

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA  
AT MUSOMA**

**APPLICATION FOR REVISION NO 13 OF 2020**

*(Arising from Labour Dispute No. CMA/MUS/221/2017)*

**GODFREY FRANCIS MARWA AND 10 OTHERS.....APPLICANTS**

**VERSUS**

**REGIONAL MANAGER TANROADS MARA.....RESPONDENT**

**JUDGMENT**

*3<sup>rd</sup> May & 29 July, 2021*

***Kahyoza, J***

Godfrey Francis Marwa and 10 Others instituted a labour dispute before the Commission for Mediation and Arbitration (the CMA) against the Regional Manager TANROADS Mara for breach of contract.

The undisputed facts are that Godfrey Francis Marwa and 10 Others were employed by TANROADS for fixed term contract of one year. Before the expiry of the term of their contract, TANROADS delisted or terminated their employment on the ground that they had no minimum qualifications. TANROAD the employment contract was *void ab initio*. Godfrey Francis Marwa and 10 others lost the battle before the CMA. Aggrieved, they instituted an application for revision before this Court. Before the application for revision was heard TANROADS raised a preliminary point of

law that the application is incurably defective for contravening rule 24 (3) (a) of the Labour Court Rules GN. 106/2007.

TANROADS' advocate submitted in support of the application that the affidavit violated rule 24 (3) (a) of GN 106/2007 which states 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".*

TANROADS' advocate submitted that the applicants were required to state in their affidavit their names, descriptions and addresses and those of the respondent, which they failed to do. He contended further the affidavit was defective and cannot suffice to support the applicant's application. To buttress his submission, TANROADS' advocate cited the case involving the applicants, **Godfrey Francis Marwa and 10 others V. Regional Manager TANROADS**, Rev. No. 19 of 2019 High Court Labour Division Musoma (unreported). He also cited the cases of **Mvomero District Council Vs. Thobias Adamu Liwongwe** Rev. Case No. 28/2012 H/C Labour Division DSM (Registry) (unreported) and **Dar es Salaam University College of Education Vs. Veronica Jacob Urassa**. Rev. Case No. 72/2018 H/C Labour Division Dar es Salaam Registry (unreported). He prayed the application to be struck out.

The applicants replied that TANROADS' advocate was challenging the application on unfounded technicality. They added that the affidavit was correct and clear on its form and substance as it complied with the requirements of Rules 24(3) (a) of **the Labour Court Rules**, (GN No. 106/2007).

They averred that the names, descriptions and addresses of the applicants are stated in the first paragraph of their affidavit. They also submitted that the affidavit provides for the applicants' descriptions which that they are adults, Muslim and Christians, male/ female and Tanzanians. The contended further the address is provided.

The applicants submitted that the preliminary point of law was not worthy the preliminary point of law as stated in the case of **Mukisa Biscuit Manufacturing Co. Ltd V. West Emal Distributors Ltd.** (1966) EA 696, at page 700 the Court stated that-

*"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arise by clear implication of the pleadings, and which if argued as preliminary point may disposed of that 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".*

The applicants resorted to Art. 107 of the Constitution of the United Republic of Tanzania. Art 107 (A), insists on substantial justice.

In his rejoinder, TANROADS' advocate submitted that the applicants did not state in their affidavit the names, descriptions and addresses of the respondent. He added that failure to provide the particulars regarding the TANROADS, the respondent made the affidavit defective.

He added that the preliminary objection squarely fits the principle enunciated in **Mukosa Biscuits Manufacturing Co. Ltd** (supra).

Having heard the rival submissions, the issue is whether the application is defective for offending rule 24(3) (2) of GN 106/2007. There is no doubt that rule 24(3) (a) GN 106/2007 makes it mandatory for an affidavit supporting an application to clearly and concisely set out the names, descriptions and addresses of the parties. The term parties include both the applicant and the respondent. This Court in the case of **Godfrey Francins Marwa and 10 Others** (supra) held that failure to comply with rule 24(3) (supra) renders the application defective. The Court followed the decisions in earlier decisions of this Court in **Mvomero District Council V. Thobias Adom Liwongwe (supra)** and **Dar es Salaam University College of Education V. Veronica Jacob Urassa** (supra) cited by TANROADS' advocate. There is also another case of **Hussein Ally & Others vs. Tanzania Hide & Skin** DSM Miscellaneous Labour Application No. 503/2019, where the Court took same position. I have no reasons differ from the established position of law. I am therefore of the firm view that rule 24 (3) provides in no uncertain terms that the affidavit must provide names, descriptions and address of the parties in clear and concise form and failure to provide such particulars renders the application defective.

A cursory look at the applicants' affidavit shows that they provided particulars regarding the applicants and nothing was stated regarding the respondent. They were required to provide particulars of the respondent. They violated the requirements of rule 24 (3) (a) of GN 106/2007.

In addition, the applicants provided particulars concerning their names, descriptions and addresses which is not clear and concise as

required by law. It is difficult to tell who is a Muslim or Christian on one side, or who is a female or a male, on the other hand. Hence the particulars concerning the applicants are short of being clear and concise.

I considered the applicants' advocate's submission that the preliminary point of law did not pass the threshold in **Mukisa Biscuit Manufacturing Co. Ltd V. West Emal Distributors Ltd**. To say the least I was unable to buy it. The Court in laid down the guiding principle but it did not prescribe all grounds of preliminary objection. In this case, TANROADS' advocate pointed out the law, which was violated. The alleged violation does not need evidence to prove it. It is obvious on the face of record.

In the end, I uphold the preliminary objection that the applicants' affidavit is defective for violating rule 24(3) (a) of **the Labour Court Rules**, G.N. No. 106/2007. Consequently, I strike it out.

The applicants failed to comply with the above cited rule for the second time. I see no reason to give them time within with to file an amended application. If they wish to prosecute the application, they must do so subject to time limitation.

It is ordered accordingly.



**J. R. Kahyoza**  
**JUDGE**  
**29/07/2021**

**Court:** Judgment delivered in the presence of Mr Joel Masoud for all the applicants and Mr. Saddy Rashidi for the respondent. B/C Mr. Makunja present.



A handwritten signature in black ink, appearing to read "J. R. Kahyoza". The signature is stylized with a long horizontal stroke at the beginning and a cursive script for the rest of the name.

**J. R. Kahyoza**  
**JUDGE**  
**29/07/2021**