

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION NO. 331 OF 2016

AMINA MHONGOLE.....APPLICANT

VERSUS

MEDICAL STORES DEPARTMENT (MSD) RESPONDENT

RULING

Date of Last Order: 28/02/2018

Date of Ruling: 10/05/2018

L.L.Mashaka, J.

This ruling is in respect of the legal issue raised by the Court suo motu upon the Counter Affidavit opposing this application for revision filed by the applicant. The issue was whether Counter affidavit has properly moved the Court in terms of Section 44(1) of the Advocates Act, Cap 341, RE 2002, for lack of name of drawer.

Senior State Attorney Mwitasi submitted that the decision in **George Humba Vs. James M. Kasuka**, TBR Civil Application No. 1 of 2005, Court of Appeal of Tanzania at Mwanza (unreported) met with similar situation raised suo motu by the Court in the interpretation of Section 44(1) of the Advocates Act, on whether the pleadings should bear the name of the drawer or not. The Court of Appeal ruled among other things, that it is only unqualified person who is not an advocate who has to provide his or

her name revealing the drawer of such pleadings before the Court. That the section does not make it mandatory for a qualified person an advocate or State Attorney to provide the name of the drawer. That to place the name of the drawer of pleadings drawn by a law firm or Attorney General's Chamber is not necessary, because those documents have been prepared by a law office which constitutes a qualified person, as per ruling in the cited case by the Court of Appeal.

He further submitted that apart from what he submitted, he noted that the previous Counter Affidavit which he had filed was inserted a name of the drawer by that latter counter affidavit only bear the office which drew it and the title of the drawer being a Senior State Attorney and signature. According to the cited case of **George Humba (supra)**, Senior State Attorney submitted that it was not fatal.

It was his humble submission that counter affidavit was in line with the law and be taken to have properly moved the Court.

On that material date the Court adjourned the matter to give time to Learned Counsel for the applicant since Learned Counsel for the applicant was absent to make a reply. State Attorney for the respondent held brief for Learned Counsel for the applicant.

On the 28th February 2018, Learned Counsel for the applicant shortly submitted that, after going through the documents; the counter affidavit, the name of the drawer was not endorsed on it. That Section 44(1) of the Advocates Act, provides the requirement of endorsing a name of the

drawer which has not been shown on counter affidavit. That the counter affidavit was liable to be struck out because it violates Section 44(1) of the Advocates Act, Cap 341 RE 2002.

In rejoinder Senior State Attorney for the respondent contended that it was not disputed that Section 44 of Cap 341 RE 2002 requires instruments prepared should be endorsed the name of the drawer but there is a decision of the Court of Appeal of Tanzania cited during submission in chief which states that the name of a drawer is mandatory to unqualified persons, but in a case of Attorney General who is a qualified person to draw the documents. By simply stating that the document has been drawn by the Attorney General is enough without placing a name of the drawer. That the notice of opposition has been signed by a Senior State Attorney who drew the document, the signature is proof that the document was drawn by the Attorney General Chambers. In different parts of counter affidavit, the Senior State Attorney who drew the document wrote his name signifying he was the drawer.

It was their humble opinion that the notice of opposition and counter affidavit were in line of the law, and that they are competent documents before this Honourable Court.

Having heard parties' submissions and gone through the Court record at hand, the issue for determination is whether or not pleadings from the office of the AG need no name of the drawer thereto or be endorsed as stipulated under the law.

Under the provisions of The Office of the Attorney General (Discharge of Duties Act) No. 4/2005 particularly Section 5(3), the Office of the Attorney General has different officers discharging duties on behalf of the AG which provides that;

"S. 5(3) The provisions of sub section (2) shall apply in relation to the Deputy Attorney General, Law Officers and State Attorney appearing in court on behalf of the Attorney General."

From the provisions above it is clear that officers discharging duties on behalf of the Attorney General are to be known to the Court not only by appearance during hearing but also when preparing Court pleadings and cause the same to be endorsed as per Section 44(1) of the Advocates Act, Cap 341 R.E 2002. The Counter Affidavit drawn and filed by Senior State Attorney who is a registered Advocate as per Sections 2 and 3 of the Advocates Act, Cap 341 R.E 2002 ought to have shown his name thereto or to cause the same be endorsed. Therefore the Counter Affidavit is not endorsed contrary to Section 44 (1) of the Advocates Act, Cap 341 R.E 2002 which requires name of drawer of a document to endorse or cause the same be endorsed. Section 44 (1) of the Advocates Act Cap 341 R.E. 2002 provides that, *"every person who draws or prepares any instrument in contravention of S 43 shall endorse or cause to be endorsed thereon his name and address;"*

In the case of Ramadhani **Sood Balenga Vs Hans Aingaya Macha**, Land Case No. 66/2013, it was held that:

"The plaint in question was signed by "C.E.R.W &Co Advocates and Global Chambers. These are partnerships or firms, duly registered under the Business Name Act, Cap 214 R.E 2002 and they are composed with Advocates as partners. The partners in these law firm or partnership are Advocates who are enrolled as Advocates and they hold in their individual names certificates to practices as legal practitioners. With respect, these Firms or Partnership are not legal practitioner or advocates recognized by the Advocates Act and thus they are not persons entitled to practice as advocates under the Advocates Act. C.E.R.W & Co Advocates and Global Law Chambers are not Advocates or legal practitioners recognized by the law. There are not any such persons as C.E.R.W & Co. Advocates and Global Law Chambers called to the bar and enrolled under S.2 of the Advocates Act and their names are not registered in the roll of Advocates. C.E.R.W & Co. Advocates and Global Law Chambers cannot legally sign and or file any pleading in the Courts.

The endorsement of Court pleadings is an irregularity in procedure and so the pleadings endorsed by persons not enrolled as a legal practitioner or advocates renders such process/pleadings defective."

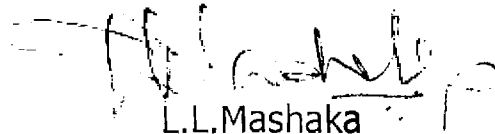
The position above fits greatly to this matter where the Counter Affidavit at hand there is no name of the drawer. The Court of Appeal of Tanzania case of George Humba (supra) is distinguishable to this case because there was a name of the drawer an advocate on the affidavit while in this counter affidavit there is no name of drawer. Therefore the Counter Affidavit has no name of the drawer contrary to Section 44 (1) of the

Advocates Act, Cap 341 R.E 2002 as explained earlier. The Senior State Attorney who is not known has failed to endorse his name as the drawer.

The Counter Affidavit is defective and is hereby struck out from the Court register.

For meeting good ends of justice between the parties, using powers vested in this Court under Rule 55(1) and (2) of the Labour Court Rules, Government Notice No. 106/2007, hereby grant the respondent leave to file proper Counter Affidavit out of time within 5 days from today.

So ordered.



L.L. Mashaka

JUDGE

10/05/2018