

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 465 OF 2018

BETWEEN

JOHN WENZAGI.....APPLICANT

VERSUS

K.K. SECURITY.....RESPONDENT

RULING

Date of Last Order: 19/06/2020

Date of Judgement: 28/08/2020

Aboud, J.

This ruling is in respect of the preliminary objections raised by the respondent herein against the applicant's application for revision of the Commission for Mediation and Arbitration (herein CMA). The relevant objections are to the effect:-

- i. That the affidavit in support of application is bad in law for contravening the provision of Rule 24 (3) of the Labour Court Rules.
- ii. That the affidavit in support of application is bad in law for containing defective verification clause.

The preliminary objections were argued by way of written submission. Mrs. Neema Ndossi, Learned Counsel represented the respondent. Unfortunately the applicant did not file submission to challenge the preliminary objection raised. Thus the court proceeded to dispose the preliminary objections ex-parte.

Arguing in support of the first preliminary objection on record Mrs. Neema Ndossi submitted that, the affidavit in support of the application contravenes the whole provision of Rule 24 (3) of the Labour Court Rules, GN.No. 106 of 2007 as there are no description and addresses of the parties as well as the material facts on which the application is based. She further stated that, there are no legal issues which arose from the material facts and the relief sought by the applicant. To strengthen her argument she cited number of cases including the case of **Maziku Lucas vs. William Mwakatobe and Others** (CA) Civ. Appl. No. 01 of 2014 (unreported).

As to the second preliminary objection Mrs. Neema Ndossi submitted that the applicant's affidavit is bad in law for containing defective verification clause. That, paragraph 9 of the affidavit in question is not verified. She therefore prayed for the application to be dismissed.

After considering the respondent's submission and court records, I found that the affidavit in question does not contain the names, description and addresses of the parties as rightly submitted by the respondent's Counsel.

The affidavit in Labour matters is governed by Rule 24 (3) of the Labour Court Rules which the applicant ought to have complied with. The relevant provision is to the effect that:-

"Rule 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 relief sought."

The above provision was emphasized by this Court in the case of **Raphael Nangumi V. Desktop Production Limited, Revision No. 193 of 2018, HCLD at Dar Es Salaam**, Muruke, J., (unreported), where the court in the course of preparation of the

Judgement noted that the affidavit in support of the application was defective and had this to say:-

"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. Since the applicant did not follow the rules the affidavit is defective. The applicant was wrong for not complying with the simplified rules and requirements of an affidavit as spelt out under Rule 24 (3) (c) and (c) which are mandatory to be in the affidavit to form part thereof. The word "The Application shall be supported by an affidavit, which shall clearly and concisely set

out(a).....(b).....(c)....(d) pre-supposes the mandatory requirement in the circumstances.”

On the basis of the above provision and Court’s decision, it is apparent that the affidavit in question has no description, addresses of the parties as well as the material facts on which the application is based, legal issues which arose from the material facts and the relief sought by the applicant. Thus, the affidavit in question does not comply with the mandatory provision of the law.

As to the second preliminary objection, it is crystal clear from the relevant affidavit the deponent omitted to verify the contents of paragraph 9 of the said affidavit. I fully agree with Ms. Neema Ndossi’s argument that the verification clause in issue is in contravention with Order VI Rule 15 of the Civil Procedure Code [CAP 33 Re 2019].

On the basis of the above discussion I find both preliminary objections raised by the respondent have merit and hereby sustained. The respondent urged the Court to dismiss the entire application. In my view that is not the remedy for incompetent applications. It has been decided in a number of cases that the remedy for incompetent

application is to strike it out. This was also the position in the case of **Ezekiel Andrew vs. Africanlife Tanzania**, Lab. Div. DSM Rev. No. 346 of 2009 [2011-2012] LCCD 1.

In the result both preliminary objections are upheld, the affidavit in support of the present application is defective for contravening Rule 24(3) of The Labour Court Rules and, for containing defective verification clause. Therefore, the court cannot entertain an incompetent application; the same is strike out from the Court's registry with leave to file a proper application and for interest of justice applicant is granted leave to file proper application on or before 10/9/2020. This is the last chance given to the applicant to file the application.

It is so ordered.



I.D. Aboud

JUDGE

28/08/2020