

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MWANZA**

LABOUR REVISION No. 34 OF 2019

(Original CMA/MWZ/NYAM/29/2017)

WILLIAM BENEDICTOR ----- APPLICANT

VERSUS

PLATNUM CREDIT LIMITED ----- RESPONDENT

RULING

TIGANGA, J

When the Applicant in this application filed this Labour Revision application, and served the same to the respondent, the Respondent raised and filed a Notice of Preliminary Objection in which two points of law were raised as follows;

1. That the pending application is incurably defective for containing the defective notice of application.
2. The affidavit is fatally defective for containing the defective verification clause.

By the order of this court the Preliminary Objection was argued by way of written submissions. In the submission in chief, the counsel for the respondent submitted that, the applicant has not complied with Rule 24 (2)

(f) of the Labour Court Rules GN 106/2017 which requires him to list and attach the documents which are material and relevant to the application. He submitted that in this case, the applicant has only attached documents but has not listed the said document which is intended to be used during the hearing. It is his opinion that the omission contravenes the law and renders the application defective.

On the second limb the respondent submits that the affidavit in support of the application is fatally defective for containing a defective verification clause. It is clear that the applicant has not verified sub paragraphs in his affidavit to confirm that the statement made are from his knowledge. For example the applicant has not mentioned the sub paragraph in paragraph 4(a),(b),(c),(d),(e),(f),(g),(h) and (i) the sub paragraph in paragraph 5(i) and (ii) and also 6(a),(b),(c) and (d).

He submitted that the position of the law is clear as provided under Order VI Rule 15 (1) and (2) of the Civil Procedure Code [Cap 33 RE 2002], which the applicant in this application has not complied with. In lieu of the foregoing defect the pending application is bound to be struck out without leave to refile.

In reply the applicant through the service of Dutu Faustine Chebwa (Advocate), submitted on the first point of preliminary objection that he attached all relevant documents to be used during the hearing of the application. He submitted that failure to list - the said document is not fatal and does not prejudice the respondent. He asked the court to focus on substantive justice and not procedural technicalities.

He asked the court to find support of his argument in the principle of overriding objective introduced by written Laws (Miscellaneous Amendments) (No. 3) Act, 2018, as interpreted in the case of **Yakobo Magoiga Gichele and Peninah Yusuph** CAT at Mwanza, Civil Appeal No. 5 of 2017 at page 14 (unreported).

On the second point of preliminary objection, he vigorously submitted that the nature of an affidavit to be used in court is governed by order XIX of Civil Procedure Code [Cap 33 RE 2019] which under Rule 3 (1) provides that the affidavit is expected to confine itself on the fact as the deponent is able of own knowledge to prove. That proof is expected to be shown in the verification clause, which the applicant has proved.

He submitted that Order VI Rule 15 (1) and (2) of Civil Procedure Code is distinguishable as it provides for the pleadings which are plaint and written statement of defence.

He submitted that paragraph 4 and 5 were verified as a whole, cited the case of **Tanzania Telecommunication Company versus MIC Tanzania Limited**, Civil Application No. 06/2005, CAT at Dar es salaam (unreported).

He prayed in the alternative that should the court find that he was supposed to verify even the subparagraph, then it allow the Applicant to cure the defect by inserting proper verification clause instead of striking out the whole application.

He invite this court to be inspired by the decision of the court of Appeal in **Sanyon Service Station Limited Vs BP Tanzania Limited (now Puma energy (T) Limited**, Civil Application No. 185/17 of 2018 CAT at Dar es salaam, at page 9 paragraph 2 and page 10 paragraphs 1 and 2 of the typed Judgment. He in the end asked the court to dismiss the said preliminary objection. That marked the argument by both parties, hence this ruling.

Now form the notice of preliminary objection and the arguments in support and against the 1st ground of preliminary objection, the complaint is that as law requires that the applicant must on the Notice of Application list the material document or exhibit to be tendered and or relied upon during the hearing. In this application the notice has no list of the said documents but the documents themselves are attached. While the Respondents counsel asks the court to find this omission to be fatal, the counsel for the applicant asks the court to find that the omission is not fatal as it can be cured by the overriding objective.

On this point, this court after a reference and consideration of the provision which provides for the requirement of Rule 24 of the Labour Court Rules GN 106/2007, intend to notify the other party and the court the gist of the application in court and the intended exhibit and evidence to be relied upon. If that is reason and intent for which a notice is required, I find the attachment of the said document suffices to mean that the proper notice went to the court and other party.

Further to that, there is no any prejudice shown by the respondent which was caused by the non listing of the said document. That being the case the principle of overriding objective save the said omission, I thus find that the Preliminary Objection in the first point is hereby dismissed for want of merit.

With regard to the second limb of preliminary objection which is founded on the complaint that the verification clause was defective on account that although the paragraphs were verified, the subparagraphs thereunder were not verified.

This issue needs not to detain me much; it has actually reminded me my Primary School mathematics teacher when teaching me the topic of sets. It is a common knowledge that a subset within a set is part of the main set. Borrowing leaf from that mathematical experience, it goes without saying that the subparagraphs which are under the paragraph which were verified were also verified as part of that paragraph. I thus find this point also to be devoid of merit, it is dismissed. That said, I find the two points which rose as the preliminary objection to be devoid of merits, they are overruled. It is accordingly so ordered.

DATED at MWANZA this 21st day of July, 2020.



J.C. Tiganga

Judge

21/07/2020

Ruling delivered in open chambers in the presence of Mr. Mugabe,
Advocate for the applicant and Mr. Gilbert Mushi H/b for PrayGod Oiso,
Advocate for respondent,



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", written over a horizontal line.

J.C.Tiganga

Judge

21/07/2020