

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

**(LABOUR DIVISION)**

**(SONGEA SUB- REGISTRY)**

**AT SONGEA**

**LABOUR REVISION NO. 03 OF 2023**

*(Originating from the Original Award Decree of Decision No. CMA/RUV/SON/28/2022 of the year 2022, Delivered by Hilary, N. J (Arbitrator) on 10/08/2023 at Songea)*

**SALEH NJOVU ..... APPLICANT**

**VERSUS**

**D. LIGHT (T) LIMITED ..... RESPONDENT**

**RULING**

Date of Last Order: 27/11/2023

Date of Ruling: 01/12/2023

**U. E. Madeha, J.**

To begin with, the Applicant by the way of chamber summons filed this application under section 91 (1) (a), 19 (2) (b) and 94 (1) (b) (i) of the *Employment and Labour Relations Act* (Cap. 366, R. E 2019), Rule 24 (1), (2), (3) and 28 (1) (a), (b), (c) (d) and (e) of the *Labour Court Rules* (G.N No. 106 of 2007), seeking for an order of revision to this Court. He also prayed for an order for costs of this application. The prayers sought in the chamber summons was supported by an affidavit sworn by the Applicant.

This ruling is in respect to the Preliminary Objections raised by the Respondent's advocate. The preliminary objections are to the effects that: **One**, the application is incompetent and bad in law for being supported by an affidavit which has a defective an incurable verification clause. **Two**, the application is incurably defective for contravening Regulation 34 (1) of the *Empolymet and Labour Relation (General) Regulations*, GN. No. 47 of 2017.

During the hearing of this application the Applicant enjoyed the legal service of Mr. Dickson Ndunguru, the learned counsel whereas Mr. Mr. Joseph Kalima Rashidi, the learned counsel represented the Respondent.

Arguing on the first point of preliminary objection, Mr. Joseph Kalima Rashidi, the Respondent's learned advocate submitted that, this application is bad in law since it was supported by an affidavit which has defective and incurable verification clause. He argued that the verification clause of the affidavit sworn in support of the application has no names of the verifiers, which is a fatal irregularity when it comes to the question of an affidavit. Mr. Kalima requested this Court to attention to the decision of the Court of Appeal of Tanzania in the case of **Econofinance Company Limited (EFC) v. Anchor-Clearing, Forwarders & Others**, Civil Application No.



54 of 2013 (unreported), in which the Court dismissed the application on the basis that the affidavit supporting it was incurably defective for failure to mention the name of the verifier. To cement his stance he cited the case of **Juma Ibrahimu Mkoma & Two Others v. Association of Tanzania Tobacco Traders**, Misc. Application No. 4 of 2016 (unreported), in which the Application was declared to be defective for failure to name the verifier in its verification clause and he prayed for this application to be strike out.

On the second point of the preliminary objection, he submitted that the application is incurably defective for contravening Regulation 34 (1) of the *Employment and Labour Relations (General) Regulations* (G.N. No. 47 of 2017). He contended that Regulation 34 (1) ) of the *Employment and Labour Relations (General) Regulations* (supra), provides for the forms to be use in labour applications. He further stated that in an application for revision it is CMA Form No. 10. He submitted further that this application is for revision of the arbitral award from the CMA but it is not in a prescribed CMA Form 10, which is a mandatory requirement of the law. He invited this Court to be persuaded by the decision of this Court made in the case of **Saleh Njovu v. D. Light (T) Limited**, Misc Civil Application No. 02 of 2022, in which an application for revision was struck out for the reason

that it contravened Regulation 34 (1) of ) of the *Employment and Labour Relations (General) Regulations* (supra) by failure to file CMA Form No. 10 and serve the same to the adverse party before lodging an application for the revision.

He also referred this Court to the decision made in the case of **Flomi Hotel Limited v. Emmanuel Sylvester Manga & Another**, Labour Revision Case No. 01 of 2022, in which the Court was of the same view to the decision made in the case of **Saleh Njovu v. D. Light (T) Limited** (supra).

He also reminded this Court that, through Application No. 02 of 2022 which was between the same parties in this application, was struck out by this Court for being incompetent, the Applicant filed any application praying for the same orders sought in the present application. He concluded by praying for this Court to strike out the application.

On the other hand, Mr. Dickson Ndunguru the Applicant's learned advocate conceded to what was submitted by the Respondent's advocate that the affidavit supporting this application has a defective verification



clause but he has a different position on the remedies to be ordered by this Court.

Starting with the first point of preliminary objection, he prayed his Court to be guided by the decision made in the case of **Jamal S. Mkumba & Another v. Attorney General**, Civil Application No. 240/01 of 2019 in which the Court of Appeal ordered an amendment of a defective affidavit. He argued that, always what the Court looks is substantive justice and if the other party will not be prejudiced the remedy is to order for amendment of the defects found in the affidavit as it was decided in the case of **Michael Clement Juma v. Abdallah Mfaume Mdogwa & Three Others**, Civil Application No. 165 of 2022, in which the Court adopted the the position of the Court in the case of **Jamal S. Mkumba & Another v. Attorney General** (supra) and ordered for the ordered for amendment of a defective affidavit. Lastly, he prayed for this Court to grant thirty days for the Applicant to file an amended affidavit.

