

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)
AT MOROGORO**

LABOUR APPLICATION FOR REVISION NO. 18 OF 2022

HAMIS ABDALLAH MINDA.....APPLICANT

VERSUS

BONITE BOTTLERS COMPANY LTD.....1ST RESPONDENT

IPP GROUP LTD 2ND RESPONDENT

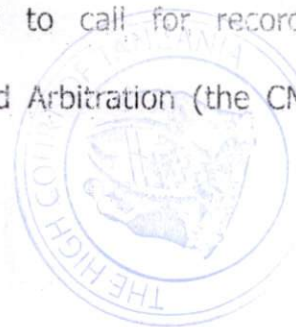
RULING

14th Febr, 2024

M.J. Chaba, J.

Through the legal aid services of Mr. Michael Deograthias Mgombozi, herein featured as the applicant's representative from Tanzania Union of Private Security Employees (TUPSE) based in Dar Es Salaam Region, Hamis Abdallah Minda, herein the applicant preferred the instant application by way of chamber summons made under section 94 (1), (b), (i) and section 94 (1) (e) (i) of The Employment and Labour Relations Act [CAP. 366 R.E. 2019] and Rule 24 (1), Rule 24 (2), (a), (b), (c), (d), (e) & (f) and Rule 24 (3) (a), (b), (c) (d) read together with Rule 28 (1) (a), (b), (c), (d) & (e) and Rule 55 (1) & (2) of the Labour Court Rules GN. 106 of 2007 and any other enabling provisions of the law seeking for the following orders: -

- (1) That, this Honourable Court may be pleased to call for record and proceedings of the Commission for Mediation and Arbitration (the CMA) in



respect of Miscellaneous Labour Application for Condonation No. CMA/MORO/17/2022 at MOROGORO and revise it on the ground that the CMA exercised its jurisdictional power illegally, with material irregularity and material errors to the merits of the dispute.

- (2) That, this Honourable Court may be pleased to call for record of proceedings of the Commission for Mediation and Arbitration in Miscellaneous Labour Application for Condonation No. CMA/MORO/17/2022 for purpose of satisfying itself to the correctness, legality or propriety of the decision made by the Honourable Mediator issued on 26th day of October, 2022.
- (3) That, this Honourable Court may be pleased to make an order to the effect that, Ruling of the Commission for Mediation and Arbitration be set aside and revised accordingly.
- (4) That, upon revising the said proceedings this Honourable Court may be pleased to make the following orders: -
 - i. That, this Honourable Court be pleased to examine the proceedings and the subsequent Ruling of the Commission for Mediation and Arbitration in the labour dispute.
 - ii. That, this Honourable Court be pleased to set aside the Honourable Mediator's Ruling dated 26th October, 2022 and order the matter be tried de-novo.
 - iii. Any other relief(s) which the Honourable Court may deem fit and just to grant.

Upon being served with the notice of application, chamber summons and the affidavit in support of the application, the respondents resisted the

application through their counter affidavit coupled with a notice of preliminary objection grounded on the following two points of law, to wit: -

1. That, the applicant's affidavit is incompetent for containing extraneous matters.
2. That, the application is incurably defective for being supported with fatally and incurably defective affidavit which contravenes Rules 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007.

As Court's practice has it, I was obliged to determine first the points of preliminary objections (PO) raised by the respondents before embarking into the merits of the application.

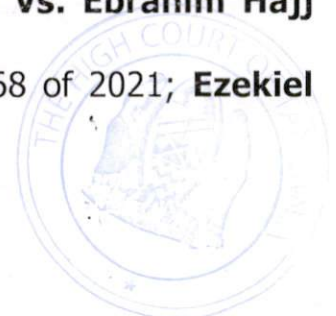
At the hearing of the PO, both parties were present. Respondents' written submission in support of the raised PO, was drawn and filed by Mr. Emmanuel Agathony Matondo, learned advocate whereas the applicant's written submission in opposition to the respondents' submission in chief was drawn and filed by Mr. Kennedy Steven Sangawe, also learned advocate. With the leave of the Court, hearing of the points of PO was canvassed by way of written submissions and both parties duly complied with the Court's scheduled order.

Submitting in support of the PO, Mr. Matondo, counsel for the respondents preferred to commence with the 2nd point of preliminary objection and opened the door of his contentions by reproducing paragraph three of the affidavit affirmed by the applicant herein, Hamisi Abdallah Minda

and averred that the applicant totally failed to move this Court as required by the law under Rule 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007. The Counsel reproduced the whole paragraph three for ease of reference and better understanding.

