

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB-REGISTRY
AT ARUSHA
(LABOUR DIVISION)
REVISION NO. 47 OF 2023
(C/F Labour Dispute No. CMA/ARS/ARS/68/22/2022)

VILLA ARUMERU LTD.....APPLICANT

Versus

ELIBARIKI TEREVAELNNKO.....RESPONDENT

RULING

28th February & 15th March 2024

TIGANGA, J.

This is an application for revision of the award Passed by the Commission for Mediation and Arbitration CMA in Labour Dispute No. CMA/ARS/ARS/68/22/32/2022 in which the respondent was the applicant challenging his termination from his employment. The application has been brought by way of a Notice of application, notice of engagement of an Advocate, and a chamber summons which has been supported by an affidavit of the Applicant. The reliefs prayed are mainly to the effect that the Labour Court be pleased to revise, and set aside the Arbitration Award made on the 24th day of July 2023, in the above-cited Labour Dispute, presided over by Hon. O. Mwebuga, Arbitrator.

The application has been made under *sections 91 (1)(a) and (b), 91(2)(b) and (c)* of the **Employment and Labour Relations Act**, [Cap. 366 R.E 2019]; and *Rules 24 (1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), and 28(1)(c)(d)(e)* of the **Labour Court Rules**, GN. No.106 of 2007.

The Application was opposed by the respondent by filing the counter affidavit of Elibariki Terevaeli Nnko, the Respondent. It was also opposed by way of Notice of Opposition under Rule 24 (4) (a) and (b) of the Labour Court Rules (*supra*); whereby the Respondent invited this Court for an order in the following terms: -

- 1. That the Applicant's revision is incompetent as the Notice of Application, Notice of Engagement of an Advocate, and Scheduled list of documents copies are not signed by the Counsel for the Applicant to be official documents for determination by this Honourable Court, hence violates the mandatory requirement of Rule 24 (2) of the Labour Court Rules, G.N No. 106 of 2007.*
- 2. The Applicant's Revision Application should not be considered by this Honourable Court as it is a wastage of time as the Applicant has no sufficient grounds to convince this Honourable Court to*

quash and set aside the decision firstly made on CMA/ARS/ARS/68/22/2022.

3. Any other relief(s) and orders this Honourable court may deem fit and just to grant.

When this matter was called for a hearing on the 14th day of December 2023, both parties appeared. While the applicant was represented by Mr. Fredrick Lucas, learned Counsel, the respondent appeared in person, unrepresented.

Parties argued the application orally, and after the hearing, the court reserved the application for judgment. When this court was composing the judgement of this Revision, it noted that, in the Counter Affidavit, and the Notice of Opposition, the Respondent had raised the preliminary objection challenging the competence of the Notice of application, a notice of engagement of an Advocate filed by the applicant, as well as a schedule of the list of documents that they were not signed by either the Counsel for the Applicant or the applicant principal officer of the applicant. The gist of that objection is that the omission offends the provision of Rule 24 (2) of the Labour Court Rules (*supra*). However, when the case was called for hearing, the existence of

the preliminary objection raised was overlooked by both parties and the court; and proceeded to hear the application on merit.

Having so noted, this court resummoned both parties and allowed them to address the preliminary objection raised and it was argued orally by both parties on 15th February /2024 as follows: -

The respondent being a layman did not have much to contribute, he just asked the court to adopt his raised point in preliminary objection. In response to the preliminary objection, Mr. Fredrick Lucas learned counsel submitted that starting with the unsigned notice of application, he would like the court to invoke an overriding objective and cure it. He contended that the Court of Appeal has been allowing the parties to sign the document in court which has not been signed. This intends to do away with technicalities.

Regarding the second issue, Mr. Fredrick Lucas submitted that, as to whether the advocate can sign the Notice of engagement, the Advocate has already filed the Notice of being engaged in the CMA. In his view, both objections can be cured by the principle of overriding objective.

Similarly, he added that the objections were brought with the counter affidavit, it was supposed to be brought on a separate notice. He prayed for the court to be guided by the said principle for the two omissions do not go to the root of the matter, and calling the applicant to sign at this stage does not in any way prejudice the Respondent.

When invited by this Court to reply to the submission in chief, the respondent said he signed his pleading, and he has no objection if the applicant needs to sign the document here in court, he should be allowed. He prayed the matter to be determined to the merit of the application, and finally, he decided to leave it to the court to decide based on the stand of the law.

