

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**LABOUR REVISION NO. 26 OF 2021**

**CHARLES LUHAGA SUMAYI.....APPLICANT**

**VERSUS**

**SHINYANGA MUNICIPAL COUNCIL.....RESPONDENT**

[Appeal from the decision of the Commission for Mediation and Arbitration  
for Shinyanga at Shinyanga.]

**(Hon. D. Mayale.)**

dated the 12<sup>th</sup> day of May, 2017

in

**CMA/SHY/232/2016**

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**RULING**

27<sup>th</sup> June & 08<sup>th</sup> July, 2022.

**S.M. KULITA, J.**

This labour application by the Applicant has been filed by way of Chamber Summons and Notice of Application, in terms of the provisions of sections 91 (1) (a) (2) (b) and 4 of the Employment and Labour Relations Act, 2004 (Act No. 6 of 2004) (as amended), Rules 24 (1), (2),

(3) and Rule 28 (1) (c) (d) and (e) of the Labour Court Rules, 2007, G.N. No. 106 of 2007 and any other enabling provision.

In the chamber summons, the Applicant prays for this Court to revise and set aside the award of the Commission for Mediation and Arbitration for Shinyanga in dispute No. CMA/SHY/232/2017 delivered on 12<sup>th</sup> May, 2017. The application is supported by an affidavit sworn by Charles Luhaga Sumayi on 20<sup>th</sup> August, 2021.

In reply thereto, the Respondent raised preliminary objections on point of law to the effect that, **one**, the application is incompetent for wrong and improper citation of the laws, **two**, the application is untenable for wanting to revise the non-existing complaint CMA/SHY/232/2017, **three**, the applicant's affidavit is defective for failure to comply with Rule 24 (3) (a) of the Labour Court Rules, G.N No. 106 of 2007, **four**, that the application is bad in law for being time barred.

As the law requires preliminary objections be argued first, on 16<sup>th</sup> May, 2022 the matter was scheduled for hearing of the preliminary objections. The Applicant appeared in person whereas Mr. Mussa Mpogole appeared for the Respondent.

Submitting in support of the first preliminary objection Mr. Mpogole stated that, the Applicant cited a dead law. He added that, instead of Cap 366 RE 2019 he cited Cap 366 RE 2004.

The counsel, also stated that, the Applicant cited section 4 which to him is inapplicable. He mentioned the provisions which he termed they ought to have been cited but the applicant did not. He mentioned them being Section 91 (2) (a) (b) (c) and Section 94 (1) (b) (c) and Rule 24(3) (a) (b) (c) (d) (e) (f). On that account of wrong and non-citation of provision of the law, Mr. Mpogole cited a case of **Registered Trustees of Calvery Assemblies of God v. Tanzania Steel Pipes Ltd, Misc. Land Case Application No. 677 of 2019** (unreported) and prayed for the application to be struck out with costs. He insisted that, this is a third time the Applicant fails to cite the proper provisions of the enabling provisions of the law, he thus pressed for costs.

Concerning the second ground of appeal Mr. Mpogole submitted that, the Applicant has mentioned in his notice of application that, a case named CMA/SHY/232 2017 dated 12/5/2017 was decided by Nnembuka. To that, he commented that, on that year there was no such a decision, but there was CMA/SHY/232/2016 decided by Dickson Mayale. To that end, he stated that, the Applicant seeks to revise a non-

existing decision. On that account, he stressed the same should be struck out.

Regarding the third ground of appeal Mr. Mpogole submitted that, the Applicant's application contravenes Rule 24(3)(a) of the G.N 106 of 2007. He stated that, the same requires the Applicant to state the names and address of the parties in the affidavit.

He added that, the Applicant's affidavit is not clear on statements of material facts in chronological order in which the application has been made. He also submitted that, the chamber summons does not tally with the affidavit.

In reply thereto, the Applicant stated that, the application has been properly moved. He added that, if there is wrong citation, the same does not lead to failure of justice. To that, he cited the case of **Alliane One Tobacco Tz Ltd and Hamis Shone v. Mwajuma Hamis and Heritagoi Insurance Co. (T) Ltd.**

As for the second ground of appeal the Applicant submitted that, the argued case does exist. He added that, even when it happens that the number is wrongly cited, the court has mandate to order the Applicant rectify it by pen.

Concerning ground number three of the preliminary objection, the Applicant submitted that, the cited provisions are proper for the matter.

In rejoinder Mr. Mpogole stated that, the Applicant admits to have wrongly moved the court and seeks it to order rectification of the same. To this, he said as the Applicant has been committing the same mistake repeatedly then, he formed an opinion that the same should be struck out.

I have keenly gone through the entire pleadings, submissions and the authorities cited by both parties to the case. I have also taken into consideration the rival issues between the parties. I hereby determine them one after the other.

On account of third point of preliminary objection, having carefully considered the submission from the Respondent's Counsel, the Court records, as well as relevant labour laws and practice, my observation and decision on the raised preliminary objection is that, the format of affidavit in labour matters is quite different with affidavits in normal civil cases.

The affidavit in Labour matters is governed by Rule 24 (3) of the Labour Court Rules. The relevant rule directs the way to follow in filling

of affidavits in Labour Court for labour matters. For easy of reference, I will quote such Rule in extensa. -

*"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.*

It is my considered view that, for the affidavit to be regarded as legally accepted from the bosom of the law, the deponent must have complied with its requirements. Ignoring the compliance of those requirements as provided by the governing rules of affidavit renders it defective. This is the position of the law as per **D.B. Shapriya and Co. Ltd v. Bish International BV, Civil Application No. 53 of 2002 CAT**, in which the Court of Appeal of Tanzania held;

*"Affidavit has been defined as a written document containing material and relevant facts or statement relating to the matters in question or issue and sworn*

*by the deponent before a person or officer duly authorized to administer any oath or affirmation or take any affidavit. It follows from this definition that an affidavit is governed by certain rules and requirements that have to be followed."*

In the application at hand, I entirely and respectfully agree with Mr. Mpogole as he rightly stated that, the affidavit in question is incurably defective as it contravenes the specific governing Rule 24 (3) (a) of the Labour Court Rules. The affidavit in question does not contain the names, description and addresses of the parties. Therefore, the Applicant failed to comply with the requirements of the mandatory provisions Rule 24 (3) (a) of the Labour Court Rules.

Also, in the case of **Reli Assets Holding Co. Ltd. vs. Japhet Casmir & 1500 Others, High Court, Lab. Div. at Tabora, Labour Revision No. 10 of 2014**, it was held that, since the Applicant did not follow the rules and requirements, the affidavit falls in the quagmire of being called a defective affidavit per se.

On the basis of the above discussion, I find the Applicant contravened Rules 24 (3) (a) of the Labour Court Rules. Hence, the preliminary objection raised by the Respondent has merit and is hereby upheld. Having so said, the present application is struck out for being

incompetent before the Court. For the interest of justice, leave is granted for the Applicant to re-file a proper application on or before 9/08/2022 if he still wishes to pursue the matter. As this point suffices to dispose of the matter, I am not going to determine the rest grounds of preliminary objections, as it will just be an academic exercise.



**S.M. KULITA**  
**JUDGE**  
**08/07/2022**

**DATED at SHINYANGA** this 08<sup>th</sup> day of July, 2022.



**S.M. KULITA**  
**JUDGE**  
**08/07/2022**