

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
HIGH COURT LABOUR DIVISION SHINYANGA**

**AT SHINYANGA**

**REVISION APPLICATION NO. 01 OF 2019**

**(Originating from Labour dispute No. CMA/SHY/287/2018)**

**ALLY MUSSA & 3 OTHERS.....APPLICANTS**

**VERSUS**

**EAST AFRICAN SPIRIT (T) LTD.....RESPONDENT**

**RULING**

*Date of last order: 31/3/2020*

*Date of Judgment: 02.04.2020*

**MKWIZU, J.:**

This is a ruling in respect of the preliminary objection directed towards the competence of the application for revision filed by the applicants against the decision of the CMA in Labour Dispute No. CMA/SHY/287/ 2018.

The application was brought under Section 91 (1) of the Employment and Labour Relations Act (CAP.366 RE 2018), Rule 26 (1) and (2) of the Labour Court Rules G.N. 106 of 2007 and other enabling provision of the law. The application was supported by the affidavit of the applicant.

Respondent filed a preliminary objection on 1<sup>st</sup> April 2019 with three points **one**, that the application contains wrong provisions of the law, **two**, the affidavit supporting the application contains a defective jurat of attestation and **three**, that the affidavit was drawn by unknown person.

When the application came for hearing, the applicants were in person with no legal representation whereas respondent was represented by Mr. Paul Kaunda learned advocate.

It is worthy to note that, in the course of arguing the point of preliminary objection, Mr. Kaunda abandoned the second point of preliminary objection and argued the remaining two points.

Submitting in support of the first point of preliminary objection, Mr. Kaunda argued that the application is bad in law for wrong citation. He said, the applicants cited the provisions of section 91 (1) of the Employment and Labour Relation Act (CAP 366 RE of 2018) and rule 26 (1) and ( 2) of the Labour Court Rules. He contended that there is no revised version of

the ELRA of the year 2018 and further that Rule 26 (1) and (2) cited deals with review and not revision applications. Applicants omitted to cite rule 24 of the labour rules which is a proper rule under the circumstances, stressed Mr Kaunda. He clarified, more that applicants ought to have cited in their chamber summons Rule 24 (1) and (2) (a), (b), (c) (d) (e) and (f), 24 (3) (a) (b) (c) and (d) and Rule 28 (1) (a-e) of the Labour Court Rules G.N. 106 of 2007 and section 94 of the ELRA. By not citing the mentioned provisions of the labour laws, Mr Kaunda suggested that the application is incompetent liable to be struck out.

On his second point of objection, Mr Kaunda submitted that, the affidavit failed to mention a person who drafted it. Falsely, the affidavit mentions the respondent to be the maker. Mr Kaunda said, the affidavit offends the requirement of section 48 of the Advocates Act. He finally prayed the application to be struck out.

On their part, applicants prayed for time to rectify the error as they are laypersons.

Undeniably, the application contains wrong citation. As rightly submitted by Mr Kaunda, the applications cited section 91 (1) of the Employment and Labour Relation Act (CAP 366 RE of 2018) and rule 26 (1) and (2) of the Labour Court Rules. It is correct that there is no Employment and Labour Relation Act revised version of 2018. Again, as correctly submitted by Mr Kaunda, the provisions of rule 26 do not apply in the instant application.

In addition to that, applicants omitted to cite proper provisions of the Labor courts rules guiding the application of this nature, Rule 24 and 28 of the Labour Court Rules. All taken into account, the 1st preliminary objection has merits. It is therefore upheld.

The consequence of wrong citation of enabling provision of the law is well known. It renders the application incompetent and deprives the court of its jurisdiction. To entertain the matter. See the case of **Chama cha Walimu Tanzania V. The Attorney General**, Civil application No. 151 of 2008 (CAT unreported).

The only legal remedy for wrong or non-citation of enabling provision of the law is to have the matter struck out as I hereby do.

Having found that the 1st preliminary objection disposes of the entire application, I find it not necessary to consider the second preliminary objection. However, taking into consideration the interest of justice and guided by the provisions for the overriding principle, I grant applicants leave to refile their application if they so wish. The application to be filed within sixty (60) days from the date of this ruling.

It is so ordered.

**DATED at SHINYANGA this 2<sup>nd</sup> day of APRIL, 2020.**

