to waste this Court's time on the same issue, but added that even the affidavit in support of the application filed by the applicant had the same defects, Ms Vumilia Counsel for the applicant had nothing to rejoin on the same.

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<sup>4</sup> *op.cit* note 2

<sup>5</sup> Rev. No. 136/2014 HCLD At Dar es Salaam per Mipawa, J.

After hearing the submissions from both the Learned Counsels for the parties and going through the records *in ex-abandunt cautela [with extreme eye of caution]*, this Court is now called upon proclaiming a ruling thereto *par excellence*.<sup>6</sup>

Following the raised preliminary objections and argued by the Learned Counsels for both parties before this Court and in order to give a coherent ruling thereto, it is firmly noted that this application is cropped with numerous procedural defects as well as the Counter affidavit, hence some of the preliminary objections are sustainable but with different end results.

**First**, it is noted that, the applicant filed a notice of application; chamber application; affidavit and notice of representation. Under the Labour Court rules what is provided for is chamber summons and not chamber application,<sup>7</sup> for such applications provided for therein under.<sup>8</sup> Hence filing a chamber application instead of chamber summons as provided for above brings confusion to the other party and very knew document to this court. But in the first place so longer as there is a notice of application which is now a trite law that the same is to be used to initiate proceedings before this Court,<sup>9</sup> then the application cannot be fatal despite the fact that there is a defect in that notice application. That issue

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<sup>6</sup> With eminence

<sup>7</sup> *op.cit* note 2 rule 11

<sup>8</sup> *ibid*

<sup>9</sup> See Backlays Bank Tanzania Ltd Vs Kombo Ally Singoma Misc. Application No 14/2011, per Moshi, J.

will be covered later; hence that Preliminary Objection is unmerited hitherto.

**Second**, going through the records it is noted that the affidavit of one Irene Ungani Kyara,<sup>10</sup> possess narration of what transpired at the CMA, there are no relief sought therein contrary to the law.<sup>11</sup> And it is hereby noted that following lack of relief sought in the affidavit of the applicant, the applicant did not cite in the Notice of application rule 24(3) of the Labour Court Rules GN 106/2007, hence non citation of the enabling provisions of the law.<sup>12</sup> Conclusively on this point the second preliminary objection is upheld; consequently suffices to dispose of the application.

**Third**, another noted jointly raised preliminary objection by both parties is on identification of deponent. It is not clear how the Commissioners for Oaths knew the deponents in the supporting affidavit and Counter Affidavit. It has been the practice of this court, knowing that *Cursus curiae est lex curiae* [the practice of the Court is the law of the Court],<sup>13</sup> and putting in mind that *Judex est lex loquens* (a Judge is the law speaking), Hon Mwaikugile, J. in the case of **Peter Mziray Kugo Vs. Anne Kilango Malecela and 2 other**, proclaimed that:-

***...the identity of the deponent in the supporting affidavit must be stated truly in the jurat of***

<sup>10</sup> See the same filed in this Court on 2<sup>nd</sup> October 2014

<sup>11</sup> *op.cit* note 2 rule 24 (3)

<sup>12</sup> Though raised *suo motu* by the Court

<sup>13</sup> *op.cit* note 5, the case cited by Ms Vumilia Counsel for the applicant on identification of deponent in the jurat of attestation

***attestation. Whether the Commissioner for oaths knew the deponent in person or has been identified to him by x the latter being personally known to the Commissioner for Oaths all that has to be stated truly in the jurat of attestation. That information of the identification has to be clearly shown in the jurat...<sup>14</sup>***

Both the affidavit in support of the application and the counter affidavit possess that defect, hence making the application defect.

Conclusively this court holds that the preliminary objections raised are upheld namely that the affidavit is defective for not confirming to rule 24 (3) of the Labour Court rules; non identification of deponent in the supporting affidavit; non citation of rule 24 (3) of the Labour Court Rules Government Notice No 106/2007 in the notice of application; non identification of deponent in the Counter affidavit.

The remedy to that above is to order the application before the Court ordered struck out for being incompetent.

But for meeting good ends of justice the applicant is given last chance of 28 days from today to file proper application before this Court.

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<sup>14</sup> Miscellaneous Civil Application No.7/2006 High Court of Tanzania at Moshi. The same is quoted by this Court in Revision No. 331/2013 Mint Security (T) Vs. Suraiya Shariff at High Court of Tanzania Labour Division at Dar Es Salaam (unreported) delivered on 30/09/2014 before Mipawa, J.

It is so ordered accordingly.

  
I.S. Mipawa  
**JUDGE**  
22/09/2015

**Appearance:-**

1. Applicant: M/s Vumilia Elia, Advocate
2. Respondent: Mr. Abdallah Kazungu, Advocate

**Court:** Ruling has been read today in the presence of both parties as shown in the appearance above.

  
I.S. Mipawa  
**JUDGE**  
22/09/2015