

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)**

**AT ARUSHA**

**MISC. LABOUR APPLICATION NO. 32 OF 2020**

**(Originating from CMA/ARS/ARB/242/2016)**

**SIMBA SAFARIS LIMITED..... APPLICANT**

**VERSUS**

**SHIZA BAKARI..... RESPONDENT**

**RULING**

15/9/2021 & 3/11/2021

**ROBERT, J:-**

Before me is an application for stay of execution pending the determination of an application for extension of time to file an application to set aside an award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/522/2017. The application is brought under section 91(3) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 24 of the Labour Court Rules G.N. No. 106 of 2007 as well as Order XXI Rule 24 of the Civil Procedure Code, Cap. 333 (R.E 2018) and supported by an affidavit sworn by Mr. Stephen D. Mushi, counsel for the applicant.

Prior to the hearing of this application, the respondent raised preliminary objections on points of law to the effect that:-

- 1. That, the application is bad for being supported by a defective notice of application contrary to Rule 24 (3) (a) and (b) of the labour Court Rules GN 106 of 2007.*
- 2. That, the Application is incurably defective for being supported by the defective affidavit having a defective jurat attestation.*

As a matter of practice, I invited both parties to address the Court on the objections raised prior to determining this matter on merits if the raised objections do not dispose of the matter.

When the matter was fixed for hearing of the preliminary objection, **Mr. Ernest Emmanuel**, learned advocate appeared for the applicant whilst **Mr. Frank Maganga**, personal representative appeared for the respondent.

Submitting on the 1<sup>st</sup> ground of preliminary objection, Mr. Maganga argued that, rule 24 (3) (a) and (b) of the labour Court Rules provides that;

*(3) 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.*

Mr. Maganga argued that, contrary to what the law provides, the applicant's affidavit supporting the application lacks description, address of the parties, a statement of legal issues that arise from the material facts and reliefs. He noted that the cited provision is couched in mandatory terms making it compulsory to comply with by virtue of section 53 (2) of the Interpretation of Laws Act, Cap. 1 (R.E 200). To support his argument, he made reference to the case of **Hussein Ally & 13 Others vs Tanzania Hides and Skin Dar es salaam and 3 Others**, Rev. Application No. 503 of 2019.

Submitting on the second ground, Mr. Maganga maintained further that, the applicant's affidavit also contravenes the requirement of section 5 and 10 of the Oath and Statutory Declaration Act, Cap. 34 (R.E 2019). He argued that, counsel for the applicant failed to follow the legal format of the jurat of attestation which is prescribed in the Act. Expounding further on this point he reproduced the jurat of attestation indicated at the applicant's affidavit as follow:

*Sworn at Arusha by the said  
Stephen D. Mushi who is known  
to me personally on this 26<sup>th</sup> day of  
May 2020*

.....  
*Deponent*

The format prescribed by the law is set out in the following form:

*".... this declaration is made and subscribed  
by the Said AB who is known to me  
personally (or who is been identified to  
me by..... the latter being known to me  
personally) this.... Day....*

.....  
*Deponent*

He prayed for the application to be dismissed for being supported with a defective affidavit and cited the case of **Changshun Liu vs Rebecca Daudi Mussa, Quingdo Industry and CDJ Classic Group L.T.D**, Misc. Application No. 387 of 2017 and **Tanzania Forestry Research Institute vs Dr. John Bahari**, Labour Revision No. 25 of 2012, where the court emphasized the need using the legal format of attestation provided under the schedule to the Oaths and Statutory Declaration Act, Cap 34 R.E 2002.

Responding to the first point of objection, Mr. Emmanuel argued that, the applicant's affidavit contains names at the first page, description

and address at the end of page 4 and 13 and legal issues can be found through material facts. He referred the Court to paragraphs 1,2,3,4,5,6 and 7 of the applicant's affidavit. Further to that, he argued that, the address of parties can be placed anywhere in the affidavit since its aim is to effect services of the document to the parties. He cited the case of **Said Choki vs Dar es Salaam Development Corporation**, Labour Revision No. 164 of 2020, TZHCLD 3790 to cement his argument.

Submitting further, Mr. Emmanuel argued that, the word "shall" does not always mean the requirement is mandatory as it depends on the practical aspects of a particular case. He cited the case of **Bahati Makeja vs Republic**, Criminal Appeal No. of 2006 in support of his position. Further to that, he maintained that, in case the Court finds the affidavit to be defective its effect is to strike out the application not to dismiss it as alleged by the counsel for the respondent.

On the second ground, he maintained that, as long as the jurat of attestation indicates that the deponent was known personally by the commissioner for oath, section 5 and 10 of the Oaths and Statutory Declaration Act was never contravened as alleged. Further to that, he maintained that, any irregularities on the jurat cannot affect the validity of oath which has been properly taken (See section 9 of Oaths and

Statutory Declaration Act, Cap 34 R.E 2019). Guided by his submission, he prayed for the POs to be overruled and if the court find the affidavit being defective the same to be struck out with leave to refile.

Having considered the rival submissions by both parties, I will now make a determination on whether there is merit to the points of preliminary objection raised against this application.

Starting with the first point of objection, having examined the affidavit in support of this application, this Court agrees with the respondent that the affidavit in question lacks the mandatory contents of an affidavit in support of an application in Labour Court prescribed in rule 24(3)(a) and (c) of the Labour Court Rules. It doesn't contain the names, description and address of parties and statement of legal issues (See **Berkely Electric Ltd vs Christopher Mussa and Another**, Revision No. 236 of 2008 (Unreported)). Thus, this ground of objection is sustained.

Coming to the second point of objection, the respondent alleged that there is a defect in the jurat of attestation of the supporting affidavit as it wasn't made in the form prescribed by the law and therefore failed to comply with sections 5 and 10 of the Oaths and Statutory Declarations Act, Cap.34 (R.E. 2002) which provides that: -

*"5). Every oath or affirmation made under this Act shall be made in the manner and in the form prescribed by rules made under section section 8.*

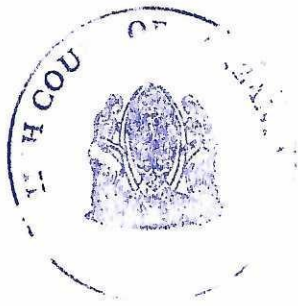
*10). Where under any law for the time being in force any person is required or is entitled to make a statutory declaration, the declaration shall be in the form prescribed in the Schedule to this Act;*


*Provide that where under any written law a form of statutory declaration is prescribed for use for the purpose of that law such form may be used for that purpose"*

It is apparent that the jurat of attestation in the present application was not prepared in the prescribed format. It doesn't state or specify whether the deponent was known to the Commissioner for Oaths personally or whether he was identified to him by a person personally known to the Commissioner for Oaths. Thus, the applicant's affidavit is defective for non-disclosure in the jurat of attestation of facts showing how the deponent was identified by the Commissioner for Oaths as required under section 10 of Cap.34. Thus, this point of objection is also sustained.

As a consequence of the noted defects, this court finds this application incompetent and proceeds to strike it court.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
3/11/2021