

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION APPLICATION NO. 06 OF 2023

(Arising from the decision of the Commission for Mediation and Arbitration of Dar es Salaam at Ilala dated 05th day of December 2022 in Labour Dispute No. CMA/DSM/ILA/424/2022)

TANZANIA SHIPPING AGENCIES CORPORATIONAPPLICANT

VERSUS

LUCAS MACHIMU AND 31 OTHERSRESPONDENTS

RULING

K. T. R. MTEULE, J.

18th April, 2023 & 02nd May, 2023

This Ruling concerns a Preliminary Objection raised by the Respondent to challenge the competence of this Application for containing an affidavit which is incurably defective for contravening the provisions of **Rule 24 (3) (a) of the Labour Court Rules G.N. No. 106 of 2007.**

The Preliminary objection is argued by a way of written submissions where the Respondent is represented by Advocate Lemister Aroni Mtoni while the Applicant is represented by Mr. Edwin Webiro, State Attorney.

Before going to the details of the substance of the Application, I will firstly address the complaint raised by the Applicant challenging the validity of the written submissions filed by the Respondent. On **27th March 2023**, this Court ordered the Parties to dispose of the raised

preliminary objection by way of written submissions that do not exceed three pages. In his submissions, Mr. Webiro, S.A complained that the Respondent's submission exceeds 3 pages which contravenes the court order of **27th March 2023**. In his view, the consequences of this disobedience of court order is to have the exceeding pages disregarded which will render the entire submissions with no value since the disregarded pages would include the contents of the legal arguments, prayers, signature of the counsel for the Respondents and endorsement of the drawer which are contained in pages 4 and 5 of the submissions. He cited the case of **Hamza Tiben Delana Versus Abdalla Magezi And 3 Others, Misc. Land Case Application No. 45/2019 (Unreported)** at Pg. 5 and 6.

Advocate Mtoni conceded to the Applicant's argument that the written submissions contravened the court order of **27th March 2023**. However, she disagrees on the consequences of such disobedience but prayed for the court to adopt the position in the case of **Intertrade Commercial Commercial Services and Limited 4 Others versus NMB and Another, Misc. Civil Application No. 304 of 2018, H.C Dar es Salaam (Unreported)** where the court disregarded the exceeding pages and proceeded to consider the pages within the prescribed limit.

Having considered parties' submissions on the exceeding limit of number of pages of the respondent's submission, it is not disputed that such limit has exceeded contrary to the court order of **27th March 2023**. Parties are in argument on the consequences of the excess pages. While the Applicant is adopting the position in **Hamza Tiben** cited supra to render the entire submissions invalid for having the disregarded pages removing the legally required contents of legal arguments, prayers, signature of the counsel and endorsement of the drawer, the Respondent is praying for the court to adopt the position in **Intertrade Commercial Services** to consider the pages which are within the limit and disregard the exceeding pages. In my view, both positions are valid as they are supported by valid case laws. In my view, for interest of substantive justice, I would apply the position in **Intertrade Commercial Services cited supra because**, in my view, submission is what a part wants to state to argue the substance before the court. The contents containing signature of the counsel and endorsement of the drawer are legal standardised contents which in my view do not form part of submissions. In counting the pages of the submission, these contents should be excluded. If excluded, therefore only one page will be in excess. As it was done in **Intertrade Commercial Services** and for the sake of substantive justice I will disregard the exceeding

page in deciding the substance of the matter and not to expunge the entire submissions.

Coming to the merits of the preliminary objection, in the Respondent's submission, Advocate Mtoni argued that the affidavit of the Applicant contains the address of the advocate instead of the address of the parties and therefore it contravenes **Rule 24 (3) (a) of G.N. No 106 of 2007**. She reproduced the said address thus;

"kwamba, wajibu maombi walikuwa wanafunzi waliokuwa kwenye mafunzo ya vitendo (internship) kwa mleta maombi na kwa ajili ya Maombi haya watumia anuani ifuatayo;

Andrew Mathew Chima,

Wakili wa kujitegemea,

Jonas & Associate Law Chamber,

Upanga Area,

Mindu street

Block No,42, Plot No.568

Vila Stephen building

S.L.P.....

DAR ES SALAAM"

She further reproduced the provision of **Rule 24 (3) (a) of the Labour Court Rules, GN No. 106 of 2007** which provides thus:

"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."

