

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LABOUR REVISION NO. 51 OF 2021**

*(Originating from Employment Dispute No. CMA/ARS/ARS/105/2020 before the  
Commission for Mediation and Arbitration at Arusha)*

**JULIUS MESHILEKI MOLLEL AND 17 OTHERS ..... APPLICANT**

**VERSUS**

**SENGO 2000 TANZANIA LTD ..... RESPONDENT**

**RULING**

28/10/2021 & 28/01/2022

**KAMUZORA J,**

This application was brought under the provisions of section 91(1) (a) (b) and (2) (a) (b) and (c) and section 94 (1)(b)(i) of the Employment and Labour Relations Act Cap 366 of 2019 and Rules 24(1), 24(2) (a) (b) (c) (d) (e) and (f) and 24(3) (a) (b) (c) (d) and 28(1) (b) (c) (d) and 28 (2) of the Labour Court Rules, G.N No 106 of 2007 seeking an order that this court revise and set aside the whole award of the arbitrator of the Commission for Mediation and Arbitration of Arusha in the matter of CMA/ARS/ARS 105/2020. The application was supported

by an affidavit sworn by Aisha Masoud the applicants' representative and contested by the respondent who filed a counter affidavit sworn by Amani Ali Kassanga, the Human Resource Manager.

The brief background of the matter is that the applicants filed a complaint at the CMA claiming for unfair termination of their employment. The CMA found that there was no termination proved by the applicants hence ordered the applicants to report back to their workplace and comply with the employment procedures and policy. Dissatisfied with the decision this revision application was preferred and the respondent while responding to the same filed a preliminary objection on point of law that: -

- 1) That the application contravenes the mandatory provision of Rule 21(3) (a) of the Labour Court Rules, GN. No 106 of 2007, which requires the names of the applicants to be disclosed.*
- 2) That the application is bad in law as the applicants failed to attach the award which is contrary to rule 24(2) (f) of the Labour Court Rules, G.N No. 106 of 2007.*

Hearing of the preliminary objection was by way of written submissions. The applicant enjoyed the service of Aisha Masoud the representatives from TUPSE Trade union while the respondents enjoyed

the service of Rashid Shaban, learned advocate. Each side filed its submission as scheduled.

Submitting in support of the 1<sup>st</sup> point of the preliminary objection, Mr. Rashid stated that, the applicants' names are not disclosed the application. That, only the name of Julius Mshileki Mollel is disclosed while the rest of the 17 names are not indicated. He submitted that non-disclosure of the names of the applicants contravenes Rule 24(3) (a) of the Labour Court Rules, G.N. No. 106 of 2007. Referring the case of **Judicature Rumishael Shoo & 64 Others Vs. The Guardian Limited**, Civil Application No. 43 of 2016 the counsel for the respondent submitted that since the names of the applicants are not stated, the whole application is fatal. He prayed for the application to be dismissed with costs.

Submitting in support of the 2<sup>nd</sup> point of the preliminary objection, Mr. Rashid stated that, under paragraph (a) (i) (a), (2) of the affidavit the applicants' representative deponed to attach the copy of the award but, no award was attached. That, it is the requirement of the law under Rule 24(2) (f) of the labour Court Rules, G.N. No. 106 of 2007 that the award be attached to the affidavit.

The respondent also raised another point of law that the application contravenes Rule 44 (2) of the Labour Court Rules G. N. No. 106 of 2007. That, the said provision requires that, where there are numerous persons having the same interest in a suit one or more person may with the permission of the court appear and be heard or defend on behalf of the others but with the leave of the court. Referring the cases of **Donatian Damian Sentozi & 3others Vs National Food Reserve Agency (NFRA)**, Misc. Labour Application No 685 of 2019 (Unreported) and **Neema Simon & 9 others Vs. Njake Hotel and Lodges Ltd**, Misc. Labour Application No 39 of 2019(Unreported) he submitted that leave of the court out to be obtained prior to the applicant appearing and represent suit on behalf of others.

In reply to the 1<sup>st</sup> point of preliminary objection Ms. Aisha submitted that, what has been argued by the counsel for the respondent is not a pure point of law and does not qualify as a preliminary objection as it contains facts which requires the calling of evidence hence does not meet the standard of preliminary objection as per the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West Ends Distributors Ltd [1969] I E. A 696.**

Ms. Aisha argued that the names which appear in this application were the correct names of the parties as appeared in the award of the CMA. She insisted that the court record is a serious document, and it should not lightly be ignored or impeached. She cemented her argument with the case of **Halfan Sauda Vs. Chichili (1998) TLR 527, Mohamed Enterprises (T) Vs. Masour Mohamed Nassare**, Civil Application No 33 of 2012(Unreported).

Ms. Aisha challenged the legality of the point objection raised during submission on account that it was not raised in the counter affidavit and the respondent did not seek for leave of the court to raise the same. Referring the **Joseph Kahungwa Vs. Agricultural Inputs Trust Funds & 2others**, Civil Appeal No 73/2019 CAT(Unreported), Ms. Aisha insisted that raising the objection at the time of submission contravened the law and the same out to be dismissed.

