

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT KIGOMA**

**REVISION NO. 10 OF 2015**

**JUMANNE GAUDENCE..... 1<sup>st</sup> APPLICANT**  
**SAMSON SAMWEL..... 2<sup>nd</sup> APPLICANT**  
**IDDI KAGIZO..... 3<sup>rd</sup> APPLICANT**  
**KASSIM JUMA..... 4<sup>th</sup> APPLICANT**  
**JOHNSON KIGOGO..... 5<sup>th</sup> APPLICANT**

**VERSUS**

**MENEJA SHIRIKA LA POSTA.....RESPONDENT**

**RULING**

*Date of Last Order: 11/04/2018*

*Date of Ruling: 18/04/2018*

**L.L.Mashaka, J.**

This ruling is in respect of preliminary objection raised by the respondent through his Counsel Erick Maximillian whether this application revision was filed within time.

During hearing of preliminary objection, applicants enjoyed the services of Mr. Ignatius R. Kagashe, Advocate while Mr. Eric Maximillian, Principal Legal Officer appeared for the respondent. The preliminary objection was argued orally before the Court.

Principal Legal Officer for the respondent submitted that, the award subject to revision was delivered on 8<sup>th</sup> April 2014 but the application for

revision was filed in this Court on the 27<sup>th</sup> May 2015 contrary to Section 91(1)(a)&(b) of the Employment and Labour Relations Act No. 6 of 2004, which inter alia provides that an award can be revised within 6 weeks of the date of award or of the date the applicant discovers the defect if the alleged defect involves improper procurement. That this application was filed after one year which is equal to 52 weeks. In that regard he prayed to the Court to dismiss the application for being time barred.

In reply, Learned Counsel for the applicants submitted that he did not represent the applicants at the CMA. That the applicants engaged him recently and has to consult with his clients because this point of objection has taken him by surprise. Learned Counsel prayed for a short adjournment to consult with his clients for 5 minutes.

The prayer was granted for a short adjournment to enable Learned Counsel for the applicants to consult with his clients. After the short break, Learned Counsel was in a position to respond to the preliminary objection. That the affidavit in support of the application does not include the chronological events leading to this present application. Learned Counsel contended that since the preliminary objection has come from the bar, he prayed to respond to the objection as follows. That the CMA award was delivered on the 08/04/2014 and the applicants expeditiously filed Revision No. 3 of 2014 on the 17<sup>th</sup> April 2014. That it transpired on the 06<sup>th</sup> November 2014, before His Lordship Mipawa, J in the presence of the applicants and absence of the respondent struck out the application on account of being incompetent. His Lordship Mipawa, J granted leave to the applicants to file a fresh application within 6 (six) months from the date of

the Court order. That on the 19<sup>th</sup> January 2015, the applicants filed Revision No. 1 of 2015 which again did not pass the test of suitability and competence before the Court and again His Lordship Mipawa,J in the presence of the applicants and Ms. Zuhura Pinde, Advocate for the respondent struck out the application for being incompetent and granted leave to the applicants to file a fresh application for revision within 90 days. After the Court order, the applicants filed this present application for Revision No. 10 of 2015 on the 27<sup>th</sup> May 2015 within the 90 days granted to them.

On account of those facts, Learned Counsel humbly submitted that this application is not time barred and prayed to the Court to continue to determine based on merit. That the affidavit does not contain these facts to the previous revision applications but produced copies of the rulings by His Lordship Mipawa, J for reference by the Court if it deems fit to refer to them.

In rebuttal, Principal Legal Officer for the respondent prayed to reply as follows. That parties are bound by their pleadings, thus the applicants were required to plead those facts which have been pleaded by their Advocate in their affidavit. That the facts regarding the orders issued by Hon. Mipawa,J (as he then was) have not been pleaded in the applicants' affidavit and cannot be pleaded at this stage when the Court is adjudicating on the preliminary objection for Counsel for the applicants has solely to rely on the pleadings which in his case it is the applicants' affidavit and its annexures or attachments and not on unpleaded facts. He referred Rule 24(2)(f) of the Labour Court Rules, GN No. 106 of 2007 which

requires the applicants to attach the documents to be relied upon on the notice of application and the provision is couched in mandatory terms using the word "shall".

He humbly submitted that since the rulings relied upon by the Counsel for the applicants were not attached to the applicants' affidavit, have to be disregarded. That the parties are bound by their pleadings, while adjudicating the preliminary objection and the Court cannot go out of the pleaded facts to adjudicate on the preliminary objection raised.

