

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

**LABOUR REVISION NO. 17 OF 2021**

**MICHAEL EDWARD MUGINYA.....APPLICANT**

**VERSUS**

**KWEMA MODERN SECONDARY SCHOOL.....RESPONDENT**

[Application from the decision of the Commission for Mediation and  
Arbitration for Kahama at Kahama.]

**(Hon. A. Massay.)**

dated the 27<sup>th</sup> day of May, 2021

in

**CMA/KHM/06/2021**

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**RULING**

11<sup>th</sup> July, 2022 & 3<sup>rd</sup> May 2023.

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

This labour application has been filed by the Applicant by way of chamber summons and notice of application. The Applicant prays for this Court to revise and set aside the award of the Commission for Mediation and Arbitration at Kahama in the dispute No.

CMA/KHM/06/2021 delivered on 27<sup>th</sup> May, 2021. The application is supported with an affidavit sworn by the applicant on 29<sup>th</sup> June, 2021.

In reply thereto, the respondent raised preliminary objections on point of law to the effect that, **one**, this court has no jurisdiction to revise the impugned ruling under Rule 24(1) and (2) of the Labour Court Rules GN No. 106 of 2007, **two**, the applicant's affidavit is defective for containing unverified paragraph.

As the law requires preliminary objections be argued first, on 29<sup>th</sup> November, 2021 the matter was scheduled for hearing of the preliminary objections through written submissions. Both parties complied with. Mr. Gervas Geneya, Advocate represented the respondent whereas the applicant stood unrepresented.

Firstly, Mr. Geneya prayed to abandon the first ground of preliminary objection. He then proceeded to submit in respect to the second ground. To that he said that, the applicant's affidavit is defective as paragraph 8 to it is not verified. He termed the defect as contrary to Order VI Rule 15(2) of the Civil Procedure Code. To cement his position, he cited the case of **Kurasini Container Terminal Ltd vs. Moshi Mohamed Chingwi, Labour Revision No. 14 of 2017, HC Labour Division at DSM.**

Mr. Geneya went on stating that, the unverified paragraph contains reliefs sought by the applicant. To him, the act of non-verifying it, equals to non-existing of the same in the applicant's affidavit. To him, that situation, offends Rule 24(3)(d) of the Labour Court Rules GN No. 106 of 2007. To cement it, he cited the case of **Jackson Kahabi V. Bulyanhulu Gold Mine Ltd, Labour Revision No. 21 of 2018, High Court ay Shinyanga.**

In reply the applicant stated that, that defect is minor and curable under section 96 and 97 of the Civil Procedure Code. In fact, the applicant agreed that paragraph 8 to the affidavit is not verified, but he called the same to be an accidental omission. He prayed the court to allow him to amend his affidavit as it was held in the case of **DDL Investment International Ltd vs. Tanzania Harbors Authority and 2 Others, Civil Application No. 8 of 2001 (CAT).**

In another way the applicant attacked the preliminary objection contending that the same is not a pure point of law as per the case of **Mukisa Biscuits Manufacturing Co. Ltd V. Wesend Distributors Ltd (1969) EA 169.**

Rejoining, Mr. Geneya stated that, sections 96 and 97 of the Civil Procedure Code are irrelevant as their preliminary objection does not

involve judgment, decree, orders or proceedings in a suit. He went on distinguishing the case of **DDL Investment** contending that, their preliminary objection does not involve errors in the Jurat of Attestation. Concerning the case of **Mukisa Biscuits**, he stated that, their preliminary objection fits in as they are challenging the applicant's affidavit under Rule 24(3)(d) of the Labour Court Rules.

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.

As long as the authenticity of the preliminary objection itself is in question, then I will start with it so as to have a good stand whether I can determine the preliminary objection or not.

All over the respondent's submissions on the preliminary objection, the issue has been that, the applicant's affidavit is defective for not verifying its paragraph 8. He termed the same to be contrary to Order VI Rule 15(2) of the Civil Procedure Code. In additional, the respondent was of the views that, as the said paragraph contains relief, hence non-verifying it is like not having reliefs sought at all, which is contrary to the requirement of Rule 24(3)(d) of the Labour Court Rules. With the above stated reasons, I find the respondent's preliminary objection is a pure

point of law fits to be determined on merit. See the cited case of **Mukisa Biscuits (supra)**.

However, there is no dispute from both parties that, the applicant's affidavit contains unverified paragraph No. 8 to it. The issue is, can it be cured under section 96 and 97 of the Civil Procedure Code? For easy of reference, I reproduce the same hereunder;

*"96. Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the court either of its own motion or on the application of any of the parties.*

*97. The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding".*

From the above excerpt of law, as rightly submitted by Mr. Geneya, the said provisions of sections 96 and 97 of the Civil Procedure Code do not involve errors from accidental omissions found in affidavits but those found in judgments, decrees, proceedings and orders. As our

concern is on the non-verification of paragraph 8 of the affidavit, I am tempted to hold as I hereby do that, this defect is not curable under the said sections 96 and 97 of the Civil Procedure Code.

As for the non-verifying a paragraph in an affidavit, the proper way would even be expunging the said paragraph from the said affidavit. However, it is unfortunately that the said paragraph 8 contains relief sought by the applicant in his application. Thus, if I take that way, there arises an issue of an affidavit that contains no reliefs sought.

The affidavit in Labour matters is governed by Rule 24(3) of the Labour Court Rules. That rule, directs the way to follow in filling of affidavits for labour matters. For easy of reference, I hereby quote the said 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. (Emphasis is mine).***

It is my considered view that, the deponent must comply with the requirements of the affidavit for his application to be regarded valid. Non-compliance of those requirements as provided by the governing rules on affidavits, renders it defective. This is the position of the law in **D.B. Shapriya and Co. Ltd v. Bish International BV, Civil Application No. 53 of 2002, CAT at DSM**, where the Court of Appeal held that;

*"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."*

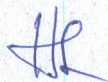
In the application at hand, I entirely and respectfully agree with Mr. Geneya that, the affidavit in question is incurably defective as it contravenes the specific governing Rule 24(3)(d) of the Labour Court Rules. This is because, after the expunge of paragraph 8 to it, the affidavit in question will not contain the reliefs sought. Therefore, the

applicant failed to comply with the requirements of the mandatory provisions of Rule 24(3)(d) of the Labour Court Rules.

In **Reli Assets Holding Co. Ltd. vs. Japhet Casmil & 1500 Others, Rev. No. 10 of 2014, HC Lab. Div. at Tabora.** 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)(d) of the Labour Court Rules. The preliminary objection has merit, hence upheld. That being said, the present application is struck out for being incompetent.

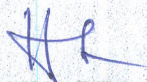
For the interest of justice, leave is granted for the applicant to re-file a proper application within 30 (thirty) days from the date of delivery of this ruling, if he still wishes to pursue the matter.



**S.M. KULITA**  
**JUDGE**  
**03/05/2023**



**DATED at SHINYANGA** this 3<sup>rd</sup> day of May, 2023.



**S.M. KULITA**  
**JUDGE**  
**03/05/2023**