

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LABOUR APPLICATION No. 08 OF 2021

(Originating from CMA/MUS/180/2017)

MAJUTO O. CHIKAWA & ANOTHER -----APPLICANTS

VERSUS

THE TRUSTEES OF TANZANIA NATIONAL PARKS ----- RESPONDENT

RULING

29th March, 2021

TIGANGA, J

When Misc. Labour Application No. 08/2021 was filed by the applicant, the counsel for the respondent countered it by the notice of opposition, counter affidavit and the notice of preliminary objection challenging the application on the ground that the affidavit filed in support of the application is incurably defective. The notice of preliminary objection so filed has two points of law as follows;

1. That the affidavit supporting the application is incurably defective for want of verification.

2. That the application is bad in law for lacking endorsement by the drawer.

When this matter was called for orders and parties were addressed regarding the filed preliminary objection, the applicants conceded the defects of the affidavit, but contended that, that was a human error caused by the facts that they are laymen unrepresented. They asked the court to judge if the defect is fatal, they asked to be allowed to amend, or if it is not amendable then the same be struck out with leave to re-file, on that they be given time to re-file.

Mr. Samwel Ochina, learned counsel for the respondent insisted that, since the applicants have conceded the defect in the affidavit, then the same is fatally defective and the application is thus taken to have been filed with proper affidavit. He prayed the application to be struck out, and he advised the applicant to pursue their right through Labour Revision No. 15/2020.

That being the state of affairs, the issue is whether the defect in the affidavit is curable. In dealing with this issue, I will be guided by the authority in the case of **Abdul Issah Bano vs Mauro Daolio**, Civil Application No. 563/02/ of 2017 - CAT - Arusha, adopting the dictionary

definition from Oxford Dictionary of Law, Seventh Edition, at page 23 the Court of Appeal held *inter alia* that;

"An affidavit is a sworn written statement of evidence used mainly to support certain applications and in some circumstances, as evidence in court proceedings. The person who makes the affidavit must swear or affirm that the contents are true before a person authorised to take oath in respect of the particular kind of affidavit."

Having so adopted the dictionary definition of affidavit, the court went on and held in its own word that;

"So an affidavit is written statement confirmed by oath or affirmation for use as evidence in court. The essential ingredients of a valid affidavit are, one, the statement or declaration of fact, by the deponent, two, a verification clause, three, a jurat of attestation, four, the signature of the deponent and the person who in law is authorised either to administer the oath or to accept the affirmation"

The Affidavit lacking any of the above ingredients is defective in substance and the defect is incurable. The Affidavit at hand lacks signature of the 1st deponent, both at verification and at the jurat of attestation. It thus falls short of the requirement indicated above. In law, that is Order XLII Rule 2 of the Civil Procedure Code [Cap 33 R.E 2019] provides that,

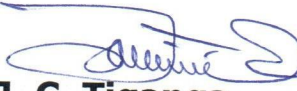
every application made in court under Civil Procedure Code, must be by way of chamber summons supported by affidavit. This means, the application without affidavit is fatally defective and cannot be left to stand.

That said, the application is therefore incurably defective, it is hereby struck out for the reasons given with leave to refile but subject to the law of limitation.

It is so ordered.

DATED at MWANZA, this 29th day of March, 2021




J. C. Tiganga
Judge
29/03/2021