

IN THE HIGH COURT OF TANZANIA

AT TABORA

(LABOUR DIVISION)

LABOUR APPLICATION NO. 20 OF 2018

(Arising from the decision of the High Court of Tanzania at Tabora in Labour Revision No. 01 of 2014 dated 17/09/2018 which originated from CMA-Tabora Labour Dispute No. CMA/TAB/DISP/31/2013)

BRUNO CHARLES MATALU.....1ST APPLICANT

MARY JUMA MASUMBUKO.....2ND APPLICANT

VERSUS

NDALA HOSPITAL.....RESPONDENT

RULING

Date of Last Order: 10/02/2021

Date of Delivery: 19/02/2021

AMOUR S. KHAMIS, J.:

Bruno Charles Matalu and Mary Juma Masumbuko moved this Court for extension of time within which to file an application for

leave to appeal to the Court of Appeal against the decision of this Court in Labour Revision No. 1 of 2014.

The application was confronted by a notice of Preliminary Objection from Ndala Hospital alleging that it was incompetent on grounds of non citation of an enabling provision of the law and improper description of names of the applicants.

By consent, the Preliminary Objections were canvassed by way of written submissions.

Submitting in support the preliminary objection, Mr M.K Mtaki, learned advocate of the respondent contended that failure to cite the enabling provision rendered the application incompetent the consequence of which is to strike it out.

He cited the case of **MARCKY MHANGO V TANZANIA SHOE CO. & ANOTHER, CIVIL APPLICATION NO. 37 of 2003** (unreported) in which it was held that failure to cite a provision of the rule in support of the application was an incurable defect and on that account the application was struck out.

He implored this Court to strike out the application in the context stated in MARCKY MHANGO's case.

On the second preliminary objection, Mr Mtaki contended that there was an improper description of the applicants' names. He explained that in the original case the applicants were BRUNO MATALU and MARY JUMA MASUMBUKO while in the present application description of their ages is shown alongside their respective names.

Whatever description of 40 years is intended to connote, he submitted that it was a misjoinder which totally changed the description of the parties in the application and rendered the application incompetent.

Responding for and on behalf of the respondent, Mr. Hassan Kilingo, learned advocate contended that there was a proper citation of enabling provision.

He argued that Rules 24 (1) (2) (3) of the Labour Court Rules GN. No. 106 of 2007 were proper citation and sufficed as enabling provisions.

He added that the application was properly filed vide a chamber summons supported by an affidavit and urged this Court to overrule the objection on the ground that it was misconceived.

Further to that, Mr. Kilingo asserted that there was proper description of names of the applicants. He explained that the age description for each of the applicants was a requirement for filing pleadings in the High Court Registry at Tabora as instructed by that Deputy Registrar.

Having outlined the parties' rival submissions as shown above, I am now set to determine the two limbs of a Preliminary Objection.

The first limb relates to non citation of enabling provision of law and its effect.

According to Mr. Mtaki, the provisions under which this application was preferred do not confer this Court powers to grant

the orders sought and its effect is to strike out this application. On the other hand, the applicants had it the other way round.

I have carefully gone through all the provisions cited in the chamber summons, without reproducing them here, and as correctly argued by Mr. Mtaki, they do not directly touch on the orders sought.

The question then follows on whether a failure to properly cite the relevant provisions of the law has the effect of striking out this application.

Whereas I agree with the learned counsel for the respondent that in the past the alleged defect was fatal and incurable in all respects, but with introduction of overriding objectives of the Civil Procedure Code and Criminal Procedure Act, the stated legal stance has changed in both Civil and Criminal matters.

Principles of overriding objective requires Courts to deal with cases justly, speedily and to have regard to substantive justice.

The principle also avoid prioritization of procedural technicalities in the process of administration of justice.

The overriding objective principle which is also known as the oxygen principle was applied in **KIKO RAJABU KIKO AND ANOTHER V BAKARI RAJABU KIKO** wherein this Court observed that the days when one could almost invariably get away with technical points of law and avoid going into merits of a case are part of history.

In **CHARLES KIMAMBO V CLEMENT LEONARD KUSUDYA AND ANOTHER**, the Court of Appeal applied the overriding objective in allowing the applicant to amend a defective application which contained some anomalies.

In **YAKOBO MAGOIGA GICHELE V PENINAH YUSUPH, CIVIL APPEAL NO. 55 OF 2017** (unreported) the Court of Appeal observed that the oxygen principle should be given more prominence to cut back on over reliance on procedural technicalities.

A similar approach was adopted by the Court of Appeal in **GASPAR PETER V MTWARA URBAN WATER SUPPLY AUTHORITY (MTWARA), CIVIL APPEAL NO. 35 OF 2017** wherein it was held that missing documents in the records of appeal that were not necessary for disposal of the legal issues raised in the appeal could be excused under the oxygen principle.

In the same spirit, I overrule the objections raised by the respondent for the defect stated neither prejudiced the respondent who is fully aware of the orders sought nor caused any miscarriage of justice.

It is so ordered.



AMOUR S. KHAMIS

JUDGE

19/02/2021

Court: Ruling delivered this 19th day of February 2021 in the presence of Ms. Joyce Nkwabi for the Respondent but in absence of the Applicants.

B.R. NYAKI
DEPUTY REGISTRAR
19/2/2021