

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

**MISCELLANEOUS LABOUR APPLICATION NO. 121 OF 2020**  
**BETWEEN**

**ANNA MASANGATI**  
**JOSEPHAT NAMPUNJU**  
**COSTANTINE KUNAMBI & 61 OTHERS.....APPLICANTS**

**VERSUS**

**PANASONIC BATTERY TANZANIA CO. LTD.....RESPONDENT**

**RULING**

Date of Last Order: 06/07/2020

Date of Ruling: 24/07/2020

**Aboud, J.**

The application is made under section 11(1) of the Appellate Jurisdiction Act Cap 15 R.E 2002, section 94 (I) (e) of the Employment and Labour Relation Act (herein the Act) and Rule 56(1) and 55(1) of the Labour Court Rules, GN No.2007 (henceforth the Rules) read together with Rules 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) of the Rules.

The 64 applicants filed this application which calls upon this Court to make the following orders:-

1. That, Court be pleased to grant an extension of time to file notice of appeal.
2. That this Honourable Court pleased to extend time for application to file an application for the certification of point of law to be determined by the Court of Appeal of Tanzania against the decision of Madam Muruke, J. given at Dar es Salaam on the 22<sup>nd</sup> day of March, 2019. In Miscellaneous Application No. 288 of 2018.
3. Costs to follow events.

During hearing the respondents' counsel raised preliminary objection which are to the effect that:-

1. The Court does not have jurisdiction to hear and determine the application in view of section 57 of the Labour Institutions Act, 2004, Rule 54 of the Labour Court Rules, 2007 GN. No. 106 of 2007 and Rule 10 of the Court of Appeal Rules, 2009.
2. The application is incompetent for being supported by an affidavit having a defective verification clause.

Hearing of the preliminary objections proceeded by way of written submission and, both parties were represented. Mr. Sylvester Eusebi Shayo represented the respondent while Mr. Luguwa was for the applicants.

Arguing in support of the first preliminary objection Mr. Sylvester Eusebi Shayo submitted that, there is no provision to the effect that the Labour Court shall certify the point of law. He stated that, this is the position taken by the Court of Appeal in **Jacob Massawe vs. Thomas Secondary School**, Misc. Appl. No. 601 of 2016, Mashaka, J. (unreported) at page 8 & 9 which also quoted the case of **Tanzania Teachers Union vs. The Chief Secretary & 3 Others**, Civil Appeal No. 96 of 2012, Court of Appeal of Tanzania at Dar es Salaam (unreported).

Mr. Sylvester Eusebi Shayo strongly submitted that, certification is no longer a precondition to the intended appeal; therefore the application for extension of time to obtain the certificate of point of law is of no consequence and an abuse of Court process. He thus, prayed for the applicant's second prayer to be expunged from the application.

As to the second preliminary objection Mr. Sylvester Eusebi Shayo submitted that, paragraphs 12 and 13 of the applicant's affidavit are arguments which this Court has no jurisdiction to consider. He argued that, this Court has no jurisdiction to consider the matters stated in the mentioned paragraphs because they consist arguments that the decision of this Court by Hon. Muruke. J was unsatisfactory; therefore no Judge of this Court can revise such decision.

Mr. Sylvester Eusebi Shayo further submitted that, the statements in paragraphs 12 and 13 of the relevant affidavit are hearsay and inadmissible. That they are information obtained from advocate Barnabas Luguwa who has not taken any Oath and has not filed any affidavit to own such statements as required under Order XIX Rule 2 (1) and (2) of the Civil Procedure Code Cap. 33 RE. 2019. He added that, the position was well enunciated in the case of **Uganda vs. Commissioner of Prisons exparte, Matovu 1966 EA 514 at 520** where it was held that:-

"The affidavit sworn to by the counsel is also defective. It is clearly bad in law. Again as a rule of practice and procedure, an affidavit for

use in Court, being a substitute for oral evidence, should only contain elements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true. Such an affidavit must not contain an extraneous matter by way of objection or prayer or legal arguments or conclusion”.

Mr. Sylvester Eusebi Shayo went on to submit that, the verification clause of the relevant affidavit has defects, that the applicants in this application are many, but in its verification it reads “...are true to the best of my personal knowledge” which implicates that this affidavit has been made by just one applicant. He added that, from the outset it marks that this application has been made by a single applicant and not otherwise. He therefore stated that such affidavit has defective verification clause and the Court should struck out the entire application. To robust his argument he cited the case of **ZTE Corporation vs. Benson Informatics Limited t/a Smart Commercial** Case No. 188 of 2017 at page 4, the last paragraph Hon. Songoro, J. (unreported).

Mr. Sylvester Eusebi Shayo therefore prayed that the preliminary points of objection be sustained, and this application be dismissed with costs for want of merits.

In response Mr. Luguwa for the applicants conceded to the first preliminary objection and prayed that the second prayer in his application be expunged from the records. As to the second preliminary objection he stated that the alleged paragraph 13 of the affidavit does not exist. With regards to paragraph 12 he submitted that it is the requirement of Labour Court Rules to disclose legal issues in the affidavit. He therefore prayed for the Court to dismiss the preliminary objection and determine the matter on merit.

In rejoinder the respondent's Counsel reiterated his submission in chief and prayed for the application to be dismissed.

