

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA SUB – REGISTRY
AT IRINGA**

MISC. LABOUR APPLICATION NO 8 OF 2024

*(Originating from the decision of the High Court of Tanzania at Iringa
in Execution Case No. 18 of 2022 by Hon Deputy Registrar, Malewo M.A
Delivered-on the 31st of October 2022).*

BETWEEN

MASSAWE HUMPHREY.....APPLICANT

VERSUS

MIAMI NIGHT CLUB.....RESPONDENT

RULING

18th & 28th March 2024

LALTAIKA, J.

The Applicant herein **MASSAWE HUMPHREY** lodged this Application for extension of time to lodge an application for reference in terms of Order XLI of the Civil Procedure Code Cap 33 R.E. 2022. Upon being served with the application, the Respondent herein **MIAMI NIGHT CLUB** raised four preliminary objections. Despite a few typographical and grammatical errors, take the liberty to reproduce them as hereunder:

- 1. The Applicant affidavit is incurably defective for not including the address of the parties contrary to Rule 24(3) (a) of the Labour Rules GN No. 106/2017.*

2. *The Applicant Application is incurably defective in its entirety for not being paginated contrary to mandatory requirement of Rule 46(1) (2) and (3) of the Labour Court Rules GN No. 106/2007.*
3. *The Applicant Affidavit is incurably defective for it is contrary to Rule 24 (3) (c) (d) of the Labour Court Rules GN No. 106/2007.*
4. *That the Applicant Application is incurably defective for it is contrary to Rule 24(2) (f) of the Labour Rules GN No. 106/2007.*

When the matter was called for mention on the **13th of February 2024** it was jointly agreed that these objections be addressed through written submissions due to the Applicant's lack of legal representation. The next part of this ruling is a summary of such submissions.

Arguing in support of the first point of objection, the Respondent expressed the belief that the Applicant's affidavit was incurably defective for not including the address of the parties, contravening rule **24 (3) (a) of the Labor Court Rules GN No. 106/2007**. She argued that this omission made it difficult for the court and the parties to ensure proper service of documents and execution of court orders. The usage of "shall" in the rule was cited as imposing a mandatory obligation, as per section 53 of **The Interpretation of Laws Act** (Cap 1 Re 2019).

According to the Respondent, it was evident that the Applicant's Application lacked the proper address of the parties and was thus incurably defective. She referred the case of **Issa Mangara & Another Vs Tanzania Railways Limited Lab**, Div, TBR, Msc. App No. 1 B of 2013 to buttress her arguments.

Regarding the second preliminary objection, the Respondent contended that Labor applications had unique procedures stipulated by the aforementioned rule. The lack of pagination and index, she argued, rendered the application non-compliant and constituted an abuse of required procedures. She cited Rule 46 (1) (2) and (3) GN No. 106/2007.

The Respondent pointed out that this unique procedural aspect of labour applications was acknowledged by the court in the case of **Ramba Beutel Maria Vs Iringa International School Lab**, Div, IRG, Rev No. 4 of 2015.

In relation to the **third preliminary objection**, the Respondent argued that the affidavit supporting the application lacked such essential information. The absence of legal issues and sought reliefs, she stated, made it difficult for the court to determine the matter, justifying its dismissal. The Respondent cited the ruling in the case of **James Daniel v. Cats - Net** Limited in support of the argument.

Regarding the last preliminary objection, the Respondent contended that the absence of the final court order rendered the application incompetent. She emphasized that the rule mandated the attachment of relevant documents, and the failure to do so rendered the application incurably defective. The Respondent referred to the case of **JOSEPH ELIAS NYAUMBA & 4 OTHERS VS TANZANIA TELE**

COMMUNICATION COMPANY LIMITED Misc Application No. 459 OF 2021 to support their stance. The Respondent prayed that the preliminary objections be sustained, and the Application be struck out with costs for its incompetence.

The Applicant on his part, responded to the first point stating that it is a known Canon of the law that each case must be decided on its own merits. He expressed the opinion that if the counsel for the respondent had appreciated this principle, he would not have raised the four preliminary objections, which, in his opinion, were superfluous. While acknowledging that Labor matters have their own legal framework, the Appellant noted the odd nature of the issues for which an extension of time for reference was sought, as reflected in the accompanying affidavit.