In view of the above details, Mr. Matondo submitted and insisted that, the applicant opted to go opposite of what the law provides by filing an application which contains incurably defective affidavit while the law clearly specifies that, the affidavit which support application shall set out the names, description and addresses of the parties. He highlighted further that, the word used in this rule is "shall" which means, it is mandatory to comply with, citing section 53 (2) of The Interpretation of the Laws Act [CAP. 1 R.E. 2019], to fortify his argument.

It was Mr. Matondo's argument that, since the applicant did violate and contravened as well the mandatory requirement of the law as shown hereinabove by disregarding to state the names, description and address of the parties and instead thereof indicated the address of the personal representative or advocate, it means that in the circumstance of this case it is too difficult to establish whether the applicant is a natural person or legal person something rendering the entire application incompetent before this Court. To reinforce and strengthen his contention, the Counsel referred this Court to the cases of **Jennifer Mlondezi & 3 Others Vs. Ebrahim Hajj Charitable Health Centre**, Revision Application No. 368 of 2021; **Ezekiel**



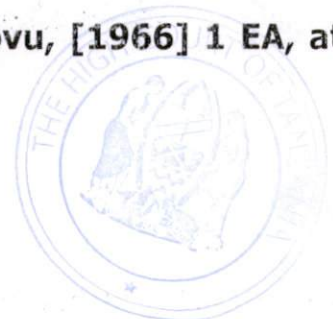
Andrew Vs. African Life Tanzali, Labour Revision No. 346 of 2009; and **Ledger Hotel & Resort (Plaza Bahari Beach) Vs. Zebediya W. Chikoya**, Misc. Labour Revision No. 270 of 2022 (All unreported).

As regards to the first limb of preliminary objection which states that; the applicant's affidavit is incompetent for containing extraneous matters, Mr. Matondo accentuated that, the affidavit supporting the present application is defective because it contains extraneous matters. He argues that, according to the law, affidavits are governed by Order VI, Rule 15 of The Civil Procedure Code [CAP. 33 R.E. 2019] (the CPC) and its requirement is that the same should be free from hearsay, issues or legal arguments or prayers. He argues further that, matters to which affidavits shall be confined are provided under Order XIX, Rule 3 (1) of the CPC. For better understanding and clarity, I find it apt to reproduce the provision of the law which says:

"Rule 3 (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements of his belief may be admitted:

Provided that, the grounds thereof are stated".

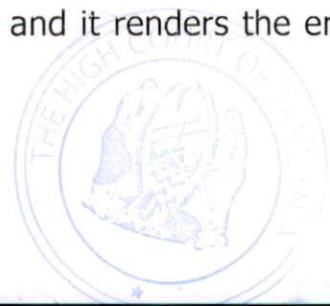
To back up his contention, the Counsel invited the Court to refer to the decision of the High Court of Uganda in the Landmark case of **Uganda Vs. Commissioner of Prisons, Ex-Parte Michael Matovu**, [1966] 1 EA, at p.514, His Lordship, Sir Egbert Udo Udoma held:



".....as a general rule of practice and procedure, an affidavit for use in Court, being a substitute for oral evidence, should only contain statement of fact and circumstances to which the witness deposes either of his own knowledge or.....such an affidavit should not contain extraneous matter by way of objection or prayers, issues or legal argument or conclusion".

To link his argument and the authority cited hereinabove, the Counsel underlined that, paragraphs 19, 21, 22, 23, 25, 27, 28, 29, 30, 32, 34 (a), (b), (c), (d), (e) and 35 (i), (ii) and (iii) of the Applicant's affidavit all contain prayers, issues or arguments contrary to the provision of the law under Order XIX, Rule 3 (1) and (2) of the CPC. To buttress his contention, he cited the cases of **Director Mkuranga District Council Vs. Issa Baradiya and James Benard Njau**, Misc. Land Application No. 304 of 2019; and **MMG Gold Limited Vs. Hertz Tanzania Limited**, Misc. Commercial Case No. 118 of 2015 (All unreported).

Based on the above submission and the authorities cited by the Counsel for the respondents in support of the raised PO, Mr. Matondo stressed that, the argumentative matters exhibited in the applicant's affidavit such as phrases like denied the right to be heard, and violation of the fundamental principle of natural justice in the impugned affidavit, all these indicates that the applicant's affidavit contains extraneous matters and it renders the entire



application incompetent. Finally, he craved the Court to strike it—out the application with costs.

