

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

(LABOUR DIVISION)

AT MTWARA

APPLICATION FOR LABOUR REVISION NO. 4 OF 2020

(Arising from the decision of Commission of Mediation and Arbitration in Labour Dispute
No. CMA/MTW/LD/58/ 2017 dated 1.4.2020)

NATIONAL UNION OF MINES AND ENERGY

WORKERS OF TANZANIA.....APPLICANT

VERSUS

DANGOTE CEMENT INDUSTRY.....1ST RESPONDENT

UNIQUE CONSULTANCY SERVICES

COMPANY LTD (UCC).....2ND RESPONDENT

RULING

5 Nov. & 8 Dec. 2020

DYANSOBERA, J.:

The 1st respondent has raised a preliminary objection against the Application for Labour Revision filed by the applicant. In the notice of preliminary objection filed on 15th day of July, 2020 a plea *in limineltis* has been raised that:

*The affidavit contravenes mandatory provisions of Rule 24 (3)
of the Labour Court rules, 2007, GN No. 106 of 2007.*

On this point, counsel for the 1st respondent prays the application to be struck out with costs.

In the notice of application accompanied with a chamber summons supported by an affidavit sworn by Victor Shinda Kassian, the Principle (sic) Officer of the applicant (Deputy Secretary General of NUMET), the applicant is moving this court to call for records of the proceedings in the Commission for Mediation and Arbitration so as to satisfy itself as to the legality, correctness and propriety of the same on the grounds set out under paragraph a (1) to (iv) of the chamber summons.

On 21st July, 2020 when the matter came up for hearing of the preliminary objection, Mr Victor Kassian, leader of the applicant appeared for the applicant, in the time, the respondents were represented by Ms Clara H. Koshuma, learned advocate. It was agreed that this matter be disposed of by way of written submissions.

Arguing in support of the preliminary objection, counsel for the 1st respondent submitted that the affidavit in support of the application which contains five paragraphs is silent on vital and important requirements under rule 24 (3) (a) to (d) as it does not indicate on the address and issue for the relief sought. According to her, these requirements are mandatory. To buttress her argument, she referred this court to the cases of **Ezekiel Andrew v. African Life Tanzania** [2011-2012] LCCD 35 and **Mariam Samburo (legal personal representative of the late Ramadhan Abas) v. Masoud Mohamed Joshi and 2 Others**, Civil Appeal No. 109 of 2016, respectively, on the mandatory nature of the

provisions and the application of the overriding objective principle. Reliance was also placed on the decisions in the cases of **Stella Maris, Mtwara University College v. Maro Msamba**, Application for Labour Revision No. 3 of 2019 and **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017.

Laying emphasis on incurable defects in a supporting affidavit lacking the mandatory requirements stipulated under rule 24 (3) of the Rules, learned counsel for the 1st respondent urged this court to find that the application has no leg to stand and invited this court to adopt the conclusion reached in the case of **James Daniel v. Cats-Net Limited** Revision No. 258 of 2017. She concluded that the filed affidavit in support of the application lacks statement of legal issues that arise from material facts, description of the parties and the reliefs sought.

In rebuttal, Mr. Alhaji A. Majogoro, counsel for the applicant, first drew the attention of this court to case of **James Burchard Rugemalira v. Rand Mr. Harbinder Singh Sethi**, Criminal Application No. 59/19 of 2017 on the authority that notices of objection should particulars so as to enable the adversary party as well as the court to understand the nature of and scope of the point of objection raised. It was argued on part of the applicant that the rule 24 (3) was not pleaded and it should, therefore, be disregarded. Further, the applicant argued that the complaint by the respondent is on failure to include the address and issues for the relief sought in the affidavit, the complaint which lacks substance because the respondent had to mention the whole provision which includes subparagraphs (a) to (d); otherwise, the applicant contends that the affidavit

has complied with the legal requirements and is, therefore, proper. This court was told by the applicant that the invocation by the respondent of the principle of overriding objective was misplaced.

I have considered the preliminary objection and the rival submissions of the parties. I have also perused the impugned affidavit sworn by Mr. Victor Shinda Kassian, the Principle (sic) officer of the applicant.

