

**IN THE HIGH COURT OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**MISC. LABOUR APPLICATION NO. 04 OF 2021.**

[Originating from Labour Dispute

No.CMA/TAB/ARB/06/2018/11]

**BETWEEN**

**TANZANIA RAILWAYS CORPORATION..... 1<sup>ST</sup> APPLICANT**

**ATTORNEY GENERAL.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**REUBEN KYENGU ..... RESPONDENT**

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**RULING**  
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Date of Last Order 12/08/2022

Date of Delivery 16/08/2022

**AMOUR S. KHAMIS, J.**

The applicants herein lodged an application for extension of time to apply for revision so as to challenge the award by the Commission of Mediation and Arbitration Tabora, in labour dispute no. CMA/TAB/ARB/06/2018/11. Upon being served with the application, the counsel for the respondent filed a notice of opposition together with the following points of preliminary objection.

- i) That, the jurat of attestation in the affidavit is incurably defective for being in violation of Section 8 of the

Notaries Public and Commissioner for Oaths Act [Cap 12 R.E 2019].

- ii) That, the jurat of attestation in the affidavit is incurably defective for being in violation of Section 10 of the Oath and Statutory Declaration Act, [Cap 34 R.E 2019].

This ruling is in respect of the above points of preliminary objections raised by the respondent. Both parties were represented by their respective counsels. The applicants were represented by Ms. Mariam Matovolwa, State Attorney, while the respondent was represented by Mr. Hassan Kilingo, Advocate. The preliminary objection was disposed by way of written submission and all parties abided to the schedule of the Court.

In respect of the first preliminary objection, Mr. Kilingo submitted that the applicants have improperly moved the Court and hence the orders sought for cannot be granted and / or / otherwise untenable. He averred that section 8 of the Notaries Public and Commissioner for Oaths Acts [Cap 12 R.E 2019] is a mandatory procedure to be followed.

He cited the case of **DPP vs. DODOLI KAPUFI & ANOTHER**, Criminal App. No. 11 of 2008 where the CAT sitting at Dar es Salaam pointed out pointed out three matters in which the Commissioner for Oath must indicate;

*“Of greater significance in the determination of this application, in our considered opinion, is the “jurat”. The word “jurat” has its origin in the latin word “jurare” which meant “swear”. In its brevity a jurat is a certification added to an affidavit or deposition stating when, where and before what authority*

*(whom) the affidavit was made. See, section 8 of the Notaries Public and Commissioners for Oaths Acts, Cap 12 R.E 2002. Such authority usually, a Notary Public and/or Commissioner for Oath, has to certify three matters, namely;*

- i. N/A*
- ii. That the signer appeared before him on the date and the place indicated thereon, and*
- iii. N/A”*

Mr. Kilingo submitted that in the application at hand, the commissioner for oaths failed to indicate how he knew the deponent or whether the deponent was introduced to him by the person he knew. He also failed to show the date of affirmation. Such defects render the affidavit in support of the chamber summons incurably defective and it goes to the roots of the matter that there is no affidavit to support the application. The same was stated in the case of **SADICK HASSAN vs. REPUBLIC**, Misc. Crim Appeal No 234 of 2019.

The second point of objection was explained by Mr. Kilingo that, the jurat of attestation is incurably defective for being in violation of section 10 of the Oath and Statutory Declaration Acts [Cap 34 R.E 2019] which provides that any statutory declaration should be in the form prescribed in the schedule of the Act.

He concluded by saying that an affidavit that is contrary to section 8 of the Notaries Public and Commissioner for Oaths Acts [Cap 12 R.E 2019] and section 10 of the Oath and Statutory Declarations Acts [Cap 34 R.E 2019] is like no affidavit was submitted at all. He therefore prayed that the Honourable Court

upholds those preliminary objections and consequently strike out the entire application with costs.

Replying to the preliminary objections, the applicant's counsel Ms. Mariam wished to bring into attention of the Honourable Court that the cases cited by the respondent's advocated were prior to the introduction of the oxygen/overriding objective principle therefore she found them to be unsuitable for the reasons ensue in the course of these submissions.

Ms. Mariam submitted that failure to indicate the date in the jurat if attestation is no longer fatal as it is a curable defect by allowing the applicant to file an amended affidavit as it was held in the case of **BWAHEERI MASAUMA vs. ULAMU WISAKA**, Misc. Land Application No. 55 of 2022.

Arguing on the second limb of the preliminary objection that the application is defective for failure to comply with section 10 of the Oath and Statutory Declaration Act [Cap 34 R.E 2019]. She asserted that the same was meritless on account of the authority cited as the respondent still revolves on the issue of dates in the jurat and the same is not fatal as it can be curable.