Responding to the 2nd point of preliminary objection, Mr. Michael Deogathias Mgombozi (Personal Representative of the applicant), firstly, acceded to the position of the law under Rule 24 (3) (a) of the Labour Court Rules GN. No. 106 of 2007 as stated by the Counsel for the respondents. However, he disagreed with the contention that the names of the applicant were not included in the affidavit, and further added that it was not necessary to include the addresses of the parties because the essence of writing parties' addresses in the affidavit is only to effect the service of the documents to the other party in relation to the case and nothing more. He maintained that, the party is at liberty to choose the convenient address for him or her to effect the respective services of the relevant documents. This is why a party usually prefer to write the address of his or her lawyer or personal representative, for a reason that it is them who usually deals with the case.

He averred that, as long as the names of the applicant are clearly indicated, therefore, the question whether the applicant's address was indicated or not, or whether the same does not belong to the applicant, in his view, not fatal. He argues that, it doesn't matter whether the address indicated in the applicant's affidavit belongs to the applicant or his personal representative, as both serves one purpose.

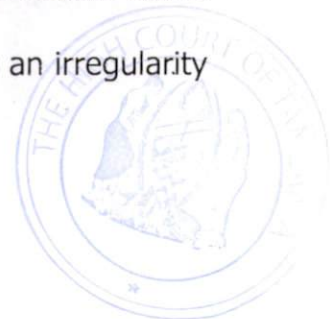


In view of the above submission, Mr. Michael urged this Court to find the raised PO unmerited, hence worth to be overruled.

Replying to the 1st limb of PO, Mr. Michael submitted that, it is so important to note that, the affidavit in issue is an affidavit in support of the Labour Court Revision and not an ordinary affidavit. Being not an ordinary affidavit, the same is guided by Rule 24 (3) (a) of the Labour Court Rules GN, No. 106 of 2007 and not by Order XIX, Rule 3 (1), (2) of the CPC. He however conceded the facts that, paragraph 35 of the applicant's affidavit contains issues and paragraph 38 contain prayers, hence complied with the law.

He asserted that, Order XIX, Rule 3 (1) and (2) of the CPC (supra) cited by the Counsel for the respondents is misconceived as the same does not apply in any affidavit deposed in support of the Labour Application. He cited the case of **Johnson Mwakisoma Vs. Ipsos Tanzania Limited**, Revision No. 975 of 2019 [2021] HCT at Dar Es Salaam to fortify his assertion. In this case, this Court (M. Mnyukwa, J.) observed that: -

"...Now borrowing the words of Judge Mipawa (as he then was) in the case of Reli Assets Holding Company Ltd Vs. Japhet Kashmir and 1500 Others (cited above), the court stated that, "omission of the applicant to include paragraph (c) and (d) of Rule 24 (3) of the Labour Court Rules so as to form part of the affidavit it is an irregularity which goes to the root of the matter.....".



Mr. Michael maintained that, the impugned affidavit did not contravene any law by having prayers and reliefs. He submitted that, the authorities and the provision of the law cited by the Counsel for respondents are distinguishable with the case at hand, hence the first limb of preliminary objection also is unmerited.

I have dispassionately considered and weighed the rival arguments from both parties in line with the points of preliminary objections raised by the Counsel for the respondents. I have further gone through the impugned affidavit deposed by the applicant and carefully considered the Court records and the labour laws applicable and practice. To begin with, I will start to determine the 2nd point of preliminary objection as submitted by the parties.

According to the Counsel for the respondents, the application is incurably defective for being supported with fatally and incurably defective affidavit which contravenes Rules 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007. As hinted above, having perused the applicant's affidavit, I noticed that the address of the respondents indicated therein, truly reflects what is quoted and referred to by the respondents' Counsel in his submission. Rule 24 (3) (a) of GN. No. 106 of 2007 requires a clear and concise statement of the names, description and addresses of the parties. It read:

"Rule 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 Added].

My understanding from the above provision of the law (Rule 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007) is that, an affidavit should give a thorough names, descriptions and addresses of the parties. For better appreciation, understanding and clarity of the impugned paragraph 3 (i), (ii) and (iii) of the applicant's affidavit, I find it apt to reproduce the contents thereof as hereunder:

"3. THAT, The names, Description and Address of the Parties: -

i. **The Applicant name and Description of the Applicant, the name of the Applicant is as apparently shown in the notice of the Application and in support of the Affidavit.**

