

**UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
HIGH COURT OF TANZANIA  
BUKOBA SUB REGISTRY  
AT BUKOBA  
ORIGINAL JURISDICTION**

**LABOUR REVISION NO. 6 OF 2023**

*(Arising from CMA/KAG/BUK/8/2023/13/2023 of the Commission for Mediation and Arbitration at Bukoba)*

**COSTANTINE GEDALIA ----- APPLICANT**

**VERSUS**

**KAGERA SUGAR LIMITED ----- RESPONDENT**

**RULING**

Date of last Order: 12/02/2024

Date of Ruling: 12/02/2024

**BEFORE: G.P. MALATA, J**

When this matter came for hearing of the Preliminary Objection this court *suo motto* raised a point of law on whether the application has been prepared and presented in compliance with mandatory provision of Rule 24 of the Labour Court Rules, 2007.

This court invited the parties to address on compliance or not of the above referred rule and its effect.

Mr. Matete Peter learned counsel for the applicant admitted that, the application has been preferred in contravention of Rule 24 of the Labour Court Rules, 2007 as such, he opined that, the remedy thereof is to struck it out.

Mr. Mosses Karua learned counsel for the respondent shared similar stand with Mr. Matete learned counsel that, the application is incompetent for none compliance with mandatory provision of law. He thus opined that, the remedy to struck it out.

This court has gone through the applicant's labour revision and noted that, the application was filed by way of notice of application supported by an affidavit setting out only facts, whereas Rule 24 of the Labour Court Rules, 2007 requires that, such application shall be filed by presenting **one**, notice of application, **two**, chamber application and **three**, affidavit setting out; **first**, facts, **second**, statement of legal issues and **third**, reliefs sought.

In the result therefore, it goes without saying that, the application is incompetent for failure to abide with the mandatory provision of the said Rule, thus I am inclined to agree with both counsels' submissions. The next question now is what is the remedy to such application?

It is now settled law that, an incompetent application or appeal cannot be adjourned or withdrawn for, principally, there is nothing to adjourn or withdraw as it was emphasized

in the case of **Ghati Methusela Vs. Matiko Marwa Mariba, Civil Application No. 6 of 2006 (unreported)** in which the Court of Appeal categorically stated that: -

*"It is now established law that an incompetent proceeding, be it an appeal/application, etc, is incapable of adjournment, for the Court cannot adjourn or allow to withdraw what is incompetently before it: **See Leons Ngalai Vs. Hon Justin Salakana & The Hon. Attorney General.**"*

On the foregoing authority the remedy available to an incompetent application or appeal is to strike it out. Having found that the application is incompetent, I hereby accordingly strike it out.

**IT IS SO ORDERED**

**DATED at BUKOBA** this 12<sup>th</sup> February, 2024.



G.P. Malata

**JUDGE**

12/02/2024

**DELIVERED at BUKOBA** this 12<sup>th</sup> February, 2024.



G.P. Malata

**JUDGE**

12/02/2024