Without prejudice and in responding to the 2<sup>nd</sup> point of preliminary objection, Ms. Aisha submitted that, as per the chamber application and affidavit filed by the applicant, they intended to attach the award of the CMA but due to human error and other circumstance beyond the human control the applicants' representative did not remember to attach the said award when lodging the revision. Ms. Aisha urged this court to

revert to the overriding objective and have regard to the substantive justice by insuring expeditious and economic disposal of the suit. To support her argument, she referred Article 107 A (2) of the Constitution of the United Republic of Tanzania and several case laws including the case of **VIP Engineering and Marketing Ltd Vs. Said Salim Bakhresa Ltd**, Civil Application No 47 of 1996 (Unreported), **Alliance One Tobacco Tanzania Ltd and Hamis Shoni Vs Mwajuma Hamis (As administratrix of the estate of the late Philemoni Kilenyi and Heritage Insurance Company Ltd)** Misc. Civil Application No 803 of 2018 HC (Unreported), **Cropper vs. Smith**[18840] 26 CHD 700, **General Market Co. Ltd vs. Aa. Shariff** (1980) TLR 61, **Khassim Mangwele Vs. R**, Crim App. No 29 of 1990 HC (Unreported), **Joseph Magombi vs. Tanzania National Parks (TANAPA)**, Civil Appeal No 114 of 2016 CAT(Unreported). Ms. Aisha's prayer is for the preliminary objection to be regarded as premature and be dismissed with costs.

In a brief rejoinder Mr. Rashid reiterated his submission in chief and stated that the cases cited by the applicants are distinguishable from the current application. He insisted that the applicants' representative has concede that she failed to attach the award which is in contravention of the law thus the application be dismissed with costs.

Regarding the introduction of the overriding objective, he submitted that the said principle does not apply blindly as the failure to disclose the names of the applicants is a genuine point of law and thus pray for the application to be dismissed with costs.

Having read the submissions made for and against the raised preliminary objection the question for determination is whether the points of objection raised have merit. I prefer to start with the 3<sup>rd</sup> point of preliminary objection raised by the applicant in his submission regarding the violation of Rule 44(2) of the labour Court Rules G.N No. 106 of 2007. The respondent's counsel contended that the applicant did not seek for leave of the court to appear on behalf of other applicants. It was however contended by the counsel for the applicant that the said objection was raised without leave of the court.

I do agree with the submission by the counsel for the applicant that parties are bound by their pleadings. As this matter was based on the determination of the point of objections, the respondent was bound to submit on the points raised. This support the spirit of the law that parties should not be taken by surprise. It however must be noted that, the court in its own move can look into the legality of the matter irrespective of whether there is an objection raised or not. Assuming

that this point is one to be looked upon by this court, we still find it baseless. The particular of the application indicates that Julius Meshileki Mollel and 17 others are applicants. The affidavit in support of the application is sworn by Aisha Masoud, the representative from labour union by the name of TUPSE. There is no doubt that in the notice of application, there is a notification that the applicant will be represented by the Trade Union referred to as TUPSE. As Aisha Masoud is not one among the applicants and she appeared as representative of the applicants and a member from TUPSE, no leave was needed for her to represent the applicants. The leave could have been necessary if one of the applicants was appearing on behalf of others.

Reverting to the 1<sup>st</sup> point of preliminary objection, Rule 24(3(a) of the Labour Court Rules, G. N No. 106 of 2007 provides that, "*the application shall be supported by an affidavit, which shall clearly and concisely set out-*

*(a) the names, description and addresses of the parties."*

It is evident from the record of the court that the current application filled before this court does not state the names of the parties but rather refers them cumulatively as Julius Meshileki Mollel and 17 others an act which is in contravention of the law. In case of



**Judicate Rumishael Shoo & 64 others** (Supra) as cited by the counsel for the respondent it was held that: -

*"..... where there are more than one applicant, all the names of applicants must be mentioned in the notice of motion. They must all be identified by names. Reference to the ret as "others" is insufficient. The reasons are that it is significant that it be known who are those persons, by names, moving the court and who would bear the consequences in case the application is not successful for example payment of costs etc."*

In labour dispute, it is important to know the names of the parties seeking for award so that when the order for payment is issued, then it will be clear for the parties intended to benefit from the same. In this regard therefore I have the same view with the respondent's counsel that non-disclosure of the names of the applicants in the application contravened the law.

Regarding Ms. Aisha's contention that the preliminary objection did not pass the threshold in **Mukisa Biscuits Case** (Supra), I was unable to buy that contention. The record clearly portrays what has been argued and raised as the 1<sup>st</sup> point of a preliminary objection. Disclosure of names and particulars of the parties is the legal requirement and non-compliance raises a clear point of law to be determined by the court.

With regard to the 2<sup>nd</sup> point of preliminary objection the applicants' representative conceded to the same in her submission that the award was not attached due to human error. She however contended that, the applicants had an intention of attaching the said award. The requirement to attach the award is not optional rather legal requirement. If Ms. Aisha claim the same to be huma error, she should have addressed the court before and seek of correction and not to raise as defence after the objection was raised. Bringing up the issue of human error after the objection was raised is an afterthought. Since the award subject to the revision before this court was not attached, I find that the 2<sup>nd</sup> preliminary objection is of merit. I say so in light of what was held from the case of **Patson Matonya Vs. Registrar Industrial Court of Tanzania Tanzania Railway Corporation Attorney General**, Civil Appeal No. 60/2007 CAT (Unreported) which held that: -

*" We agree with the view of Ms. Shio and state without hesitation that the missing page vitiated the substance of the contested ruling and rendered the record of appeal incomplete. Consequences of filing incomplete record has the adverse effect of rendering the appeal incompetent."*

For the reasons advanced above, I find that the two preliminary objections raised by the respondent has merit and are hereby sustained.

The revision application is hereby struck out for being incompetent. But, considering the nature of the dispute, I make no orders as to costs.

**DATED** at **ARUSHA** this 28<sup>th</sup> Day of January 2022



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over a circular stamp.

D.C KAMUZORA

JUDGE