

**IN THE HIGH COURT OF TANZANIA  
(IN THE DISTRICT REGISTRY)  
AT MWANZA**

**MISC. LABOUR APPLICATION NO.1 OF 2021**

(Arising from Misc. Labour Application No. 13/2020, originating from  
Labour Revision No. 107/2018 from CMA Award CMA/GMA/GTA/43/2017)

**NARCIS NESTORY ..... APPLICANT**

**VERSUS**

**GEITA GOLD MINING LIMITED ..... RESPONDENT**

**RULING**

*Date of Last Order: 14.04.2021*

*Date of Ruling: 15.04.2021*

**A.Z.MGEYEKWA, J**

This is an application which was brought under Rule 24 (1), (2) (a), (b), (c), (d), (c) and (f), Rule 54, Rule 55 of the Labour Court Rules, G.N No. 106 of 2007 and Section 11 (1) of the Appellate Jurisdiction Act, Cap. 141. The application was supported by an affidavit sworn by Mr.Kabago. The respondent resisted the application and has demonstrated his resistance by

a counter-affidavit deposed by Libent Rwazo, the learned counsel for the respondent.

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, Mr. Kabago, learned counsel represented the applicant, and Mr. Libent Rwazo, learned counsel represented the respondent.

During the hearing of this application, Mr. Rwazo started by objecting the application, he raised points of objections. As the practice of the Court, I had to determine the preliminary objection first before going into the merits or demerits of the application. That is the practice of the Court founded upon prudence which I could not overlook.

In support of the preliminary objection, Mr. Rwazo submitted that in accordance to section 24 (2) of the Labour Courts Rules requires the applicant or a party to sign the application. He argued that to the contrary the representative is the one who signed the application. The learned counsel went on to argue that Rule 24 (2) of the Labour Courts Rules provides the contents of application in labour matters whereas the application must contain the name, address of the applicant and the reliefs

sought. He valiantly contended that the affidavit is prepared contrary to the law, it lacks a statement of legal issues, address and particulars of parties. Mr. Rwazo further argued that the learned counsel for the applicant has cited provision of the law which does not move this court to determine his application since he cited Rule 11 of the Appellate Jurisdiction Act while the Act does not contain rules. He further argued that the applicant's affidavit is not arranged in chronological order.

The learned counsel for the applicant did not end there he contended that the application is not supported by the applicant's affidavit. He lamented that the applicant was required to swear on his own capacity. He went on to argue that Mr. Kabago did not represent the applicant at the Commission for Mediation and Arbitration and before this court thus he was not acquainted with the case. In his view, he stated that the learned counsel for the applicant could not swear the affidavit on matters which were not on his own knowledge. Mr. Rwazo fortified his argumentation by referring this court to the case of **Tanzania Breweries Ltd v Herman Bildad Minja**, Civil Application No. 11/18 of 2019 (unreported) whereby the Court of Appeal of Tanzania cited with approval the case of **Lalago Cotton Gonnery & Oil**



**Mills Company Ltd v the Loans & Advances Realization Trust, Civil**  
Application No.80 of 2020 (unreported).

On the strength of the above argumentation, Mr. Rwazo beckoned upon this court to find that the applicant's affidavit is incurable defective. He urged this court to expunge the affidavit as a result the application will remain with no any supporting affidavit.

In reply, Mr. Kabago strongly opposed the preliminary objections. He argued that the statement of legal issues is featured in the applicant's affidavit. To support his submission he referred this court to paragraph 10 of the applicant's affidavit. Mr. Kagabo went on to argue that his affidavit complied with the requirement stated under Rule 24 (2) of Labour Rules. He added that the affidavit is in chronological order. He further argued that the affidavit was signed by the learned counsel for the applicant since the applicant has a right to be represented and he had knowledge on what transpired at the Commission for Mediation and Arbitration and before this court. Insisting, Mr. Kabago argued that in his affidavit he has narrated all the facts which he obtained from the Commission and court records. Mr.

Kabago stated that he cited Rule 11 instead of section 11 of the Appellate Jurisdiction Act. In his view the defect did not prejudice the respondent.

Mr. Kabago stated that the affidavit was made in accordance to Rule 24 of the Labour Court Rules. He stated that the citation of Rule 55 and 55 of the Labour Court Rules was proper and since the said Rules does not include filing a notice of appeal he had to cite section 11 of the of the Appellate Jurisdiction Act.

In conclusion, the learned counsel urged this court to disregard the preliminary objections raised by Mr. Rwazo.

After a thorough perusal of the point of preliminary objection along with the submissions of both parties, the issue for determination is **whether the preliminary objection is meritorious**. The learned counsel for the respondent among his objections argued that that the application is incompetent for failure to comply with Rule 24 (3) (a) of the Labour Courts Rules GN. No. 106 of 2007 that the affidavit does not contain the statement legal issues, names, address and description of the parties. I have perused the learned counsel for the applicant's affidavit and found the statement of legal issues is provided under paragraph 10 of the applicant's affidavit.



However, I have noted that that the affidavit lacks the names and addresses of the parties. The law under Rule 24 (3)(a) of the Labour Court Rules 2007, GN.106 of 2007 requires the affidavit supporting the application to contain the names, description and address of the parties. Rule 24 (3)(a) of the Labour Court Rules 2007, GN.106 of 2007 provides that:-

*" (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.*

Guided by the above provision of the law, I have glanced indeed the affidavit and found that affidavit does not contain the names, descriptions, and addresses of the parties on of the affidavit. The said particulars are supposed to be stated at the beginning of the affidavit, immediately after the name of the person who takes an oath then what follows are the names, descriptions, and addresses of the parties. But the affidavit at hand lacks the names, description, and address of the parties. Therefore, this point has merit.

Having considered the above point of preliminary objection, as shown above, it is evident that the present application is improperly filed before this Court. Since this point of objection renders the application incompetent, I

find no any justifiable legal reasons to deal with the other points of objection, as it will not reverse the decision made above.

In the result, and for the above reasons, I would uphold the preliminary objection. The application, accompanied by an incurably defective affidavit is declared incompetent, and accordingly, I strike it out without costs. Order accordingly.

DATED at Mwanza this 16<sup>th</sup> April, 2021.

  
A.Z.MGEYEKWA

**JUDGE**

16.04.2021

Ruling delivered in the chamber this 16<sup>th</sup> April, 2020 via teleconference whereas Mr. Kabago, learned counsel for the applicant and Mr. Kyariga, learned counsel for the respondent were remotely present.

  
A.Z.MGEYEKWA

**JUDGE**

16.04.2021

