

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**REVISION APPLICATION NO 76 OF 2018**

**(Originate from CMA/ARS/ARB/225/2018)**

**THE NELSON MANDELA AFRICAN**

**INSTITUTION OF SCIENCE AND TECHNOLOGY ..... APPLICANT**

**VERSUS**

**HONORINA MASHINGIA ..... 1<sup>ST</sup> RESPONDENT**

**NAMSI I. HUSSEIN ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

13/1/2021 & 21/4/2021

**ROBERT, J:-**

The Applicant herein seek to revise the decision of the Commission for Mediation and Arbitration (CMA) of Arusha delivered in favour of the respondents, her former employees. The respondents registered their dispute at the CMA alleging to be unfairly demoted from their positions on allegations of poor performance which resulted into loss of TZS 821,487,861.50/= . After the hearing the CMA decided in favour of the respondents herein and ordered placement of

the respondents to their previous positions and for payment of salary arrears for the duration of the demotion to the tune of TZS 9,436,900/= each. Aggrieved, the applicant filed this application seeking to revise the decision of the CMA.

The application is supported by an affidavit sworn by **Dr. Shubi Kaijage**, Acting Deputy Vice Chancellor of the applicant and resisted by the respondents' counter-affidavit sworn by Harun I. Msangi, counsel for the respondents.

Prior to the hearing of the application, the applicant's counsel raised a point of preliminary objection to the effect that:

- i. The respondent's counter affidavit is defective for containing defective verification clause.

As a practice, the Court invited parties to address it on the point of objection raised by the applicant before proceeding with the merit of this application in case the objection is not sustained. At the hearing of preliminary objection, **Mr. Joseph Shoo**, appeared for the applicant while **Mr. Haruni I. Msangi**, entered appearance for both respondents.

Arguing their point of preliminary objection, the applicant's counsel stated that, the counter affidavit before this court is defective for bearing defective verification clause contrary to Rule 3 (1) of order XIX of the **Civil Procedure Code**, Cap 33 R.E 2019, which states that;-

*"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted."*

The respondents' counsel verified that paragraph 1,2,3,4,5,6,7,8,9,10,11 and 13 is true to the best of his own knowledge while the other information he received from the respondents. He maintained that, the deponent was supposed to specify what he received and what he knows from his own knowledge. To support his argument, he made reference to the case of **Juma Said and another vs. the Republic**, Criminal Application No. 4 of 2010, CAT at Mwanza (unreported).

He argued that, since the requirement is mandatory, it goes to the root of substantial justice and not a matter of form and mere technicality. Therefore, he prayed for the counter affidavit to be struck out.

In reply, the respondent's counsel argued that, the objection raised is based on matters that need proof and therefore it is not a pure point of law. Submitting on the substance of the objection raised, he maintained that, the deponent deposed at paragraph 2 and 3 that he represents the respondents at CMA hence conversant with the facts of the case and able to prove if there is a need to do so. That's why he verified that paragraph 1,2,3,4,5,6,7,8,9,10, 11,12 and 13 of counter affidavit is true to the best of his own knowledge.

Further to that, he submitted that, the respondent followed all the requirements provided under Order XIX Rule 3(1) of the CPC and maintained that, the case of **Juma Said and Another**(supra) cited by the applicant herein, is distinguishable to the case at hand. He argued that, unlike this case, the case of Juma Said deals with affidavit which did not have verification clause. He maintained that, the counter affidavit in this case is not defective and the objection raised is not a pure point of law. Thus, he prayed for the preliminary objection raised to be dismissed.

Having considered the rival submissions from both parties and the records in support of and against this application, it is apparent that Mr. Haruni I. Msangi was engaged by the respondents to represent them at the CMA. He has also taken conduct of this application on behalf of the respondents before this court.

The law allows advocates to swear affidavits on behalf of their clients under special circumstances. This is on matters which are in the advocate's personal knowledge. In the case of **Lalago Cotton Ginnery and Oil Mills Company Limited vs. The Loans and Advances Realisation Trust (LART)**, Civil Application No. 80 of 2002, CAT (unreported) it was held that:-

*"An advocate can swear and file an affidavit in proceedings in which he appears for his client, but on matters which are in the advocate's knowledge only..."*

Counsel for the respondents stated at paragraph 2 and 3 of the counter affidavit that the deponent who is an advocate of the respondents' states that:

*"2) I am an advocate of the High Court of Tanzania and subordinate Courts save primary court. I represented the respondents in the Arbitration proceedings. I was served with the affidavit in support of Chamber summons on 18.9.2018.*

*3) that, in my capacity aforesaid, I have full knowledge and information concerning the arbitration proceedings and I have respondents' authority to affirm this counter affidavit."*

Looking at the quoted paragraphs and considering the fact that the deponent, represent the respondents at the CMA, I am convinced that those facts must have been in the knowledge of the deponent. Under the circumstances, the learned counsel was correct to verify that he had knowledge of what he deposed.


The CAT in **Jestina George Mwakyoma vs Mbeya-Rukwa Autoparts and Transport Limited**, Civil Application No. 7 of 2000 (Unreported) held;

*"The deponent to an affidavit must have personal knowledge of the facts to which he deposes. True, persons other than the applicant may also supply affidavit, but if they do, they must be persons who depose to what they personally know..."*

In our instant case, the deponent (counsel for the respondents) depose what he knows personally. The act of being an advocate of the respondents since MCA proves that he is well conversant with the facts he deposed.

That said, I find and hold that the preliminary objection raised has no merit and I proceed to dismiss it forthwith.

It is so ordered.

  
K.N. ROBERT  
JUDGE  
21/4/2021



The seal of the High Court of Tanzania is circular, featuring a central emblem of three figures seated under a canopy. The text "THE HIGH COURT OF TANZANIA" is inscribed around the perimeter of the seal.