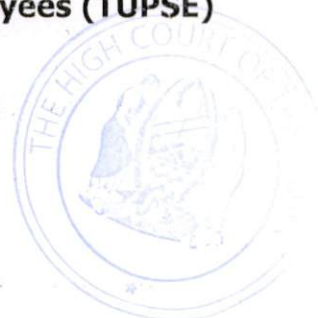
ii. **Address of the Applicant for service of the Applicant is:**

General Secretary,

Tanzania Union of Private Security Employees (TUPSE)

Kawawa Road/Lindi Road,

DCC Business Park, Machinga Complex,



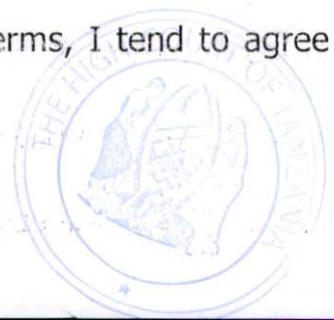
**3rd Floors, Wing B, P.O. Box 25175,
Dar Es Salaam, Mobile 255 743 183 708.**

- iii. Address of the Respondent for service of the Respondents' address of the Representative is: -

Bonite Bottlers Limited & IPP Group Ltd,
Shiri Matunda – Moshi, Mailing Address,
P.O. Box 1352, Moshi – Kilimanjaro.
[Bold is mine].

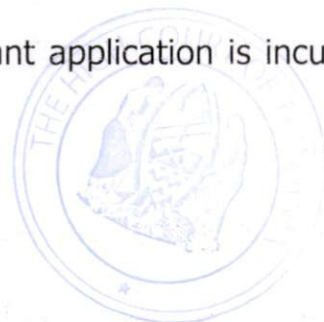
From the above quoted words, it is ostensibly clear that the names of the applicant are missing in as much as description of the applicant is concerned, and I do not think that, the above description presents a clear and concise description of the names and physical address of the applicant whose names are Hamis Abdallah Minda. In my considered view, not only the names of the applicant should have clearly and precisely described him including his physical address, but also more details were required to have been described. As correctly submitted by the Counsel for the respondents, in the circumstances of this case, it is too hard to establish whether the applicant is a natural person or legal person, something which renders the affidavit incurably defective. As such, a defective affidavit usually produces an incompetent application before the Court.

In similar way, since the provision of Rule 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007 is coached in mandatory terms, I tend to agree



with the Counsel for the respondents that, the applicant's affidavit is fatal and incurably defective. It is worth noting that, although the cases cited by the learned Counsel for the respondents in support of his position are of the same Court (High Court) which are not binding upon me, the same, cannot form a basis for easily departing from them merely on the ground that they are persuasive. It is settled that, the Court cannot lightly depart from its own decision if coherency, consistency and predictability of the law is to be maintained. The above position was clearly put in the right perspective by My sister Hon. Mansoor, J., when she dealt with the case of **David David Mbunda Vs. Stanley Joachim Mmanyi**, Misc. Land Appeal No. 80 of 2013, HC Land Division (unreported). See also the cases of **Ledger Hotel & Resort (Plaza Bahari Beach) Vs. Zebediya W. Chikoya** (supra) and **Cleophas M. Manyangu Vs. Association of Local Authorities of Tanzania**, Revision No. 436 of 2022 (Both unreported) cited by the Counsel for the respondents. It follows therefore that, to depart from own decision one need to have strong reasons for that. I thus, find the above decisions highly persuasive in the matter under consideration and therefore subscribe to them all by their holding.

For the reasons stated hereinabove, I see no need to labour on the first limb of preliminary objection as by so doing that will be an academic exercise in which I am not prepared to indulge in. Consequently, I uphold the 2nd point of preliminary objection for a reason that, the instant application is incurably



defective for being supported with fatally and incurably defective affidavit which contravenes Rules 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007.

As to the way forward, I thus proceed to strike out the application for being defective, hence incompetent before this Court with no order as to costs. If at all the applicant wishes to pursue for his right, he is at liberty to file a fresh Application for Revision but subject to the Law of Limitation Act, [CAP. 89 R.E. 2019]. It is so ordered.

DATED at MOROGORO this 14th day of February, 2024.



M.J. CHABA

JUDGE

14/02/2024

Court:

Ruling delivered under my hand and Seal of the Court in Chambers this 14th day of February, 2024 in the presence of the Applicant, and Mr Bicole Muyani, a representative of the 1st respondent, and in the absence of the 2nd Respondent.




S. P. KIHAWA

DEPUTY REGISTRAR

14/02/2024

Court:

Right of the parties to appeal to the Court of Appeal of Tanzania fully explained.




S. P. KIHAWA

DEPUTY REGISTRAR

14/02/2024