The Applicant emphasized that the intended application for reference should **conform to the provisions of Order XLI of the Civil Procedure Code Cap 33 R.E 2019**, which requires a question of law or usage to have arisen for the opinion of the High Court to be sought. He pointed out that the Labour Court Rules do not make stipulations for such a situation, leading the applicant to seek an extension to ensure that the Court has the necessary jurisdiction to entertain the application.

Furthermore, the Applicant stated that applications made under the Civil Procedure Code, such as this one, should be made **via chamber summons and affidavit, as per Order XLIII Rule 2 of Cap 33**. He argued that if the respondent's counsel had addressed the peculiar nature of the intended application for reference, he would not have raised the preliminary objections, as he believed them to be misguided.

The Applicant then addressed the First, Second, and Third Preliminary objections jointly, arguing that the objections regarding the address of the parties, pagination, and disclosure of material facts and reliefs sought cannot hold water, as the application for extension of time is made under the provisions of the Civil Procedure Code, requiring applications to be made by way of chamber summons and affidavit.

Regarding the fourth preliminary objection raised by the respondent, the Applicant contended that it was of trivial relevance. He argued that the respondent claimed the application was incurably defective for failing to append relevant documents, specifically citing the absence of a copy of the final order in execution case No. IS of 2022.

However, the Applicant stated that paragraph 8 of the affidavit supporting the application suggested that a copy of the proceedings and final order of the court was attached as Annexure IV. He questioned

what other final order the counsel expected to be appended, considering this attachment. In his view, this was a misdirection by the respondent's counsel.

I have dispassionately considered the rival submissions. The objection is against the application made by the appellant seeking an extension of time. The appellant contends that the preliminary objections raised by the respondent are superfluous and misguided. The Court of Appeal of Tanzania in **ATTORNEY GENERAL VERSUS TANZANIA PORTS AUTHORITY AND MR. ALEX MSAMA MWITA CIVIL APPLICATION NO. 467/17 OF 2016** emphasized that claims of illegality constituted sufficient reasons for an extension of time, regardless of whether the applicant provided a reasonable explanation.

I have gone through the applicant's affidavit, and I entertain no doubt that he has passed through a very difficult terrain. He has been subjected to unnecessary bureaucracy and technicalities that aim at robbing him of his rights. I do not want to go into the details at this juncture, but may it suffice to state that this is a court of justice not a court of technicalities.

The applicant has argued that each case must be decided on its own merits and that the preliminary objections raised by the respondent are unnecessary. He asserted that the application for extension of time

is made under the provisions of the Civil Procedure Code, which require applications to be made via chamber summons and affidavit. The court finds merit in this argument, as the procedural requirements for such applications are indeed governed by the Civil Procedure Code.

Furthermore, the applicant contended that the peculiar nature of the intended application for reference should be considered. He argued that while Labor matters have their own legal framework, the issues for which an extension of time is sought do not neatly fit within the parameters of the Labour Court Rules. The court acknowledges the validity of this argument and recognizes that the Labour Court Rules may not explicitly address situations such as the one at hand. More importantly, substantive justice triumphs over technicalities.

Regarding the specific objections raised by the respondent, the court finds that the objections pertaining to the address of the parties, pagination, and disclosure of material facts and reliefs sought are unfounded. As the application is made under the Civil Procedure Code, it is subject to the procedural requirements outlined therein, rather than those of the Labour Court Rules. Therefore, the objections based on the Labour Court Rules are deemed irrelevant in this context.

With respect to the fourth objection raised by the respondent regarding the absence of relevant documents, the court agrees with the

appellant's contention that the affidavit supporting the application suggests that the necessary documents were indeed attached. The court finds that the respondent's objection in this regard lacks merit.

Said and done, the preliminary objections raised by the respondent are hereby overruled. The application for extension of time to lodge an application for reference is hereby granted. The same must be **filed within 21 days** from the date of this Ruling.

It is so ordered.




E.I. LALTAIKA

JUDGE

28.03.2024

Court:

This Ruling is delivered this 28th day of March 2024 in the presence of Mr. Edrick Mwinuka, learned Advocate holding brief for Mr. Yusufu Luwumba learned Counsel for the Respondent and the Applicant who has appeared in person, unrepresented.




E.I. LALTAIKA

JUDGE

28.03.2024

Court:

The right to appeal to the Court of Appeal of Tanzania is fully explained.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

E.I. LALTAIKA

JUDGE

28.03.2024