

IN THE HIGH COURT OF TANZANIA

AT TABORA

MISC. LABOUR APPLICATION NO. 2 OF 2019

(Arising from the decision of CMA-Tabora Labour Dispute No.

CMA/TAB/MISCAPP/12/2018)

OMARY SAIDI 1ST APPLICANT
FATUMA SAID 2ND APPLICANT
ELIZABETH DAGRAS 3RD APPLICANT
CHAUSIKU RAMADHANI 4TH APPLICANT
ASHA ABDALA 5TH APPLICANT
ASHURA NASORO 6TH APPLICANT
ASHA AMANI 7TH APPLICANT
HAWA MUSA 8TH APPLICANT
MARIAM SALUM 9TH APPLICANT
ABDALA JUMA 10TH APPLICANT
PILI SIMBA 11TH APPLICANT
ANELITA PIUSI 12TH APPLICANT
IDDI SAID 13TH APPLICANT
JULIANA MAIKO 14TH APPLICANT
MARY JACOB 15TH APPLICANT
ROSE PETER 16TH APPLICANT

VERSUS

TANZANIA LEAF TOBACCO COMPANY LTD RESPONDENT

RULING

Date of Last Order: 02/07/2021

Date of Delivery: 19/07/2021



AMOUR S. KHAMIS, J.

This ruling is in respect of Preliminary Objection which was raised by respondent Tanzania Leaf Tobacco Company Ltd against an application by applicants Omary Said & 15 Others who are seeking extension of time to file Labour Revision.

The applicants paraded several grounds in support of their application but before the same could come for hearing the respondent raised two points of Preliminary Objection to wit

- 1. That, the Affidavit in support of Chamber summons is incurably defective for contravening Rule 24(3) of the Labour Courts Rules, 2007***
- 2. That, the Applicant's Notice of Application is incurably defective for contravening Rule 24(2) of the Labour Courts Rules, 2007***

At the hearing, applicants enjoyed the service of Mr. Hassan Killingo learned Advocate whereas the respondent were represented by Ms. Edna Aloyce also learned Advocate.

With the permission of this Court both parties agreed to dispose the Preliminary Objection by way of written submissions.

Submitting in support of Objections Ms. Edna stated that, the application at hand is made under **Rules 24(1-3), 56(1) of the Labour Court Rules, 2007 GN. No. 106 of 2007** (the Rules) and the same is supported by an affidavit in effort to meet the requirement of **Rule 24(3)** which provided thus:-

The application shall be supported by an affidavit which shall clearly and concisely set out:-

- (a) The names, description and addresses 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

It is Ms. Edna's assertion that, there is no any paragraph in the affidavit which gives description and addresses of the parties, legal issues as per **Rule 24(3)(c) of the Rules** and relief sought by appellants.

Ms. Edna claims further that, the provisions of law cited above uses the word "shall" to imply mandatory requirement set therein when filing an application in Court. She added that, the applicants are not availed discretion of not complying with **Rule 24(3) of the Rules**.

As to the second point of objection, Ms. Edna submitted that the applicant's purported Notice of Application falls short of qualifying to be a Notice of application for non-compliance with **Rule 24(2) (c - f) of the Rules**. It is her argument that, the applicants were bound to comply with **Form No. 4 found in the schedule to the Rules**. Finally, Ms. Edna prayed this Court to declare the application incompetent.

In reply Mr. Kilingo submitted that, the Preliminary Objections raised by respondent are incompetent and that in law they are not preliminary objections because they are based on matters which if they are sustained, they will not dispose off the applicant's application in the eyes of justice.

To define the term Preliminary Objection, Mr. Kilingo cited the case of **Mukisa Biscuit Manufacturing Ltd vs. West End Distributors Ltd** [1969] EA 696 where the court held that;

“... a preliminary objection contains a point of lawand which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

He also cited the case of **Musanga Ngándwa vs. Chief Japhet Wanzagi & Eight Others** [2006] T.L.R 351 where preliminary objection was clarified as: -

“The expression preliminary objection has been used in our jurisdiction to refer to objection to the jurisdiction of the Court, a plea of limitation and the like; it contains a point of law which, if argued as a preliminary point, may dispose of the suit; a preliminary objection cannot be raised if any fact has to be ascertained, that is, it cannot be based on unascertained factual matters”

Mr. Kilingo claims that, the essence of preliminary objection has three bases that are, One, it has to be purely on Point of law, two, it should not depend on court's discretion and three, it needs no evidence to prove the same.

He continued to argue that, all important contents described under **Rules 24(2) and (3) of the Rules** were presented in the applicant's application regardless its arrangement. He contends

that the law is not so strict on arrangement of contents stipulated so they cannot stand to be preliminary point of objections.

He finally submitted that, the alterations made in the applicant's affidavit and notice did not affect the main point at issue and the content of applicant's affidavit did not infringe the requirements of the said rules, he therefore prayed this Court to dismiss respondent's preliminary objections with cost.

I have thoroughly gone through the submissions of all counsels and the entire related record of this application. Keenly examining the application, one is easily swayed with submission by Ms. Edna that the requirements set forth in rule 24(2-3) of the Labour Court Rules, 2007 are mandatory, it cannot be ignored. I am in agreement with her that, the application at hand cannot be entertained by this Court as it offends the provisions of rule 24(2 and 3) of the Labour Court Rules, 2007.

There is no controversy about the landmark cases cited by Mr. Kilingo, it is true that a preliminary objection has to be purely on Point of Law, it should not depend on Court's discretion and it needs no evidence to prove it. It is crystal clear that the objections leveled by the respondent are based on pure points of law.

As to **Mukisa buscuits's** case cited above, I do not agree with Mr. Kilingo that, if the objections raised are sustained there is no point of law which will dispose the matter summarily, it is crystal clear that, the applicant's application offended rule 24(2-3) of Labour Court rules, that alone can finally dispose of the application.

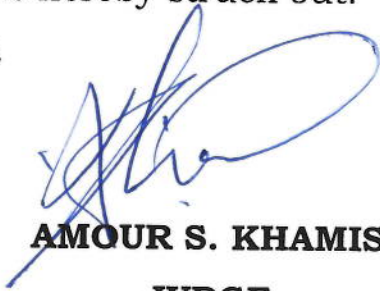
The aim of preliminary objection was concisely elaborated by the Court of Appeal in the case of **Bank of Tanzania Ltd vs.**

Devran P. Valambia, Civil Application No. 15 Of 2002 (unreported)
in the following words.

*“the aim of preliminary objection is to save the time of
the Court and of the parties by not going into the merit
of the application because there is point of law that
will dispose of the matter summarily.”*

In totality of the above reasons, the first and second
objections raised by respondent are hereby sustained and the
applicant's application is hereby struck out.

Order accordingly.

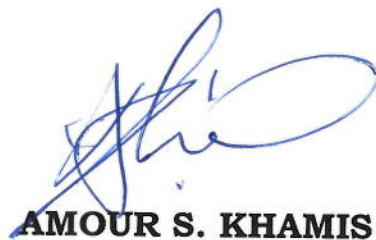


AMOUR S. KHAMIS

JUDGE

19/07/2021

Ruling delivered in open Court in presence of Mr. Musa
Kassim, advocate for the respondent and absence of the
applicants. Right of Appeal explained.



AMOUR S. KHAMIS

JUDGE

19/7/2021