

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 906 OF 2019**

**BETWEEN**

**NATIONAL INSTITUTE OF TRANSPORT ..... APPLICANT**

**VERSUS**

**TWAMBILILE MWAKAJE ..... RESPONDENT**

**RULING**

*Date of Last Order: 27/05/2020*

*Date of Ruling: 24/07/2020*

**S.A.N. Wambura, J.**

This ruling is in respect of a preliminary objection filed by the respondent **TWAMBILILE MWAKAJE** when filing the counter affidavit in response to the application for revision of CMA's award filed by the applicant **NATIONAL INSTITUTE OF TRANSPORT**. It is to the effect that:-

- (i) The affidavit in support of the Notice of Application is improperly verified.*
- (ii) The affidavit is unknown whether the deponent was personally known or identified by the other person before the Commissioner for Oaths.*

*(iii) The name of the Commissioner for Oaths differs.*

With leave of this Court the preliminary objection was disposed of by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

It was submitted by the respondent that:-

- (i) The provisions of Order 6 Rule 15(2) of the Civil Procedure Cap 33 R.E. 2002 have been contravened as the verifier did not verify sub paragraphs 12.(i),(ii),(iii),(iv) to paragraph 14 thus rendering the affidavit defective as was held in the case of **Kurasini Container Terminal Ltd Vs. Mushi Mohamed Chingwi**, Lab Rev. No. 14 of 2017
- (ii) The affidavit in support of the application is defective as the Commissioner for Oaths failed to specifically state whether he knew the deponent personally or the deponent was identified to him contrary to Sections 5 and 10 of the Oath and statutory Declarations Act Cap 34 R.E. 2002 and as held in the cases of **James Daniel Vs. CATSNET Ltd**, Rev. No. 255 of 2017 and **Thomas John Parson Vs. Khalid A. Nongwa** Misc. Land Application No. 954 of 2017.

- (iii) That the affidavit is defective for having two different names as the attesting officers. Whereas the attesting officer is said to be Felix Mtunzi on the stamp the name reads as Felix Fabian Mtunzi who are two different persons.

They thus prayed for the matter to be dismissed as despite of being afforded various opportunities by this Court to file a proper application the applicant has still been negligent by filing incompetent applications.

The applicant challenged the preliminary objection by stating that:-

- (i) The applicant has verified paragraphs 12, 14 and 15 accordingly and that the Court should not deal with technicalities but substantive justice.
- (ii) The affidavit in support of the application complies with Sections 5 and 10 of the Oaths and Statutory Declarations Act as there is an indication that the deponent was introduced to the Commissioner for Oaths by Hans Kwasakyeni who was known to him personally
- (iii) That the third ground needs evidence to prove the same and so cannot stand as a preliminary objection as defined in the cases of **Mukisa Biscuits Manufacturing Company Ltd Vs. West**

**End Distributors Ltd (1969) and VisiblyHeard Openco Vs: TTCL**, Commercial Case No. 201 of 2018 (unreported).

That due to the remarkable changes by the Court of Appeal of Tanzania through the case of **Yakobo Magoiga Kichere Vs. Peninah Yusuph**, Civil Appeal No. 55 of 2017 the Court should deal with substantive justice and not be bound by technicalities as provided for under Article 107(2)(a) of the Constitution of the United Republic of Tanzania.

They thus prayed for the preliminary objection be overruled.

In rejoinder, the respondent retaliated his submissions in chief praying for the application to be dismissed or struck out with costs.

In my view, I believe the 2<sup>nd</sup> ground lacks merit as it is on record that the deponent was introduced to the Commissioner for Oaths by Hans Kwasakyeni only that the Commissioner for Oaths was negligent in deleting the uncalled for words to have the same properly read.

As for the 3<sup>rd</sup> ground one may need to prove that Felix Mtunzi and Felix Fabian Mtunzi are one and the same persons and not different persons all together as allegedly by the respondent. It will also fail to stand as a pure point of law at this juncture.

However as for the 1<sup>st</sup> ground that is purely on a point of law.

Order 6 Rule 15(2) of the Civil Procedure Code Cap 33 R.E 2019 and not 2002 as alleged by the Respondent provides that:-

***"The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true."***

***"Order 19 Rule (1) Affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications on which statements his beliefs may be admitted: provided that the grounds thereof are state."***

***[Emphasis is mine]***

It is therefore a settled principle of law that, the verification clause in the affidavit should clearly state which paragraphs contain facts which are true to the deponent's own knowledge and which ones are true to his information and belief.

The law does not allow a general verification clause by the deponent. Without specifying the respective paragraphs, then the verification clause is rendered defective and automatically the whole affidavit is defective.

This position has been vehemently elaborated in the case of **ANATOL PETER RWEBANGIRA VS THE PRINCIPAL SECRETARY, MINISTRY OF DEFENCE AND NATIONAL SERVICE AND THE HON ATTORNEY GENERAL** (supra) where the court held that it is against the rule governing the modus of verification clause in affidavit and without specification as neither the Court nor the respondents can safely gauge as to which of the deponed facts are based on applicant's own knowledge and which ones are based on his belief. The same was so held in the case **Prosper Ndyamukama vs The Board of Trustees of TANAPA and TANAPA**, Lab. Div., MRGR, Revision No.04 of 2014 reported as case No. 28 LCCD 2015 [Part I] .

It is the applicant who numbered the said paragraphs and sub paragraphs. By omitting to verify them it is expected that someone else would verify on them but that has not been done. I thus uphold this ground of preliminary objection herein raised.

I am aware of the decision in the case of **Yakobo Magoiga Kichere** (supra), however it has been stated that the coming into play of the

Written Misc. Amendment No. 8 of 2018 does not mean that it should be used blindly as it was held in the case of **Sotisambu Village Council and 3 Others Vs. Tanzania Breweries Ltd & 3 Others**, Civil Appeal No. 105 of 2011. (CAT).

Having upheld the 1<sup>st</sup> ground of the preliminary objection herein raised I accordingly strike out the application with costs as per Rule 50 Labour Court Rules, 2007. If the applicant still intends to pursue the matter they should abide to the laid down procedures as this is the 3<sup>rd</sup> application which I have been forced to strike out the application for being incompetently filed by the applicant.

S.A.N. Wambura  
**JUDGE**  
24/07/2020

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**TWAMBILILE MWAKAJE ..... RESPONDENT**

**Date: 24/07/2020**

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicant: }  
For Applicant: } Mr. Hans Mwasakeni Advocate

Respondent: }  
For Respondent: } Mr. Isack Zake Advocate

CC: Lwiza

**COURT:** Ruling delivered today in presence of Mr. Hans Mwasakeni Advocate for the Applicant and Mr. Izack Zake Advocate for the Respondent.

  
F.A. Mtarania  
**DEPUTY REGISTRAR**  
24/07/2020