

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION. NO. 550 OF 2019

BETWEEN

OTTU ON BEHALF OF MWANAISHA

JUMA & OTHERS..... APPLICANTS

VERSUS

UBUNGO GARMENTS LIMITED.....RESPONDENT

RULING

Date of Last Order: 02/06/2020

Date of Ruling: 24/07/2020

Aboud, J.

This is an application for substitution of a party made under Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) and (f), 24 (3) (a) (b) (c) and (d) and Rule 55 (1) (2) of the Labour Court Rules, GN No. 106 of 2007 (herein referred as the Rules). The applicant moved the Court for the following orders:-

- i. This Honourable Court be pleased to grant
an order of substitution of TREASURY

REGISTRAR in lieu of UBUNGO GARMENTS
LIMITED as a part to this application.

- ii. Any other relief as the Court may deem fit
and just to grant.

In the course of writing this ruling the Court observed that the Court is not properly moved to determine the application at hand. The provisions cited by the applicant in this application do not empower this Court to hear and give the order sought. The applicant cited Rule 24 and its sub-rules as is indicated above which is very proper because all applications before this have to be supported by affidavit with exception to application for review as is provided under Rule 27 of the As to the Rules. As regard to Rule 55 (1) (2) of the Rules also cited above, it only empowers the Court to adopt any appropriate procedures in circumstances where there is lacuna. Rule 55 (1) (2) provides that, I quote:-

“55 (1) Where a situation arises in proceedings or contemplated proceedings which these rules do not provide the Court may adopt any procedure that it deems appropriate in the circumstances

(2) In the exercise and performance of its powers and functions, or in any incidental matter, the Court may act in a manner that it considers expedient in the circumstances, to achieve the objects of the Act and, or the good ends of justice”.

Therefore, the above position of the law spells about the procedure to be used once the matter is properly filed before the court and not otherwise. In such situation the applicant was supposed to cite provision(s) of other law which moves the Court to determine the application at hand, but he failed to do so.

It is the established principle that failure to cite proper provision or incomplete citation of enabling provision of the law makes an application incompetent and the only remedy is to strike it out. This was also the position in the case of **Edward Bachwa & Another Vs. The Attorney General & Another**, Civ. Appl. No. 128 of 2006 (CA) DSM (unreported), where the Court held that, wrong citation of the law, section, subsection or non citation of the law will not move the court to do what is asked and renders the application incompetent.

Assuming that the court is properly moved, I asked myself if there is any case pending in this court of which one of the parties is titled **UBUNGO GARMENTS LIMITED** with whom the applicant intends to substitute with TREASURY REGISTRAR and I find none. I have also considered the submission by both parties and record of the Court which reveals that, there is no pending application between the parties before this Court. As rightly submitted by the respondent's Counsel the last application made by the applicant was Misc. Appl. No. 193 of 2018, which they withdrew on 11/07/2019 before Hon. Muruke. The relevant Hon. Muruke's order stated as follows:-

"Upon prayer by applicant counsel Mr. Stephen Mboje counsel for applicants to withdrawn the application to plead other necessary parties successor in title of Ubungo Garments Limited, (respondent), Miscellaneous Labour Application number 193/2018 is marked withdrawn."

On the basis of the above order the application no. 193 of 2018 was marked withdrawn. That being the position, the applicants application for substitution of a party has no any legal stance because

there is no pending application between the parties at hand which will justify the sought order.

In the result I find the present application is incompetent before the Court. Thus, the application is struck out accordingly.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

I.D. Aboud

JUDGE

24/07/2020