

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 485 OF 2019

THEOGENES KATO ISHERWIGAAPPLICANT

VERSUS

NIC BANK TANZANIA LIMITED.....RESPONDENT

RULING

Date of Last Order: 23/06/2020

Date of Ruling: 14/08/2020

Aboud, J.

This ruling is in respect of the preliminary objection raised by the respondent against an application for revision filed herein. The said preliminary objection is to the effect that; the application is bad in law by being supported by a defective affidavit.

The matter was argued by way of written submission. Both parties were represented by Learned Counsels. Dr. M. J. Lugaziya appeared for the applicant while Mr. Lige James was for the respondent.

Arguing in support of the preliminary objection the respondent submitted that, the affidavit in support of the application is incurably defective as it is not dated despite the mandatory requirement of the law that the jurat of attestation must be dated as provided under section 8 of the Notaries Public and Commissioner for Oaths Act [CAP 12 RE 2002] which is to the effect that:-

“Section 8 - Every Notary Public and Commissioner for Oaths before whom any oath or affidavit is taken or made under this act shall state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made.”

Mr Lige James further argued that, the applicant's affidavit does not properly identify the deponent to the Notary Public and Commissioner for Oaths who attested it. He stated that, the Commissioner for Oath did not specify if he knows the deponent personally or he was introduced by another person, the action

which is contrary to section 10 of the Oath and Statutory Declaration Act. To strengthen his submission he cited the case of **Thabitha Mugwani Vs. Pangea Minerals Ltd**, Lab. Rev. No. 48 of 2014, where it was held that:-

“The identity of the deponent in supporting the affidavit must be stated truly in the jurat of attestation. Whether the Commissioner for Oaths knew the deponent in person or has been identified to him by x the later being personally known to the Commissioner for Oaths all that has to be stated truly in the jurat of attestation. That information of identification has to be clearly shown in the jurat.”

The Learned Counsel stated that since the affidavit has no proper jurat of attestation as it is not properly sworn; it is clearly that it does not possess a required legal element to qualifying as an

affidavit. He therefore prayed for the application to be struck out for being incurably defective.

Without wasting valuable time of the court the Learned Counsel for the applicant conceded to the preliminary objection raised and prayed for leave to re-file proper application.

From what I have gathered in submission of both parties and admission of the applicant on the preliminary objection raised, I find the issue to be determined before this Court is whether the applicant's affidavit has been properly filed in court.

I have gone through the affidavit in question and it is apparent that in the jurat of attestation the date was not indicated as rightly contested by the respondent's Counsel. Thus, it is crystal clear the applicant contravened the provision of section 8 of CAP 12 RE 2002. The relevant provision states that, the date when the oath or affidavit is taken or made should be included in the jurat of attestation.

It is also clear that, in the relevant affidavit the Commissioner for Oath did not indicate if he knows the deponent personally or he

was introduced by another person an omission which is contrary to section 10 of the Oaths and Statutory Declaration Act. Now the question to be addressed is what is the remedy of the defects at hand?

The respondent's Counsel prays for this Court to strike out the application for being defective. Now the question to be addressed before this Court is whether the defects in applicant's jurat of attestation amounting to striking out the whole application? The answer is no, I subscribe to the reasoning in the Court of Appeal case of **Sanyou Service Station Ltd. Vs. BP Tanzania Ltd (Now Puma Energy (T) Ltd**, Civ. Appl. No. 185/17 of 2018 where it was held that, the rules of procedure should be followed but not without some sense of justice.

It is my view that the defects in the present application can be rectified without striking out the whole application as prayed by both parties. The Commissioner for Oath omitted to indicate the date in the jurat of attestation when the oath or affidavit was taken. He also failed to state if he knows the applicant personally or he

was introduced by another person. I found those defects can be rectified without affecting the root of the application at hand. This was also the position in the case of **Sanyou Services Station Ltd** (supra) where it was held that:-

“I wish to emphasize that from the foregoing, it can be safely concluded that the Court’s powers to grant leave to a deponent to amend a defective affidavit, are discretionary and wide enough to cover a situation where a point of preliminary objection has been raised and even where the affidavit has no verification clause. Undoubtedly, as the rule goes, the discretion has to be exercised judiciously. On the advent of the overriding objective rule introduced by the Written Laws (Miscellaneous Amendments) (No. 3), Act, 2018, the need of exercising the discretion is all the more relevant.”

In this application I am bound by the above position of the Court of appeal. Consequently I order the applicant to amend his affidavit before the Court to wit, to insert the date of attesting and the Commissioner for Oath to state if he knows the applicant personally or was introduced by another person so as the matter can proceed on merit.

In the result, I uphold the preliminary objection raised by the respondent and order the applicant to rectify the defects in Court chambers as ordered above for the matter to proceed on merit without wasting valuable time of the Court.

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

14/08/2020