On the second point of objection, the Applicant's advocate submitted that, the issue of filing a notice of motion by using the standard form set in Form No. 10 in G.N No. 47 of 2017 is not new. He added that, Court has made several decisions on the available remedies for applications which

contravenes such form. He referred this Court to the decision made in the case of **Tanzania Revenue Authority v. Mulamuzi Byabusha**, Revision No. 312 of 2021 (unreported) in which the Court held that it is not important to use a specific form set in GN. No. 47 of 2017 to file an application for the revision, since failure to use it does not cause miscarriage of justice. He also referred this Court to the decision made in the case of **Ferdinand Msakuzi v. Director General PCCB**, Revision No. 7 of 2018 and **France Dioniz Boniface v. Charity Organisation**, Revision No. 8 of 2018 ( both unreported), in which the Court had a similar position.

To shorten the story, he prayed for this Court to ignore the defects of not using Form No. 10 since no injustice has been occurred to the Respondent or strike out the application with the leave to refile.

In his rejoinder Mr. Joseph Kalima Rashidi submitted that; what has been argued the Applicant's advocate is on the overriding objective principles, which require the Court to render substantive justice without been bound by technicalities. However, that does not mean that the parties to the suit can do whatever they want and abandon all the requirements of the law. He added that, this Court should not close its eyes



and let the parties do what they want just because there are overriding objective principles.

The Respondent's advocate argued further that the Applicant is not entitled to be given another chance to amend his application since in the case of **Saleh Njovu v. D. Light (T) Limited**, Misc. Civil Application No 02 of 2022 he was granted with time to make an amendment but he failed. He argued that, an order for amendment is not proper in this application since the Court is not a playground. He cemented his arguments by making reference to the case of **Unilever Tanzania Ltd. v. Paulo Basondole**, Labour Revision No. 14 of 2020, in which the Court was of the view that; Courts cannot ignore the laid-down legal procedures of filing notice of the revision on the pretext of avoiding technicalities, because doing so would be violating the law. Thus, he prayed for this Court to strike the Application.

Having gone through the records of this application, specifically on the affidavit supporting the application, it is clear that the verification clause has no name of verifier. In **Mantrac Tanzania Ltd v. Raymond Costa**, Civil Application No. 11 of 2010 (unreported) and the case of **Philip Bernard Mlay v. Iddi Gahu** (L.T. GEN. RTD), the Court of Appeal

of Tanzania while referring to the decision reached in the case of **Uganda v. Commissioner of Prisons. Ex parte Matovu** [1966] EA 514, had this to state:

*"Affidavits intended to be used in the judicial proceedings are by law required to be confirmed to facts as the deponent is able of his own knowledge to prove and should be properly verified by the deponent ..."*

*"...as a general rule of practice and procedure, an affidavit for use in court being a substitute of oral evidence, should only contain statements of facts and circumstances to which the witness deposes either of his knowledge ..."*

In the instant application, as it can be seen in the verification clause of the affidavit filed in support of the application, there is no doubt that, the name of the verifier is not found as rightly argued by the learned advocates from both parties.

It is important to know that, verification clause is a crucial part of an affidavit as it attests the truthfulness of the statements made in the affidavit. Thus, name of the verifier or the person who swears or affirms that the contents of the affidavit is very important and the application without the name of the verifier affect its validity.



The Applicant's advocate prayed for this Court either to order for amendment of the defects or for the application to be strike out with a leave to refile. On my party, I am of the view that, the proper remedy is to strike out the application so that the Applicant can file a fresh application after curing the defects identified in this application. In regard to that, the verification clause in the affidavit supporting this application is defective as conceded by the Applicant's learned advocate.

For the foregoing reasons, I find merits in the preliminary point of objection raised by the Respondent's advocate for the reason that, the affidavit supporting the application is defective to the extent indicated above. The application is hereby struck out. I give no order as to costs. It is so ordered.

**DATE** and **DELIVERED** at **SONGEA** this 01<sup>st</sup> day of December, 2023.



A handwritten signature in blue ink, appearing to read "U. E. MADEHA", is written over a horizontal line.

**U. E. MADEHA**

**JUDGE**

**01/12/2023**

**COURT:** Ruling is delivered in the presence of the Mr. D. P. Ndunguru, the learned Advocate for the Applicant and Mr. Joseph Kalima Rashidi, the learned Advocate for the Respondent. Right of appeal explained.



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**U. E. MADEHA**

**JUDGE**

**01/12/2023**

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**U. E. MADEHA**

**JUDGE**

**01/12/2023**

