

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

LABOUR DIVISION

AT ARUSHA

REVISION NO. 107 OF 2021

(Originating from Commission for Mediation and Arbitration Application No.
CMA/ARS/ARS/91/2021)

JEROME RINGIA.....1st APPLICANT

SUZANA NAIBUGO.....2nd APPLICANT

MWANAIIDI HASSAN.....3rd APPLICANT

ANNA PESHA.....4th APPLICANT

VERSUS

EMAYAN PACKAGING LTD..... RESPONDENT

RULING

22.06.2022 & 13.07.2022

N.R. MWASEBA, J.

The applicants herein are seeking for revision of an award of the Commission for Mediation and Arbitration (CMA), Arusha in Labour Dispute No. CMA/ARS/ARS/91/2021. The application is supported by a

Handwritten signature

joint affidavit sworn by **Martine Fabian Simon** and signed by all applicants herein.

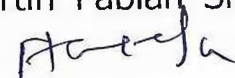
The application was objected by the respondent who filed a counter affidavit sworn by Mr Kapimpiti Mgalula, learned counsel for the respondent.

Prior to the hearing of the application the counsel for the respondent raised one point of preliminary objection to wit:

a) That the Revision Application is bad in law for containing a defective affidavit.

At the hearing of the application, the applicants appeared in person, unrepresented whilst Mr Kapimpiti Mgalula, learned advocate appeared for the respondent. They both agreed to dispose of the preliminary objection by way of written submission whereby the applicants defaulted to file their reply without adducing any reasons.

Submitting in support of their raised preliminary objection Mr Mgagula argued that the affidavit is titled "**Joint affidavit**" however it was deponed by a stranger named "**Martine Fabian Simon**" but signed by all applicants. He argued further that even an advocate who witnessed the said affidavit did not witness the stranger "Martin Fabian Simon"



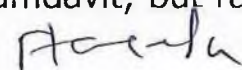
who deponed the facts. So, it was his submission that the application is bad in law for being supported by a defective affidavit and the same cannot be cured even with the oxygen rule.

Having heard the submission made by the counsel for the respondent and having gone through the pleadings the issue worth for determination is whether the raised preliminary objection has merit.

The counsel for the respondent submitted that the application is defective for being supported by a defective affidavit which was deponed by the stranger to the case. Looking at the **Black's Law Dictionary 8th edition** it defines the word affidavit as:

"A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths, such as notary public..."

Basing on the above definition, this court has revisited the records of the application and noted that the applicants to the instant case are **Jerome Ringia, Suzana Naibugo, Mwanaidi Hassan and Anna Pesho**. However, the affidavit supporting their application was deponed by one **"Martin Fabian Simon"** who is a stranger to the case without stating his relationship with the applicants. Further to that the said "Martine Fabian Simon" did not even sign the said affidavit; but rather it



was the applicants who signed the same. **Rule 24 (3) (a) of Labour Court Rules**, GN 106 of 2007 sets out the contents of an affidavit. The Rule states: -

"24 (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

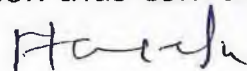
(d) the reliefs sought." (Emphasis added)

As it has been emphasized in the above provision, the applicant's affidavit does not meet the requirement of **Rule 24 (3) (a) of the Labour Court Rules** as it does not clearly convey the names, description and addresses of the applicants but the name and description of the stranger to the suit. It reads as follows:

JOINT AFFIDAVIT

*We, **MARTIN FABIAN SIMON**, adult, Christian, Male and Resident of Arusha do hereby make oath and state as follows:*

- 1. That, we are the applicants in this application thus conversant with all facts..."*



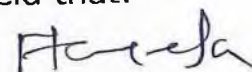
As stated above, the said Martin Fabian Simon is a stranger to this application. Thus, it is apparent that the names of the applicants are missing in that description. The names of the parties should have been properly described including their physical addresses.

That being said, this court do concur with the counsel for the respondent that the said affidavit is defective, and its defectiveness goes to the root of the case, and the same cannot be cured by the principle of Overriding Objective since the said principle cannot be applied blindly.

As it was decided in the case of **Njake Enterprises Ltd Vs. Blue Ltd and Rock Venture Company Ltd**, Civil Appeal No. 69 of 2017 (CAT-unreported) where the Court had this to say:

"Also, the overriding principle cannot be applied blindly on the mandatory provisions of the procedural law which goes to the very foundation of the case. This can be gleaned from the objects and reasons introducing the principle in the Act."

This application being supported by a defective affidavit contravenes **Rule 24 (3) of the Labour Court Rules**, GN. No. 106 of 2007 and thus it has no leg to stand. This has been a position of this court as it was stated in the case of **James Daniel Vs. Cats- Net Limited**, Revision No. 258 of 2017 (HC- Unreported) it was held that:



"It is a finding of this court that an application filed in support of a defective affidavit has no leg to stand."

In the end, since the present application is based on the defective affidavit, the same cannot be maintained as it lacks legs to stand on.

Accordingly, the preliminary objection is sustained; hence the application is struck out without costs due to the nature of the application.

It is ordered.

DATED at **ARUSHA** this 13th day of July 2022.



N.R. Mwaseba
N.R. MWASEBA

JUDGE

13.07.2022