After the submissions by parties on the preliminary objection raised by the respondent, the Court duly observed defects and note this application offends Section 44(1) of the Advocates Act, Cap 341 RE 2002 for failure to show the name of drawer, also offends Order VI, Rule 15(3) of the Civil Procedure Code, Cap 33 RE 2002 for lack of verification of the facts deposed by the deponents/verifiers at the verification clause, there is no signature by the verifiers. Also the format of the jurat of attestation has not complied with the format provided under Sections 5 & 10 and the Schedule thereon, to the Oaths and Statutory Declarations Act, Cap 34 RE 2002. Learned Counsel for the applicants addressed the Court whether the application properly moved the Court.

Learned Counsel for the applicants submitted that the verification clause is not duly signed by the verifiers, but it was his humble submission that the same is not fatal for the Court to close doors to the applicants to pursue their rights.

He further submitted that should the Court hold that the verification clause is defective, the affidavit be struck out and the applicants who have

tirelessly and diligently pursue their rights be granted leave to file a proper affidavit.

The other point on lack of name of the drawer, Learned Counsel argued that the Rungwe and Co. Advocates is an artificial person and cannot endorse. That to endorse means "*to put one's signature*" and since Rungwe and Co. Advocates is an artificial person cannot be a person to endorse. However Learned Counsel contended that under Section 44(1) of Cap 341 RE 2002 does not include an affidavit, that it is not an instrument referred to hence it does not require such endorsement.

In a nutshell, Learned Counsel submitted that should the Court satisfy itself to the defects on the verification clause and non compliance to Section 44(1) of the Advocates Act, Cap 341 RE 2002, he humbly prayed for the interest of justice, that the application be struck out with leave to file a proper application for revision.

In reply, Principal Legal Officer for the respondent in respect of the no name of the verifiers at the verification clause, submitted that the defect is consequential and the remedy is to struck out the same. He prayed the same be struck out with no leave to refile, since the applicants have been filing defective applications and the said applications have been shown in the rulings submitted by Learned Counsel for the applicants. That should the Hon.Court grant leave to file fresh application as prayed for by the applicants then this Court be pleased to order costs incurred to prosecute this matter to the respondent.

Having heard submissions by both parties and after a thorough perusal of the Court records, the issues for determination is whether or not this application for revision was filed within the time limit prescribed under the law and whether or not the Court has been properly moved to determine this application.

On the first issue that the matter is time barred for being filed out of the time limit provided under Section 91(1)(a)&(b) of the Employment and Labour Relations Act No. 6 of 2004, which states that:

*"Section 91(1) Any party to an arbitration award made under Section 88(8) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award:-*

*(a) Within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;*

*(b) If the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact."*

As correctly submitted by Principal Legal Officer of the respondent, a CMA award can be revised within 6 weeks of the date of award or of the date the applicant discovers the defect if the alleged defect involves improper procurement. According to submission by Learned Counsel for the applicants and the Rulings of this Court, which this Court takes judicial notice under Section 59(1)(a) of the Tanzania Evidence Act, Cap 6 RE 2002,

the applicants filed Revision No. 3 of 2014 on the 17<sup>th</sup> April 2014, which is within the 6 weeks provided under the law. The CMA award was delivered at the CMA on the 08/04/2014. This Revision No. 3 of 2014 was struck out by His Lordship Mipawa,J on the 06<sup>th</sup> November 2014 in the presence of the applicants and in the absence of the respondent because the application was incompetent. His Lordship Mipawa,J grant the applicants leave to file a fresh application for revision within 6 months from the date of the Court order. The applicants filed Revision No. 1 of 2015 which also was incompetent and struck out by His Lordship Mipawa,J and leave was granted to file a fresh application within 90 days. The applicants diligently filed this present application on the 27/05/2015 within 90 days which were granted by this Court. Therefore this application for revision was filed within time at the first instance and it is not time barred. Preliminary objection raised by the respondent has no merit and is overruled.

The Court suo motu raised the defects affecting the application, which offends Section 44(1) of the Advocates Act, Cap 341 RE 2002 for failure to show name of the drawer and Order VI, Rule 15(3) of the Civil Procedure Code, Cap 33 RE 2002 for lack of verification of the facts deposed by the deponents /verifiers at the verification clause, they failed to sign the verification clause. Also the format of the jurat of attestation has failed to comply with the format provided under Sections 5 & 10 and the Schedule, to the Oaths and Statutory Declarations Act, Cap 34 RE 2002. Learned Counsel for the applicants concede to the verification clause not duly signed by the verifiers, but submitted that it was not fatal. On the non-compliance to Section 44(1) of the Advocates Act, Cap 341 RE 2002, he

concede to the fact that Rungwe and Co. Advocates is an artificial person and cannot endorse, however he contended that under Section 44(1) of Cap 341 RE 2002 does not include an affidavit, that it is not an instrument and does not require such endorsement.