After going through Court record pertaining to this application, the preliminary objections at hand, the relevant laws and parties' submissions with eyes of caution, I find the issues to be determined are; whether the Court have jurisdiction to hear and determine the application in view of section 57 of the Labour Institutions Act, 2004, Rule 54 of the Labour Court Rules, 2007 GN No.106 of 2007 (the

Rules) and Rule 10 of the Court of Appeal Rules, 2009 (Court of Appeal Rules). Second, whether the application is incompetent for being supported by a defective affidavit.

As to the first preliminary objection as rightly submitted by both parties, appeal from the Labour Court to the Court of Appeal is automatic and does not require leave or certification of point of law. This is specifically provided under the provision of section 57 of the Labour Institutions Act. which is to the effect that:-

“Any party to the proceedings in the Labour Court may appeal against the decision of that Court to the Court of Appeal of Tanzania on a point of law”.

The above legal position was well elaborated in the Court of Appeal case of **Tanzania Teachers Union** (supra) where the Court made it clear by declaring that:-

“For the avoidance of doubt, the right of appeal from the Labour Court under section 57 of the LIA shall no longer be conditional or predicated in obtaining leave to appeal or certification of point of law by High Court”.

This Court is bound by the above decision. Therefore this Court will not belabour too much in the first preliminary objection because it has merit and respondent correctly prayed it be expunged from the court records.

Turning to the second preliminary objection that the application is incompetent for being supported by defective affidavit, that it contains arguments and defective verification clause, I have noted both parties' submissions. Firstly, it is worth to note that an affidavit is governed by certain rules and requirements that have to be followed. And an affidavit in labour employment matters is governed by the provision of Rule 24 (3) of the Rules. Therefore deponent must follow the same. The relevant Rule provides that:-

"24(3) - The application shall be supported by an affidavit, which shall clearly and concisely set out;-

(a) The names, description and address 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 added)

Therefore, it is an established principle and the mandatory requirement of the Rules that the affidavit in labour employment matters should contain legal issues/arguments and the prayers/relief sought by the deponent. This position was emphasized in the case of **Raphael Nangumi V. Desktop Production Limited**, Revision No. 193 of 2018, HCLD at Dar Es Salaam, (unreported), Muruke, J, held that:-

“It must be understood that the Labour Court as a specialized court and Division of the High Court has its Labour Laws and Rules enacted and passed by the legislature with the aim of guiding the Labour Court to achieve its purpose. Affidavit in Labour and Employment matters is governed by rules and requirements

as spelt out in Rule 24 (3) (a) (b) (c) and (d) above of the Labour Court Rules GN. No 106 of 2007. Therefore a deponent must follow the same.”

On the basis of the above discussion it is evident that, an affidavit in labour application has its format which is quite different from other affidavit applied in normal civil cases. Therefore, the case of **Uganda vs. Commissioner of Prisons exparte, Matovu** (supra) which held that, the affidavit should not contain prayer or legal arguments or conclusion is inapplicable to the present application.

Also the respondent alleged that, the verification clause is defective because the contents of paragraph 12 and 13 of the affidavit in question are information received from the advocated. I have gone through the relevant affidavit and observed that, it only have 12 paragraphs as rightly submitted by the applicant. Therefore, the submission based on paragraph 13 is baseless and misconceived. As regard to paragraph 12, in my view the respondent concentrated in reading the heading of the relevant paragraph when he argue that, this Court has no jurisdiction to determine its content. At

subparagraph II of the paragraph in question the applicant specifically stated that, they are shortcomings in the decision intended to be challenged to the Court of Appeal, hence this Court was not called upon to determine the same.

On the allegation that they are information obtained from the applicant's advocate, I have read the contents of the paragraph in question. In my view this Court is not in a position to ascertain the applicants' ability to know if is their own information or were obtained from their advocate as alleged by the respondent. That being the case, such an objection did not constitute pure point of law because it needs facts and evidence to be proved.

I have also gone through the record and noted suo motto that the applicants in this application are 64 in total number. However, in the notice of application and affidavit in support of the application only three applicants, ANNA MASANGATI, JOSEPHAT NAMPUNJU, and CONSTANTINE MSHANGA have signed the relevant documents on behalf of 61 others. And at paragraph 9 of the affidavit the undersigned applicants stated that, they were granted leave of this court pursuant to Rule 44 (2) of the Rules to represent 61 others. Rule 44 (2) of the Rules provides that, I quote:-

"44 (2) - Where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the Court shall in such case give at the complainant's expenses, notice of the institution of the suit to all such persons either by personal service or where it is from the number of persons or any other service reasonably practicable by public advertisement or otherwise, as the Court in each case may direct".

In my perusal of the court record, I found there is no order of the court to prove that fact. Failure to attach the relevant order makes the whole application incompetent because the Court cannot solely rely on unproved information and written evidence (joint affidavit) of those three applicants. That being said, I find the present application is incompetent before this court because the three

applicants appeared to represent the other 61 applicants on their own motion without leave of this Court.

Therefore, this court finds no need to labour much on discussion of verification clause because the application is defective in total. Regarding the first preliminary objection it is crystal clear that appeal from the Labour Court to the Court of Appeal is automatic and does not require leave or certification of point of law. So the applicants' prayer of expunging the same has merit but the fact that the application at hand is improperly filed before the court, the prayer goes with smoke.

In the result I find the present application is incompetent and the only remedy is to strike it out. Thus, the application is struck out from the Court's registry and, for the interest of justice the applicants are granted leave to re-file proper application if they still wish to come to court. The application is to be filed on or before 05/8/2020.

It is so ordered.



I. Aboud

**JUDGE**

24/07/2020