On a brief rejoinder, Mr. Kilingo insisted that the affidavit can not be cured and cited the case of **DB SHAPRIYAAND CO. LTD vs. BISH INTERNATIONAL BV** (unreported), where the CAT defined an affidavit in accordance to section 8 of the Notaries Public and Commissioners for Oaths Ordinance, Cap 12.

He argued that if in alternative the applicant's affidavit is a curable defect, then the court should not be prevented from looking into the merits of the dispute heavily relied on the doctrine



of the overriding objectives. As it is clear that non-compliance with mandatory provisions of the law cannot make an affidavit curable as it's a document with strict statutory procedure. Therefore, the doctrine of overriding objectives cannot be used as a pethoral of every disease.

Upon carefully going through the submissions of both parties, I will determine both limbs of the preliminary objection jointly as they both relate to the jurat of attestation.

Section 8 of the Notaries Public and Commissioner for Oaths Act [Cap 12]

*“Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his name and state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made.”*

Section 10 of the Oaths and Statutory Declaration Act [Cap 34 R.E 2019] states that;

*“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;*

*Provided that, where under any written law a form of statutory declaration is prescribed for use for the purpose of the law such form may be used for that purpose.”*

The above cited provisions that the preliminary objection revolved around compelled me to go to the affidavit supports the application at hand. It came into my observation that in the jurat

of attestation, the commissioner for oaths did not indicate whether he know the deponent personally or has been identified to him by another person and also the date when the oath was taken.

This, therefore, contravenes the mandatory requirements of both Section 8 of the Notaries Public and Commissioner for Oaths Act and Section 10 of the Oaths and Statutory Declaration Act [Cap 34 R.E 2019]

The same view was held in the case of **THOMAS JOHN PAIZON vs. KHALID A. NONGWA**, Misc. Land Application No. 954 of 2017 where the court stated that;

*“Under section 10 of the Oaths and Statutory Declarations Act Cap 34 R.E 2002, it is mandatory that the statutory declaration complies with the form prescribed in the schedule and it must be stated and specified in the jurat of attestation 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.”*

The applicant’s counsel argued that the defects of the affidavit are not fatal as they are curable by amendment is the court applies the rule of overriding objectives. However, I am of the view that the court cannot act blindly where the provisions of the law have clearly stipulated the procedures to be complied with.

The issue of regarding the rule of overriding objectives cannot be blindly applied against any mandatory provisions as it has been cited in many cases including **MONDOROSI VILLAGE COUNCIL & 2 OTHERS vs. TANZANIA BREWERIES LIMITED & 4**

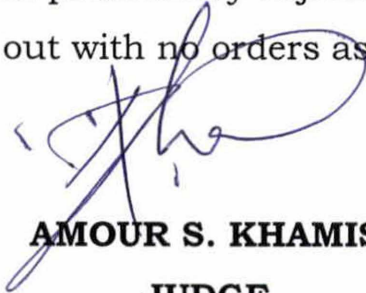
**OTHERS**, Civil Appeal No. 66 of 2017 CAT at Arusha, where the court held that;

*“Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case.”*

Since the jurat of attestation is one of the crucial elements in affidavit, disregarding the date when the affidavit was made and whether the deponent was personally known to the commissioner for oaths or identified to him by somebody else who is known to the commissioner is going contrary to the mandatory requirement of Section 10 of the Oaths and Statutory Declarations Act and also Section 8 of the Notaries Public and Commissioner for Oaths Act.

The defect can not be cured through overriding objectives as the same goes to the root of the case. A defective jurat of attestation renders the whole affidavit incurably defective whose remedy is to strike it out.

In the upshot, the preliminary objection is sustained and the application is struck out with no orders as to costs.



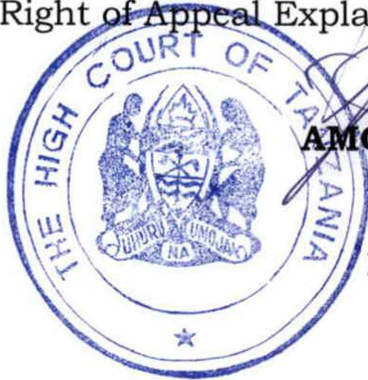
**AMOUR S. KHAMIS**  
**JUDGE**

**16/08/2022**

**ORDER**

Ruling delivered in Chambers in presence of Ms. Mariam Matovolwa, learned State Attorney for the applicants.

Right of Appeal Explained.



**AMOUR S. KHAMIS**

**JUDGE**

**16/08/2022**