

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 742 OF 2018**

**BETWEEN**

**ROBERT S. LOVA ..... 1<sup>ST</sup> APPLICANT**

**MOHAMED MANJOLE ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**MINISTRY OF NATURAL**

**RESOURCES AND TOURISM.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

**Date of Last Order: 04/05/2020 & 26/05/2020**

**Date of Ruling: 03/07/2020**

**A. E. MWIPOPO, J.**

The respondents have filed Notice of the Preliminary Objection on 08/12/2018 to be determined by this Court on the first hearing date of the application. The Notice of Preliminary Objection contains one point of Law that:

1. The affidavit in support of the application is defective for containing lies and untrue statement.

On 04/05/2020 the court ordered the hearing of the Preliminary Objection to proceed by way of written submissions.

The respondents who were represented by the Office of the Solicitor General submitted on the preliminary objection that the affidavit sworn by the 1<sup>st</sup> Applicant namely Robert Lova in the first paragraph shows that the applicants in the present revision application and in the referral before the Commission for Mediation and Arbitration are four (4). The names of applicants includes Robert Nova, Adam Ally Magula, Mohamed Manjole and Edwin Mhagama. The affidavit shows that the 1<sup>st</sup> Applicant is representing other applicants as named above in this application. The respondent is of the view that there is nothing in the application and it's supporting affidavit which shows that the 1<sup>st</sup> Applicant obtained a leave to representing other applicants.

The respondent argued that the affidavit contains some facts which are lies and untrue for the reason that the present revision have only two applicants as per pleadings and not four as it was provided in the affidavit. He prayed for the Court to strike out the entirely application since defective affidavit cannot support the application. To support his argument the respondent cited the case of **Ignazio Messina v. Willow Investment SPRL, Civil Application No. 21 of 2001, Court of Appeal of Tanzania, (Unreported)**.

In reply, the applicant submitted that in the present application there are only two applicants namely Robert Lova and Mohamed Manjole. It is also the truth that the in the dispute referred to the

Commission for Mediation and Arbitration there were four (4) complainants. The Complainants before the commission were the applicants and other two complainants namely Ally Magula and Edwin Mhagama. He stated that Ally Magula and Edwin Mhagama were mentioned in the affidavit in association with proceedings before the Commission. He alleges that the 1<sup>st</sup> Applicant was informing the Court that there were 4 Complainants before the Commission. The applicant avers that what was stated in the affidavit is not a lie but rather a misstatement and lack of proper particularization. The misstatement was made without ill motive with the intention of explaining matters which happen to be true.

He was of the opinion that the decision of the Court of Appeal of Tanzania in the case the **Ignazio Messina v. Willow Investment SPRL (supra)** which was cited by the respondent does not apply in the present application since the principle that a lie made on purpose with intention of gaining advantage unjustly goes to the root of the case. In the present case the applicants had no intention to lie. He prayed for the Court to overrule the objection as the misstatement was not fraudulently made and there is no adverse effect to the respondent and the application as a whole.

The applicant submitted further that even if it is found that the affidavit is defective and thus struck out, the same was not supposed to

be the basis for throwing out the application since apart from the affidavit of the 1<sup>st</sup> Applicant, the 2<sup>nd</sup> Applicant applied for and was granted leave to file his affidavit which he filed on 26/03/2019 and is part of the application. Thus, if the 1<sup>st</sup> Applicant Affidavit is struck out for being found to be defective there still remains the 2<sup>nd</sup> applicant's affidavit which supports the application.

In rejoinder the respondents submitted that the misstatement or lack of proper particularization is misleading the Court and at this juncture the affidavit cannot be amended as affidavit is substitute of oral evidence adduced before the Court. The respondent retaliated his submission in chief and prayed for the Court to strike out the application for incompetence.

From submissions from both parties there is no doubt that the applicants in the present application is Robert S. Lova and Mohamed Manjole. The Applicant's affidavit which was sworn by Robert S. Lova states in the first paragraph that the 1<sup>st</sup> Applicant was the first Applicant in the present application as well as in the dispute before the Commission. The 1<sup>st</sup> applicant states further that the other applicants are Adam Ally Magula, Mohamed Manjole and Edwin Mhagama and that he is representing them. Reading through the affidavit as a whole the 1<sup>st</sup> applicant was stating the facts of the application on behalf of the applicants.