According to Advocate Mtoni, the law clearly specifies that the affidavit which supports an application shall set out the names, description, and addresses of the parties and that the use of the word "shall" in the provision means it is mandatory to comply with it as provided under **section 53 (2) of the Interpretation of the Laws Act Cap 1 R: E 2019.**

According to Advocate Mtoni, disobedience to this mandatory requirement of the provision of law cannot be rescued by the principle of overriding principle because this goes to the function of the provision. She referred to the case of **Mondorosi Village Council & 2 Others**

Versus Tanzania Breweries Limited & 4 Others, Civil Appeal No. 66 of 2017 CAT ARUSHA (Unreported) where the Court held:-

"Regarding the overriding objective principle, we are of the considered view that the same cannot be applied blindly against the mandatory provision of the procedural law which go to very foundation of the case"

It is the submission of the Respondents that stating the name and address of the advocates without the names and address of the parties in affidavit is very confusing because one cannot be able to know and identify and to establish whether the applicant is a natural person or a legal entity.

In response Mr. Webiro, S.A denied defiance to **Rule 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007** and submitted that the name of the Applicant has been clearly indicated at the top of the affidavit as "Shirika la Uwakala wa Meli Tanzania (TASAC)" and the description, postal and physical address of the Applicant is well captured in paragraph 1.2 of the affidavit. He added that the names of the Respondents also appear at the top of the affidavit as "Lucas Machimu na Wenzake 31" as found in the impugned ruling of the CMA. According to him, the description and physical address of the Respondents are well

captured in paragraph 1.3 of the affidavit where the addresses for the Counsel of the Parties for purpose of service and both Parties appeared in Court signifying that the service was duly effected and the same is not offensive.

It is Mr. Webiro,s submission that the case of **Jennifer Mlondezi & 3 Others Vs. Ebrahim Haji Charitable Health Center Revision No. 368 of 2021 on page 7**, this Court categorically held that it is not an offence to have the address of the Advocates for the purpose of service. He stated that this is a fit case to apply overriding objective because it encourages the resolution of disputes expeditiously without being tied up with legal technicalities. He referred to the case of **Felician Muhandiki Vs. The Managing Director Barclays Bank (T) Ltd Civil Appeal No. 82 of 2016 (Unreported) at Pg. 15** where, the Court of Appeal held that procedural irregularity cannot vitiate proceedings if no prejudice has been occasioned to the party. According to Mr. Webiro, the Respondents have not shown how they have been prejudiced for the Court to act on the same affidavit if it at all contains the defects.

He further referred to **Rule 55(2) of the Labour Court Rules, GN. No. 106 of 2007** which empowers the Labour Court to act in a manner

that considers expedition in the circumstances to achieve the objectives of the Act and or the good ends of justice.

He denied any confusion claimed by the Respondent to make it difficult to establish if the Applicant is a natural person or a legal entity. He stated that it is clearly in the affidavit that the Applicant is a government entity and that the Respondents were interns in the office of the Applicant, and therefore, they are natural persons and nothing is confusing. He added that the spirit of indicating the address is for the purpose of service of all documents in the proceedings as per **Rule 24 (2) (d) of the Labour Court Rules, G.N. No. 106 of 2007.**

Mr. Webiro submitted in the alternative shall it be found that the affidavit is defective and prayed that the Applicant be allowed to amend the application. He further submitted that shall the Court finds that the anomaly warrants striking out the application, the Applicant prays to be given time within which to bring a fresh application so that the matter may be heard on substance for the good ends of justice.

Mr. Webiro finally prayed that the preliminary objections against the Applicant be overruled with no order as to costs.

The Respondent filed a rejoinder which I shall consider while determining this application.

Having considered to parties' submissions, what follows is my views on the merits of the objection. I have gone through the affidavit and discovered that the address of the Respondents indicated therein truly reflects what is quoted by the Respondent's counsel. **Rule 23 (3) (a) of G.N. No. 106 of 2007** requires a clear and concise statement of the names, description and addresses of the parties. The address of the Respondents states generally as:

Andrew Mathew Chima,
Wakili wa kujitegemea,
Jonas & Associate Law Chamber,
Upanga Area,
Mindu street
Block No,42, Plot No.568
Vila Stephen building
S.L.P.....

DARES SALAAM

I don't think that the above description presents a clear and concise description of the names and addresses of the Respondents who are one Lucas Machumu and 31 Others. In my view, more details are

required to have a clear description of the Respondent. Since the provision of **Rule 23 (3) (a)** is couched in mandatory terms, I have to agree with the Respondent's counsel that the affidavit is incurably defective. Therefore, the Preliminary objection has merits.

Regarding the consequences of the said defect in the affidavit, as stated above, the defied provision contains mandatory requirement hence the defect is incurable. However, I have considered the Applicants proposal to have in consideration the principle of overriding objectives which requires the court to take precedence of substantive justice rather than technicalities. Having this in mind, I will prefer the Applicant's option of having this matter struck out with leave to refile.

In the upshot, I uphold the Preliminary objection and strike out the application with leave to refile it within 14 days from the date of this ruling. It is so ordered.

Dated at Dar es Salaam this 2nd Day of May 2023.




KATARINA REVOCATI MTEULE

JUDGE

02/05/2023