I have sufficiently considered both parties' contentions and the applicable provision of the law. According to Rule 24 (2) of the Labour Court Rules (supra) provides: -

*"24 (2) The Notice of Application **shall substantially comply with Form No. 1 in the Schedule to this Rules signed by the party bringing the application and shall contain the following information:***

(a) Title of the matter

(b) The case number signed to the matter by the Registrar

- (c) Reliefs sought*
 - (d) An address at which the party will accept notices and service of all documents in the proceedings.*
 - (e) A notice advising the other party if he intends to oppose the matter, that party shall deliver a counter affidavit within fifteen days after the application has been served failure of which the matter may proceed ex-parte and;*
 - (f) A list and attachment of documents that are material and relevant to the application.*
- (4) A notice of opposition, a counter affidavit or both shall: -*
- (a) be filed within fifteen days from the day on which the application is served on the party concerned.*
 - (b) substantially be in conformity with necessary changes required by the context of subrules (1) and (2)”*

Looking at how the applicant responded, he, in essence, was challenging the way the preliminary objection was raised. He said it was not proper for the respondent to raise the preliminary objection in the notice of opposition or the counter affidavit. In his view, the same was supposed to be raised in a separate notice. He did not cite any law be it statutory or case law which direct so. Now how the preliminary objection should be raised has been a ground for discussion before this court in the case of **Registered Trustees of The Baptist Convention of Tanzania @**

Jumuiya Kuu ya Wabatisti vs James Kasomi & 4 Others, Miscellaneous Civil Application No. 35 of 2021, High Court of Tanzania, Mwanza Registry, my Brother Hon. Manyanda, J while relying on the persuasive decision of this Court in the case of **Gabinus Singano vs. St, Timothy Pre & Primary School**, Labour Revision No. 8 of 2019 (unreported), Hon. Mwenempazi, J. when faced with a situation akin to this, had this to say:-

"The law is silent on the manner in which a preliminary objection should be raised, however, the practice has shown that one should give notice of preliminary objection and the essence of the notice is to allow the other party to prepare his defence. It was therefore not proper for the applicant to raise an objection at the time when he was supposed to respond to the preliminary objection that had been raised by the respondent."

Therefore, the strength of the authority above the raising of the preliminary objection the way it has been raised is proper and has offended no law, for the essence of raising the preliminary objection is just to inform the other party that the party raising it would rely on it on the date of hearing.

Now having satisfied myself that the preliminary objection was properly raised I now determine it. The objection is premised on the

ground that the law requires the Notice of application and the Notice of engagement to be signed by the party applying or his Advocate. This is the requirement of law as provided under section 24 (2) of the Labour Court Rules, which provides in mandatory terms that the Notice of Application shall substantially comply with Form No. 1 in the Schedule to this Rules and shall be signed by the party bringing the application.

Failure to sign the said notice in my view is a fatal omission in this case both the Notice of Application and the Notice of Engagement were not signed the omission which I consider to be fatal.

In mitigating the consequences, Mr. Fredrick Lucas argued that such omission is not curable by overriding objective. With respect to him, it is not curable. I am holding so because according to Rule 24 (2) of the Labour Court Rules (supra), the notice of application offended a mandatory requirement of Rule 24(1) of the Rules (supra) for want of signature. That also applies to the notice of engagement, as well as the Schedule list of documents. This means therefore it is instructive to find, that the Notice of Application, notice of engagement, scheduled list of documents filed without signature are all defective and cannot be served by the overriding objective principle.

There was yet another request by the respondent that the applicant be pardoned and be allowed to sign so that the court could go to the merits of the application.

I do not agree with the respondent on his request to overlook the matter and go to the merit of the application. The argument upfronted by the Counsel that the Court of Appeal has been allowing parties to sign documents has not been supported by any authority of the Court of Appeal, without the support of the said authorities I find the argument unfounded, unsupported, and unprecedented.

I have one reason for each. *First*, one cannot be allowed to amend a defective Notice of application after the preliminary objection has been raised. Doing so would be pre-empting the raised preliminary objection. This has been explained in a number of decisions. In the case of **Thabit Ramadhan Maziku and Another v Amina Khamis Tyela and Another**, Civil Appeal No. 98 of 2011, CAT at Zanzibar (unreported) it was held that: -

"Once an objection is raised one cannot apply to amend otherwise it will amount to pre-empting Respondent's preliminary objection, it is trite law that under order VI Rule 17 of the Civil Procedure Code, the Applicant had a right to amend pleadings at any stage of the suit. However, that right

ceased when the preliminary objection was taken against her by the Respondent."

Similarly, in the case of **Shaban Fundi v Leonard Clement**, Civil Appeal No. 38 of 2011, CAT at Dar es Salaam (unreported), in which the court held: -

"According to Mr. Ngudungi's prayer will be tantamount to pre-empting the preliminary objection which course of action, upon plethora of authorities is illegal, the Court will not tolerate the practice of an advocate trying to pre-empt a preliminary objection or by trying to rectify the error complained of."


The Notice of application, notice of engagement, and scheduled list of documents are therefore struck out from the records. It should be noted that having so struck out the said documents, there remains the chamber summons and the affidavit. However, under Rule 24(1) and (2) of the Labour Court Rules, makes it a must that the labour court in an application for revision should be moved by the Notice of Application, in the absence of the the notice then there is no application properly filed, now that the notice has been struck out, the next question is whether we still have an application? The answer to that, is that there is no application. That makes the whole application to collapse.

For the interests of justice, I allow the applicant to re-file a proper, application within seven (7) days to file a proper application without being bound by the law of limitation. Since this is a labour matter then, no order as to costs is made.

It is so ordered.

DATED and delivered at **ARUSHA** this 15th day of March 2024.




J. C. TIGANGA
JUDGE