As a general rule, an affidavit, being a substitute for oral evidence, should only contain statements of facts and circumstances to which the witness deposes either of own personal knowledge or from information which he believes to be true. See- **Uganda vs. Commissioner of Prisons, Exaparte Matovu [1966] 1 EA 514**. The Court of Appeal in the case **Ignazio Messina v. Willow Investment SPRL (SUPRA)** held that "an affidavit which is tainted with untruth is no affidavit at all and cannot be relied to support an application. The false evidence cannot be acted upon to resolve any issue."

The applicants' affidavit which was sworn by the 1<sup>st</sup> applicant contains untrue statements that there are four applicants in the present application. The applicants' in their submission have conceded that the applicants in the present application are Robert S. Lova and Mohamed Manjole. Ally Magula and Edwin Mhagama were mentioned in the affidavit in association with proceedings before the Commission. He alleges that the 1<sup>st</sup> Applicant was informing the Court that there were 4 Complainants before the Commission. However, reading the affidavit as a whole it appears that all four of them are applicants before this Court which is contrary to the title of the Application and applicants' submission.

An affidavit, being a substitute for oral evidence, should only contain true statements of facts and circumstances which the witness

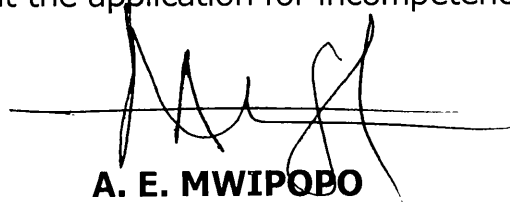
deposes either of own personal knowledge or from information believed to be true. The fact that the 1<sup>st</sup> applicant affidavit contains untrue statement means it is not trustworthy. Further, Affidavit being a statement of evidence taken under oath cannot be amended. Therefore, I find the affidavit is incurably defective and I strike it out.

The applicant submitted that if the affidavit is found to be defective and thus struck out, the same was not supposed to be the basis for throwing out the application since the 2<sup>nd</sup> Applicant applied for and was granted leave to file his affidavit which he filed on 26/03/2019 and is part of the application. Thus, if the 1<sup>st</sup> Applicant Affidavit is struck out for being found to be defective there still remains the 2<sup>nd</sup> applicant's affidavit which supports the application. The Court record does not show that there is any order which was granted to the 2<sup>nd</sup> Applicant to file his affidavit. Therefore the submission by the applicants that the 2<sup>nd</sup> applicant filed his affidavit following Court order have no proof that the Court granted the 2<sup>nd</sup> applicant with such an order.

The said 2<sup>nd</sup> applicant affidavit was filed on 26/03/2019 which was almost 3 months after the respondents filed his notice of preliminary objection on 08/12/2018. The affidavit was filed as supplementary affidavit which means it was supplementing the previous affidavit by the 1<sup>st</sup> Applicant. Since the main affidavit have already been struck out then automatically the supplementary affidavit which by all means does not

qualify to be supplementary affidavit as it was not made by 1<sup>st</sup> applicant to supplement his previous affidavit cannot stand alone. Therefore, the applicants' submission that the application is still supported by the 2<sup>nd</sup> applicants' affidavit have no merits.

Since the alleged 2<sup>nd</sup> applicant's affidavit was filed silently without the order of the Court after the respondent have filed Notice of preliminary objection and that the affidavit is supplementary to the struck out affidavit, then there is no affidavit to support the application after the affidavit sworn by the 1<sup>st</sup> applicant was truck out. As result the present Revision Application is not supported by any affidavit contrary to rule 24(3) of the Labour Court Rules, GN. No. 106 of 2007 hence incompetent. Therefore, I find the preliminary objection to have merits and I hereby strike out the application for incompetence.

A handwritten signature in black ink, appearing to read 'A. E. MWIPOBO', is written over a horizontal line.

**A. E. MWIPOBO**

**JUDGE**

**03/07/2020**