Section 44(1) of the Advocates Act, Cap 341 RE 2002 provides that:-

*"every person who draws or prepares any instrument in contravention of Section 43 shall endorse or cause to be endorsed thereon his name and address; and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the said requirements shall be liable on conviction to a fine not exceeding two hundred shillings."*

To appreciate the expression of the word "instrument" as provided under Section 43(3) of Cap 341 RE 2002 stipulates that:-

*"For the purpose of this Section and Section 44 the expression "instrument" does not include:-*

- (a) A will or other testamentary instrument;*
- (b) An agreement under hand only which does not and is not intended to operate as a deed under the Land Act;*
- (c) A letter of power of attorney; or*
- (d) A transfer of stock or shares containing no trust or limitation thereof."*

According to the expression provided above, it states the instruments which do not qualify to be an instrument for the purposes of Section 44(1) of the Advocates Act. Hence an affidavit is an instrument which requires



endorsement thereon together with name of drawer and address. Under Section 44(2) of the Advocates Act, it is unlawful for any registering authority to accept or recognize any instrument unless it purports to bear the name of the person who prepared it endorsed thereon. Hence this Court was not supposed to accept this application for lack of name of drawer on the notice of application, chamber summons and affidavit.

The Court finds this application for revision suffers from the said defects which are fatal and render the application incompetent. The only remedy available is to struck out as prayed for by Learned Counsel for the applicants.

The Court raised the defect observed at the verification clause, the failure by the deponents/verifiers to verify the facts deponed which offends Order VI, Rule 15(3) of the Civil Procedure Code, Cap 33 RE 2002 and failure to comply to the format of jurat of attestation at the affidavit as required under Sections 5 & 10 and the Schedule thereon, to the Oaths and Statutory Declarations Act, Cap 34 RE 2002. However Learned Counsel for the applicants did not submit on these two points of objection.

Though Learned Counsel for the applicants failed to submit, the Court finds these defects are apparent on the affidavit deponed by the applicants, deponents/verifiers failed to verify what they stated; hence fatal for it offends the mandatory requirement under Order VI, Rule 15(3) of the Civil Procedure Code, Cap 33 RE 2002 which states:-

*"Order VI, Rule 15 (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties*

*pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

*(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verified upon information received and believed to be true.*

***(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*** "[Emphasis is mine]

This is a mandatory requirement that the verification clause shall be signed by the person making it; the verifiers stated at the verification clause their names and provided a date and place at which it was said to be verified but there is no signatures of the verifiers as required under Order VI, Rule 15(3) of the Civil Procedure Code. The deponents who are the 5 applicants failed to sign the verification clause, hence renders the affidavit incurably defective.

Another point is the defect observed in the jurat of attestation which does not comply with the mandatory requirements of Section 5 & 10 and the Schedule thereon, to the Oaths and Statutory Declarations Act; Cap 34 RE 2002. Section 5 and 10 of Cap 34 RE 2002 stipulates that:-

*" Section 5 Every oath or affirmation made under this Act shall be made in the manner and in the form prescribed by rules made under Section 8."*

*"Section 10 provides: Where under any law for the time being in force any person is required or is entitled to make a statutory declaration, the declaration shall be in the form prescribed in the Schedule to this Act:*

*Provided that where under any written law a form of statutory declaration is prescribed for use for the purpose of that law such form may be used for that purpose."*

The Schedule to Cap 34, RE 2002 states that:-

*This Declaration is made and subscribed by the said A.B. who is known to me personally (or who has been identified to me by .....; the latter being known to me personally) this .....day of .....*

} Signature of the person making the declaration

*(Signature, qualification and address of the person taking the declaration)."*

The format of the jurat of attestation at the affidavit in support of the application is only known to the deponents/verifiers and does not comply with the format provided under the above cited provisions, hence renders the affidavit incurably defective. The provisions of Section 5 and 10 of Cap 34 RE 2002 are mandatory requirements which have to be complied with.

The defects duly observed by the Court suo motu renders the affidavit in support of this application for revision incurably defective and is accordingly struck out. The application for revision has no legs to stand, for it suffers from lack of name of drawer which offends Section 44(1) of Cap 341 RE 2002 and was not supposed to be accepted by the Court

registry as provided under Section 44(2) of same Act. This application is incompetent to move the Court and is accordingly struck out of the Court register.

For the interest of justice, I grant the applicants leave to file a competent application for revision within 30 days from today.

Principal Legal Officer of the respondent has failed to substantiate and provide any substance of proof that the application for revision filed by the applicants is frivolous. The prayer for costs has no merit. No order to costs.

So ordered.



L.L. Mashaka

**JUDGE**

18/04/2018