

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION APPLICATION NO. 4 OF 2024

(Originating from CMA/ARS/ARS/157/21/86 & 124/2021)

SOA TANZANIA LTD TRADING AS SENSE

OF AFRICA..... APPLICANT

VERSUS

RICHARD HENRY WAMEYO.....1ST RESPONDENT

FRANK PATRICK NDOSSI.....2ND RESPONDENT

PAUL DISMASS OLAL.....3RD RESPONDENT

RULING

08/05/2024 & 29/05/2024

NDUMBARO, J

This ruling emanates from the preliminary points of objections raised by the respondents on the following points;

1. The application for Revision No. 4 of 2024 is incompetent for failure to attach CMA form number 10 to seek revision contrary to Regulation 34 (1) of the Employment and Labour Regulations (General) Regulation GN No. 47 of 2017.

2. The affidavit in support of this application contravenes mandatory requirements of section 5 of the Oath and Statutory Declaration Act (Cap 34 RE 2002)
3. That the application contravenes the mandatory requirement of rule 43 (1) (a) and (b) of the High Court Labour Rules GN No. 106 published in May 2007.
4. That the notice of application contravenes the mandatory requirement of rule 24 (2) (e) and (f) of the High Court Labour Rules GN No. 106 published in May 2007.

As practice demands, the hearing of the main application was put on a halt for the disposition of the preliminary objection first. When the parties appeared for a hearing of the preliminary objection the respondents were represented by **Mr. Anthony Kazikodi**, Personal Representative, the applicant on the other hand enjoyed legal services from advocate **Eric Stanslaus**. With the leave of the court, the preliminary objection was disposed of by way of written submissions.

Nevertheless, before I summarize the parties' submissions, I would like to bring to the attention the complaint raised by the respondents in their rejoinder about the applicant's non-compliance with the scheduling order to file his reply submission. It is evident from the records that the

applicant was required to file his submission in reply on 18th April 2024, nevertheless, the physical filing of the reply submission shows that the same was filed on 19th April 2024. Conversely, it should be remembered that the law under **rule 21 (1) of the Judicature and Application of Laws (Electronic Filing) Rules 2018** provides that the document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted unless a specific time is set by the court or it is rejected. That being the case, this court made an inquiry on the electronic filing of the applicant's reply submission and it was discovered that the same was filed on 18th April 2024. In that regard, pursuant to rule 21 (1) cited above I am of the increasing view that the applicant's reply submission was filed in time and it is worth for consideration by this court. That said, I now proceed to recapitulate the parties' submissions as follows;

Submitting in support of the first point of the objection, the respondent argued that this application is incompetent for failure to attach CMA Form No. 10 contrary to regulation 34 (i) of the Employment and Labour Relations G.N No. 47 of 2017. The respondents went on to submit that it is the requirement of the law that whoever wants to file revision must attach CMA Form No. 10 which is a notice of intention to

seek revision to the other party. Therefore, failure to file this form renders this application incompetent. To support this argument, the respondents cited the case of **Frank Msingia & 14 others vs Tanganyika Wilderness Camps**, Labour Revision No. 49/2021.

On the second point of the objection, the respondents submitted that the affidavit in support of this application was not endorsed and signed by the court registry officer contrary to the mandatory requirement of **section 5 of the Oath and Statutory Declaration Act (Cap 34 RE 2002)**. The respondents went on to state that the affidavit in support of the application does not indicate the case number and the date on which it was lodged contrary to **Order XIII Rule 4 (1) of the Civil Procedure Code Cap 33 R.E 2022**. They further supported their argument with the case of **SGS Society General De Serveillance SA and others vs VIP Engineering & market Ltd and another**, Civil Appeal No. 124 of 2017.

On the third ground of the preliminary objection, the respondents submitted that the application contravenes the mandatory requirement of rule 43 (1) (a) & (b) of the Labour Court Rules GN No. 106 of 2007. The respondents went on to state that it is a mandatory requirement of the law that any person who represents another person should give

notice of representation and that notice should be in writing providing full details such as postal address, emails and fax. It was therefore their contention that the absence of the notice of representation is fatal and renders the application incompetent.

On the last point of objection, the respondent argued that the applicant's application contravenes the mandatory requirement of rule 24 (2) (e) & (f) of the High Court Labour Rules GN. No. 106 of 2007. The respondents went on to state that the applicant's failure to give notice to the other party to oppose the matter within 14 days and failure to show the list and attachment of the documents is fatally defective, the respondents thus prayed for the dismissal of this application.

