

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**LABOUR REVISION NO. 08 OF 2022**

(Originating from Labour Dispute RF/CMA/MOR/164/2020 At Morogoro)

**UDZUNGWA UTALII COLLEGE ..... APPLICANT**

**VERSUS**

**EMANUEL BRIGHTON BRIGHTON ..... RESPONDENT**

**RULING**

11<sup>th</sup> & 31<sup>st</sup> May, 2022

**CHABA, J.**

Before me is an application for revision filed by UDZUNGWA UTALII COLLEGE, a corporate entity hereinafter to be referred to as the applicant seeking to challenge the ruling of the Commission for Mediation and Arbitration (the CMA) under the provisions of section 91 (1) (b), Section 91 (2) (b), (c) and section 94 (1) (b) (i) and (d) of the Employment and Labour Relations Act No. 6 of 2004 (the ELRA) as amended, Rule 11 (a) (b), Rule 24 (1), Rule 24 (2) (a), (b), (c) & (d) and Rule 28 (1) (a), (b), (c), (d) & (e) of the Labour Court Rules, GN No. 106 of 2007.

The chamber summons has been filed alongside with the notice of application and notice of representation, and it is supported by an affidavit sworn by one TONNY KANYA, an authorised officer of the applicant dully authorised to act on its behalf and signed by him. However, the verification clause shows that one Mr. MWABAYA THADEO CHACHA verified the same and then signed by TONNY KANYA again.

It is further on record that the affidavit was attested before Mr. PANCRAS CHARLES LIGOMBI, the learned counsel who admittedly works under GEEM ATTORNEYS wherein the learned counsel Mr. MARWA MASANDA belongs. The notice of representation was signed by Mr. MARWA MASANDA himself and not the applicant.

In essence, the applicant calls upon this court for the following orders:

1. That, the Honourable court may be pleased to call for and revise and set aside the record of the CMA for Morogoro in Complaint No. CMA/MOR/164/2020 between Emanuel Brighton Brighton (Complainant) and Udzungwa Utalii College (Respondent) in which the decision was delivered by Hon. Kayugwa H., on the 18<sup>th</sup> February, 2022 and satisfy itself on the correctness of the decision and if found wrong in law set side.
2. Costs to follow event, and
3. Any other reliefs.

When the respondent was duly served with the chamber summons, notice of application and notice of representation through the service of his personal representative, Mr. Boniphace Basesa, the secretary to a Trade Union called DOSHWITU, he filed a counter affidavit, notice of representation and a notice of preliminary objection on points of law.

Hence, in opposing the application, the respondent raised four (4) points of preliminary objection. Therefore, this ruling is in respect of preliminary objections raised by the respondent's personal representative, Mr. Basesa. These points of preliminary objection have been premised on the following grounds:

- 1) That, the applicant's affidavit is incurable defective for containing two different names of deponent.
- 2) That, the affidavit supporting the applicant's application for labour revision is incurable defective for contravening section 10 of the Oaths and Statutory Declaration Act [Cap. 34 R. E. 2019].
- 3) That, the affidavit supporting the applicant's application for labour revision is incurable defective because the advocate who makes attestation is a member of the firm GEEM ATTORNEYS which represent the applicant.
- 4) That, this application is bad in law because the notice of representative was signed by the counsel and not applicant.

At the hearing of preliminary objection, Mr. Pancras Ligombi, learned counsel who held brief for Mr. Marwa Masanda entered appearance for the applicant with an instruction to proceed, whereas Mr. Boniphace Basesa appeared for the respondent.

Submitting in support of the points of preliminary objection, Mr. Basesa argued in the **first ground** that the affidavit is incurable defective for containing two different names of deponent. He submitted that the affidavit was sworn by Mr. Tonny Kanya and then verified by Mr. Mwabaya Thadeo Chacha. On the **second ground**, Mr. Basesa accentuated that the affidavit filed by the applicant is incurable defective for contravening section 10 of the Oaths and Statutory Declaration Act [Cap. 34 R. E. 2019]. As to the **third ground** which again attacks on the affidavit, he submitted that the affidavit supporting the applicant's application for Labour Revision is incurable defective because the advocate who made an attestation is a member of the firm called GEEM ATTORNEY which represents the applicant, and the **fourth ground** is to

the effect that this application is bad in law because the notice of representative shows that the learned counsel Mr. Marwa Masanda did appoint himself to be a representative for the applicant and signed the document instead of being appointed by the applicant herself. He submitted that by so doing he contravened Rule 43 (1) (a) (b) of Labour Court Rules, GN. No. 106 of 2007. On these grounds he prayed the court to dismiss with costs.

On his part, Mr. Ligombi earnestly conceded to the first ground in respect of variation of names that are appearing in the affidavit both referring to the deponent and the person who verified the contents therein. As to the way forward, the learned advocate prayed the court to allow him amend the application instead of dismissing the same. To reinforce his argument, he cited the case of **Sanyou Service Station Ltd v. BP Tanzania Ltd (Now Puma Energy T. Ltd)**, Civil Application 185 of 2018, CAT, Dsm, 2019.

