

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

MISCELLANEOUS LABOUR APPLICATION NO. 672 OF 2019

BETWEEN

PATRICK ITULE..... APPLICANT

VERSUS

DIAMOND TRUST BANK (T) LIMITED..... RESPONDENT

(Originating from Revision Application No. 405 of 2018)

RULING

Date of Last Order: 27/05/2020

Date of Ruling: 17/07/2020

Aboud, J.

This ruling is in respect of the preliminary objection raised by respondent's Counsel against the application for extension of time to file Notice of Appeal to High Court of Tanzania out of time. The preliminary objection is to the effect that:-

- a) This Application is incompetent for it is supported by a fatally and incurably defective affidavit which contravene the provisions of Rule 24 (3) (a), (c) and (d) of the Labour Court Rules, GN. No. 106 of 2007 (herein the Labour Court Rules).

Parties were ordered to file their written submission in respect of the preliminary objection raised. Only the respondent complied with the Court's order and the applicant did not file his submission. Hence, the Court decided to enter a default decision as in accordance with Rule 37 (1) of the Labour Court Rules.

During hearing the respondent was represented by Mr. Arnold Luoga, learned Counsel. Arguing in support of the preliminary objection Mr. Arnold Luoga submitted that the application is improperly before the Court for being supported by fatally and incurably defective affidavit which contravenes the provisions of Rule 24 (3) (a), (c) and (d) of the Labour Court Rules.

He further argued that, it is on record the applicant in this matter has not complied with the requirement of the aforementioned provisions of the law. He added that, the application is defective and the same ought to have been struck out forthwith. To support his argument he cited the case of **Mobax Telecoms (T) Limited vs. Charles Albertos Gugu, Lab. Div., DSM, Revision Appl. No. 203 of 2011.**

From the above premise Mr. Arnold Luoga prays this court to sustain the objection and strike out the application.

Having carefully considered the submission from respondent's Counsel, Court records, as well as relevant labour laws and practice, my observation and decision on the raised preliminary objection is that, the format of affidavit in labour matters is quite different with affidavits in normal civil cases. The affidavit in Labour matters is governed by Rule 24 (3) of the Labour Court Rules. The relevant rule directs the way to follow in filling of affidavits in Labour Court for labour matters. For easy of reference I will quote such Rule *in extenso*:-

"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 is mine).

It is my considered view that the deponent must comply with the requirements of the affidavit in order for it to be regarded as legally accepted affidavit from the bosom of the law. Thus, to ignore compliance of those requirements as provided by the governing rules of affidavit renders it defective. This is the position in the case of **D.B. Shapriya and Co. Ltd v. Bish International BV, Civil Application No. 53 of 2002 CAT**, where the Court of Appeal of Tanzania held that:-

"Affidavit has been defined as a written document containing material and relevant facts or statement relating to the matters in question or issue and sworn by the deponent before a person or officer duly authorized to administer any oath or affirmation or take any affidavit. **It follows from this definition that an affidavit is governed by certain rules and requirements that have to be followed.**"
(emphasis added).

In the application at hand, I entirely and respectfully agree as rightly with Mr. Arnold Luoga that, the affidavit in question is incurably defective as it contravenes the specific governing Rule 24 (3) (a), (c) of the Labour Court Rules. The affidavit in question does not contain the names, description and addresses of the parties as well as the legal issues. Therefore, the applicant failed to comply with the requirements of the mandatory provisions Rule 24 (3) (a), (c) of the Labour Court Rules. The importance of legal issue that arise from the material facts was emphasized by this Court in the case of **Aidan Amon Vs. Mwananchi Communication Ltd.** Rev. No. 841 of 2018, where it was held that:-

“Statement of legal issues and reliefs sought by a party in the supporting affidavit to the application before this Court’s proceedings is so vital, that, failure of which renders the affidavit incompetent before the Court, thus leaves the application with no legs to stand, hence incompetent”.


Also in the case of **Reli Assets Holding Co. Ltd. vs. Japhet Casmil & 1500 Others**, Lab. Div. TBR. Rev. No. 10 of 2014, it was

held that since the applicant did not follow the rules and requirements, the affidavit falls in the quagmire of being called a defective affidavit per se.

As regards to the objection that the affidavit does not contain the relief sought. In my view such objection does not stand because the applicant specifically stated at paragraph 15 of the relevant affidavit that the application is supported by the relief sought in the chamber summons.

On the basis of the above discussion I find the applicant contravened Rules 24 (3) (a) and 24 (3) (c) of the Labour Court Rules. Hence the preliminary objection raised by the respondent has merit and is hereby upheld. That being said, the present application is struck out for being incompetent before the Court. In the interest of justice leave is granted to the applicant to re-file proper application on or before 30/07/2020 if he still wishes to per sue the matter.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written in a cursive style.

I.D. Aboud

JUDGE

17/07/2020