

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA LABOUR DIVISION
IN THE LABOUR COURT ZONE CENTRE
AT MOSHI**

REVISION NO. 8 OF 2014

BETWEEN

MOSHI DISTRICT COUNCIL..... APPLICANT

VERSUS

ROSE KESSY.....RESPONDENT

R U L I N G

04/05/2015 & 07/05/2015

Mipawa, J.

The Applicant Moshi District Council hereinafter referred to as the Applicant filed the present revision under Section 94 (1) (b) (ii) of the Employment and Labour Relations Act¹. Rule 24 (2) and 28 (1) of the Labour Court Rules². The Respondent Rose Kessy raised a preliminary objection challenging the notice of application as follows:-

- 1. That, the notice of application is incompetent and or not proper before the Court as it contravenes the provision of Rule 24 (2) of the Labour Court Rules 2007.*

¹ Act No. 6 of 2004 Cap 366 RE 2009

² Government Notice (GN) No. 106 of 2007

2. *That, the affidavit supporting the application is incurably defective as it has been deponed by a person who has not been appointed by the Applicant to do so.*
3. *That, the affidavit supporting the application is incurably³.*

At the hearing of the preliminary objection the Applicant. The Applicant never appeared though Mr. Phillip Malach, Legal Officer of the Applicant entered appearance but did not want to take the application because the one who was assigned the application was not present that he was transferred to Arusha and prayed for adjournment. The decline of Mr. Phillipo, Legal Officer of the Applicant to prosecute the application made this Court to proceed ex-parte.

Submitting in support of the preliminary objection Mr. Kamani, Learned Advocate who appeared for the Respondent told the Court that the notice of application contravenes Rule 24 (2) of the Labour Court Rules⁴. That the notice of application does not comply with form no. 4. That the notice of application has only one paragraph of praying reliefs. That they don't know where they will sent the documents when replying to the Applicant⁵. That therefore requirement of form no. 4 are not met in the notice of application.

In the second limb of the preliminary objection the learned counsel for the Applicant submitted that the affidavit is incurably defective for

³ The notice of preliminary objection filed by the Respondent as against the revision

⁴ *op.cit* note 2

⁵ *Viva voce* submission by the Respondent

being deposed by the person who has not been appointed by the Applicant the said Bahati Choni.

In the third limb of the preliminary objection the Respondent argued that the affidavit of the Applicant is incurably defective for containing allegations and commands especial in paragraph 7. The affidavit does not therefore comply with Rule 24 (3) (b) of the Labour Court Rules⁶.

Concluding the Respondent's Advocate submitted that the Applicant set out prayers which is contrary with the requirements of the law he pointed specifically to the last "*ayah*" of the affidavit. The Respondent therefore prayed to the Court to struck out the present revision application.

I have carefully considered the Respondent's Advocate and I agree with him that the application before the Court is incompetent not only that it contravenes Rule 24 (2) of the Labour Court Rules⁷, as advanced by the learned counsel but because the application for revision suffers serious defects of non-application of the enabling provision.

The Applicant ought to have cited the provision which enable the Court to have the ***dunamis*** (power) and the ***ex-cathedra*** (official authority) to revise the CMA⁸ award ***notebien*** Section 91 (1)⁹ and its

⁶ *op. cit* note 2. The Rule says that the application must be supported by affidavit which shall clearly and concisely see out (b) a statement of the material facts

⁷ *op. cit* note 2

⁸ CMA refers to Commission for Mediation and Arbitration established under S. 12 of the Labour Institutions Act No. 7 of 2004

⁹ Act No. 6 of 2004 Cap 366 RE 2009

paragraphs Section 91 (2)¹⁰ with its paragraphs which are (a) or (b) or (c)¹¹ of the Employment and Labour Relations Act¹², depending on the grounds of appeal advanced. Also Rule 24 (1) (2) (3) or 11 and Rule 28 (1) of the Labour Court Rules specifying the paragraphs under the same¹³.

The Applicant has entirely not cited the paragraphs and the relevant sections the Court of Appeal has stressed in its various decisions that failure to move the Court by citing the relevant section of the law, sub-section or paragraphs cannot move the Court. In **Manager Es-Ko International Inc. Kigoma V. Vicent J. Ndugumbi**¹⁴ the Court of Appeal held that:-

...It is now settled law that wrong citation of the law, section or sub-section and/or paragraph of the law move the Court to do what it is being asked to do and accordingly the application is incompetent...¹⁵

The Court of Appeal had also reiterated and emphasized the position of non-citation in **Robert Leskar V. Shibesh Abebe**¹⁶ quoting with approval its decision in the case of **Anthony Tesha V. Anita Tesha**¹⁷, in

¹⁰ *op.cit* note 9

¹¹ Paragraph (c) of Section 91 (2) was due to the Amendment under section 14 of the Written Laws (Miscellaneous Amendment Act No. 3 of 2010)

¹² *op.cit* note 8

¹³ See Rev. No. 3 of 2013 Tanzania National Parks V. Amon Kagwa HCLD

¹⁴ Civil Appeal No. 22 of 2009 CAT at Tabora (unreported)

¹⁵ *ibid* per Rutakangwa, J.A.

¹⁶ AR Civil Application No. 4 of 2006 CAT per Rutakangwa, J.A.

¹⁷ Civil Appeal No. 10 of 2003 CAT unreported

which the Court held that:-

*...The mere citation of a section without indicating the subsection and paragraphs is tantamount to non-citation and renders the application incompetent...*¹⁸

Now apart from the non-citation of the enabling provisions as above stated, it is true as submitted by the Respondent that the notice of application filed by the Applicant does not comply with form no. 4 that is LCF 4 which is in the Schedule to the Labour Court Rules¹⁹. The affidavit of the Applicant does not also comply with Rule 24 (3) (b) of the Labour Court Rules 2007²⁰. Furthermore the affidavit does not bear the name of the person who verified the information no name of the verified which is contrary to the requirements of the law. The jurat of attestation is contrary to the format described under the Schedule to the Oaths and Statutory Declaration Act²¹. The Applicant has formulated his own format.

In the event the preliminary objection is partly upheld to the extent as described in the above ***totidem verbis*** of the ruling (many words). Therefore this revision, application is incompetent before the Court and consequently it is hereby struck out.


I.S. Mipawa
JUDGE
07/05/2015

¹⁸ *op. cit* note 15

¹⁹ LCF no. 4 refers to Labour Court Form No. 4 appears at page 51 of the Schedule to the Labour Court Rules GN. No. 106 of 2007. The notice of application shall comply with LCF No. 4

²⁰ *op. cit* note 2. GN. No. 106 of 2007 Rule 24 (3) (b) an affidavit shall clearly and concisely set out (a)...(b) a statement of material facts in a chronological order on which the application is based (c) ...(d)...

²¹ See the Schedule to the Oaths and Statutory Declaration Act Cap 34 RE 2002

Appearance:-

1. Applicant: Mr. Philip Malet, Legal Officer
2. Respondent: Present in person

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


I.S. Mipawa
JUDGE
07/05/2015