As to the second point of preliminary objection, the learned advocate contended that the respondent failed to explain how the JURAT was defective. He stated that the JURAT was properly drawn, and it contained all relevant ingredients including the place where; **One**, the Oath or affirmation was taken, **Two**; Date, Month and Year in which the Oath or affirmation was administered, and **Three**; the name or particulars of the officer or Authority who administered the Oath or affirmation. Mr. Ligombi maintained that since all elements that constitutes the contents of a valid jurat were adhered to, therefore this point for preliminary hearing has no merit.

Countering the **third point**, Mr. Ligombi discredited the argument submitted by Mr. Basesa as the same not backed up by any provisions

of the law. He cited the case of **Mukisa Biscuit Ltd v. West End Distributors (1969) EALR** as a quidding principle of law in this aspect. He concluded by stating that, Mr. Basesa's contention is lacking legal back up.

Concerning the **fourth ground**, the learned advocate cited section 56 (c) of the Labour Institutions Act [Cap. 300 R.E. 2019] which recognises advocates as among the persons who may stand as representative in labour cases. In that view, he submitted that at the material time he was a right person to represent the applicant upon complied with section 56 (c) of the Labour Institution Act (supra). He went on submitting that Rule 43 (1) (a) (b) of the GN. No. 106 of 2007 requires the representative to file a notice of representation, which was fully adhered to. He faulted the other requirements outlined by Mr. Basesa to the effect that the same are not within the parameters of the law.

In rejoinder Mr. Basesa accentuated that since the affidavit did contain a defective jurat, therefore the entire application is hopeless, and it deserves to be dismissed on the ground of incompetence. He maintained that since the affidavit is a crucial document in any application, the same cannot be rectified. He added, as the said affidavit contravened section 10 of the Oaths and Statutory Declaration Act [Cap. 34 R. E. 2019] then it is obvious that this application is devoid of merit. In respect of the fourth ground, Mr. Basesa reiterated what he submitted earlier on.

In determining the points for preliminary objection, I have considered all points advanced before this court as preliminary objection. In my view, these points can be merged into one major point

or ground, that the affidavit supporting the application is defective for three reasons: One; being verified by a different person from the deponent, Two; attested before the advocate who works under the same chambers with the applicant's counsel, and Three; for contravening section 10 of the Oaths and Statutory Declaration Act [Cap. 34 R. E. 2019] in its jurat.

At the outset, I acknowledge that both parties agree that the verification clause has defect. I had ample time to peruse and study the affidavit deposed by Mwabaya Thadeo Chacha and the following are my observations. The proposed format by Mr. Basesa is somehow strange. There is no law that requires the affidavit to include words or statements showing that the deponent signed in the said affidavit. The format outlined in the schedule as provided by the law under section 10 of the Oaths and Statutory Declaration Act (Supra) was adhered to by the applicant's affidavit.

As regards to the third point, I have decided to refer to the relevant law, that is the Notaries Public and Commissioner for Oaths Act [Cap. 12 R. E. 2019], specifically section 7 which provides thus:

"No commissioner for oaths shall exercise any of his powers as a commissioner for oaths in any proceedings or matter in which he is advocate to any of the parties or in which he is interested."

In our case, Mr. Pancras Ligombi who works under the same Law Chambers called GEEM ATTORNEYS, and even took part of this case by several appearance holding brief of Mr. Marwa Masanda, learned advocate with instruction to conduct hearing is the one who administered the oath. I am strongly satisfied that Mr. Pancras Ligombi

was an interested commissioner for oath and thus was unfit to administer the oath taken by the applicant in the affidavit in question. This point as raised by Mr. Basesa, though blindly and without citing any law, has merit. The decision in the case of **Sanyou** (supra) is not disregarded, but in this case, the defects diagnosed in the affidavit supporting the application at any rate cannot be disregarded because in the eyes of the law are not fit for amendment.

In respect of the fourth point, I am much convinced by the argument advanced by the respondent's representative that notice of representation was to be issued by the applicant herself. I know that the statutory provisions are not specifically providing the procedure of appointing a personal representative, but by purposive approach it is more appropriate for the applicant (or a party) to appoint the representative and notify this court to that effect. The gist of section 56(c) of the Labour Institutions Act (supra) and Rule 43 (1) of GN No.106 of 2007 is to the effect that, an advocate can be appointed as representative, and that any representative, must file a notice of representation before the court. That notice of representation, in my view, must be signed by the party or authorised officer in case of an entity, or otherwise. When the learned advocate has signed it, this can be taken and resolved that such an advocate is the one who provides the notice to the court.

In the upshot, I am satisfied that the first, third and fourth points of preliminary objection have merits and are accordingly hereby upheld. The second point is overruled. As this application is incompetent, it is hereby struck out with no order as to costs.

**It is so ordered.**

**DELIVERED** at **MOROGORO** this 31<sup>st</sup> day of May, 2022.



**M. J. CHABA**

**JUDGE**

**31/05/2022**