Responding to the objections raised by the respondents, **Mr. Eric** submitted as follows; on the first point of objection, the counsel submitted that it is indeed the requirement of the law that filling of CMA Form No. 10 is a mandatory condition before one can file a revision to the High Court. The counsel went further to submit that the applicant herein filed the said CMA Form No. 10 at the Commission and the same was received on 10th January 2024, therefore according to him, the applicant complied with the said provision of the law.

With regard to the second point of the objection, Mr. Eric submitted that the application before this court was endorsed and signed as required by the law. Moreover, the counsel argued that the respondents were trying to misdirect this court by stating that the affidavit did not contain standard ingredients of an affidavit contrary to section 5 of the Oath and Statutory Declaration Act (Cap 34 R.E 2002) while the same does not provide for those standards. On the basis of the above explanation, the counsel prayed for the said objection to be overruled and the matter to be heard on merit.

Submitting on point number three, the counsel maintained that the applicant herein complied with the mandatory requirement of section 56 (c) of the Labour Institution Act and Rule 43 (1) (a) and (b) of the Labour Court Rules (G.N No. 106 of 2007) as it is evident that the notice of representation is presented on page two. Further to that, it was his argument that the revision application furnished comprehensive detail, including postal addresses and email contacts, thereby ensuring the clarity and completeness of their submission. The counsel thus prayed for the dismissal of this point of objection.

With regard to the last point of objection, Mr Eric submitted that the applicant herein complied with Rule 24 (2) (e) & (f) of the Labour Court

Rules. Nevertheless, he cited the decision of this Court in the case of **Onesmo Joseph Nanyaro vs Kibo Palace Hotel**, Revision Application No. 55 of 2019 where the Court was of the finding that failure of the applicant to write a notice of advice cannot make the application incompetent. With the above submission, the counsel prayed for raised objections to be overruled and the matter to be scheduled for hearing on merit.

In their rejoinder, the respondents basically restated what they submitted in their submission in chief.

Having summarized the parties' submission above, it is now time for the court to determine the preliminary objections hereunder;

On the first point of the objection, the respondents allege that the applicant did not attach CMA Form No. 10 contrary to Regulation 34 (1) of the Employment and Labour Relations (General) Regulations, 2017. I have gone through the said Form that is used as a notice to seek revision of the award to the High Court. Unfortunately, the said Form is filed at the CMA and since the records of the CMA have not been availed to this court it is apparent that this point of objection will call for evidence to verify as to whether the said notice was filed or not. In that regard, it is my firm view that this point of objection will not stand as a

pure point of law as required by the principle in the case of **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd** [1969] EA 696 and thus it is bound to fail.

That said, I now turn to the second point of the objection. The respondents allege that the applicant's application was neither endorsed by the registrar nor signed by the Court Registry. I have gone through the application contrary to the respondent's submission, this court has noted that the same was endorsed on 18th January 2024 with the High Court seal and the signature of the Deputy Registrar. In that respect, I also find no merit in this point of objection.

As to the third point of objection, the respondent challenged the application stating that the applicant did not file the notice of representation. I have gone through the provision of rule 43 of the Labour Court Rules which provides for representation of parties. Reading from this provision of law I have observed that the purpose of giving notice of representation is to provide for address to effect service. I am aware that in every application whether prepared by an advocate or a party the address is indicated on the last page. In that regard, with the advent of the principle of overriding objective, I find that the omission did not prejudice the respondents in any way as the service of the

documents was effected effectively. That said, this preliminary point of objection is overruled.

As to the last point of objection, the respondents purported that the applicant contravened the mandatory provision of rule 24 (2) (e) of the Labour Court Rules. I have gone through the said rule and it states that the notice of application shall contain a notice advising the other party that 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. In answering this point, I shall subscribe myself to the decision of my learned brother Robert, J cited by the applicant's counsel. As I have gone through the application filed by the applicant, it is apparent that the said application did not comply with the requirements of rule 24. My learned brother when faced with a situation similar to what is before this court, had the following to say;

"The Court is aware that, Rule 24 (2) (e) requires that there must be a notice to address the other party if he intends to oppose the application, which is not provided for. However, since the law under rule 24 (4) (a) requires an opposite party to file a counter affidavit within 15 days from the day they were

served with the application, failure of the applicant to write a notice of advice cannot make the application incompetent.”

With the above principle of the law, the fourth point of the preliminary objection is also bound to fail. That said, the objections are hereby overruled and the application should proceed to be heard on merit. It is so ordered.



D. D. Ndumbaro
D. D. NDUMBARO
JUDGE
29/05/2024