Having closely examined the said affidavit, I am satisfied that the same is incurably defective in that it violated the mandatory provisions of section 24 (3) (a), (b), (c) and (d) of the Labour Court Rules, GN. No. 106 of 2007. As rightly submitted by Ms. Clara H. Koshuma, learned Counsel for the 1st respondent, the affidavit in support of the application is incurably defective. As I understand, the requirements stipulated paragraphs (a), (b), (c) and (d) of sub-section (3) of section 24 of the Rules must be contained in a substantive part of the affidavit. As far as paragraph (b) is concerned, the affidavit must demonstrate clear and concise statement of facts, in chronological order, on which the party relies, which statement must be sufficiently particularized to enable any opposing party to reply to the document. Likewise, under paragraph (c), the affidavit must show a clear and concise statement of the legal issues that arise from the material facts, which statement must be sufficiently particular to enable any opposing party to reply to the document. That is the gist of the law and this is mandatory in view of section 53 (2) of the Interpretation of Laws Act [Cap.1 R.E.2019].

For clarity and ease of reference, Rule 24 (3) (c) of the Labour Court Rules, 2007 provides that:

"24.-

(3) The application shall be supported by an affidavit, which shall clearly and concisely set out-

(a) the names, description and address of the parties

(b) a statement of the material facts in a chronological order, on which the application is based

(c) a statement of the legal issues that arise from the material facts; and

(d) the reliefs sought"

As rightly submitted by Counsel for the 1st respondent, the affidavit in question has not complied with the mandatory requirements stipulated under Rule 24 (3). This court in the case of **Ezekiel Andrew v. African Life Tanzania (2011-2012) LCCD 35** emphasized on the mandatory nature of the said provisions. The affidavit is, therefore, defective.

There is no doubt that an affidavit is, in legal sense, evidence. It has, therefore, to conform to the legal requirements, particularly where such requirements are mandatory as is the case here. That being the position of the law, I am constrained to hold that the defects are not curable and therefore, render the application before this court incompetent.

It is true that there is an overriding principle which may assist parties to attain substantive justice, however, I should hasten to state that such

principle should not be used as a shield to protect and help parties to circumvent the legal requirements.

The applicant argues that the notice of preliminary objection did not provide particulars so as to enable the adversary part as well as the court to understand the nature and scope of the point of objection raised. I think the argument, though attractive, has no substance. The 1st respondent filed a notice of objection notifying the court and the applicant of the incurable defects contained in the applicant's affidavit. This court is satisfied that the said affidavit is indeed incurably defective for failure to comply with the mandatory requirements of the law. It is true that in the case of **James Burchard Rugemalira v. R and Mr. Harbinder Singh Sethi**(supra), the Court of Appeal at p. 9 of the typed ruling of the court observed:-

"It should be remembered that a notice of objection is always intended to let the adversary party know a point of law raised so that when it comes up for hearing he should be aware in advance what the nature of the point of objection raised is all about and this will enable him to prepare himself for a reply thereof, if any."

However, that observation was not made in vacuum. The point of objection rose in that matter was not clear. In that ruling, the Court of Appeal had earlier on recorded and observed at the same page 9 the following:

"The respondent /Republic filed a preliminary objection contended that the application was incurably defective for non-complying with the law. It is during the hearing of the preliminary objection where it was clarified that there are omnibus applications which were lumped together. The applicant countered the point of objection raised by first saying that it was not clear at all. Indeed we hasten to point out however, that the point of objection as reproduced above without more is not clear. The respondent has not stated the proper provision of law which the applicant ought to have cited, hence their assertion that the application is incurably defective.

In the preliminary objection under consideration, the 1st respondent was clear that the application violated the mandatory provisions of rule 24 (3) of the Labour Court Rules, 2007, GN 106 of 2007. The case of **James Burchard Rugemalira v. R and Mr. Harbinder Singh Sethi** is, therefore, distinguishable from the present matter.

For those reasons, the preliminary objection is upheld. On account of those defects of the affidavit which cannot be cured and, therefore, renders the application incompetent, should be and is hereby struck out but with leave to re-file, if the applicant still wishes.


W.P.Dyansobera

Judge

10.12.2020



This ruling is delivered under my hand and the Seal of this Court this 10th day of December, 2020 in the presence of Mr. Victor Kassian, the applicant's Principal Officer and in the presence of Ms. Clara Koshuma, learned counsel for the 1st respondent.




W.P. Dyansobera

Judge