

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

REVISION NO. 162 OF 2019

BETWEEN

PRAISEGLORY KILEO APPLICANT

VERSUS

EATHWAYS LOGISTICS LTD. RESPONDENT

RULING

Date: 06/03/2020

MWIPOPO, J.

When this Application came for hearing on 27/02/2020 the learned Counsel for the Respondent Deogratius Kilasa (Advocate) raised Preliminary Objection (P.O.) that the Applicants Affidavit is incompetent for containing a defective verification Clause. He submitted that the Verification Clause shows that all Affidavit paragraphs are true to the best of applicants own knowledge. However, content of paragraph 3(iii) of the affidavit shows that the information contained therein was obtained through information from Nurdin Ibrahim. Therefore the verification Clause of the affidavit which shows that all information contained in the Affidavit were true to the best of applicant's own knowledge was supposed to show that the information in

paragraph 3(iii) of the affidavit was obtained from one Nurdin Ibrahim and he believe the same to be true.

In support of the submission the Applicant cited the case of Anatol Peter Rwebangire Vs. The Principal Secretary, Ministry of Defence and National Service and the AG, Civil Application No. 548/04 of 2008, Court of Appeal of Tanzania, at Bukoba (unreported) where the Court acknowledged the fact that an Affidavit which fails to disclose source of information where the information deposed by the deponent are not of their own knowledge is defective. Relying on this case, the respondent was of the opinion that the Affidavit must show which information are true to deponents own knowledge and which are true to the deponents beliefs. Failure to meet the threshold renders the affidavit defective.

He submitted further that the Applicant who is a female have stated in the introductory part of the Affidavit that she is a male. Therefore the respondent prayed for the affidavit to be struck out since it cannot be relied.

In reply, the learned Counsel for the Applicant David Andindile Advocate submitted that the content of paragraph 3(iii) of the Affidavit is to the effects that the applicant was stating about material facts which she knows from what Nurdin Ibrahim have told her. Therefore the Applicant were verifying her information from her own knowledge.

On the submission of the introduction part of the affidavit to show that the Applicant is a male person, the learned Counsel for the Applicant submitted that the error was typographical one as the applicant is a female. He cited the case of Sanyo Service Station Versus BP(T) Ltd. Civil Application No. 185 of 2018, Court of Appeal at Dar es Salaam (unreported) where the Court held that the defective rule of procedure has to be followed in the defective verification clause with some sense of justice. Relying on the cited decision, he prayed to be allows to amend the affidavit defects.

In rejoinder, the Respondent reiterated the submission in chief and stated that amendment of the Affidavit can not cure the defects.

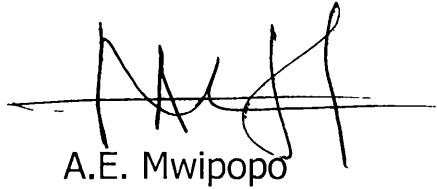
After submission from the learned Counsel for Respondent and the Applicant, I read the Affidavit in dispute. I do agree with the Respondent that the Verification Clause shows that the content of all paragraphs in the Affidavit are true to the knowledge of the Applicant. However, paragraph 3(iii) of the Affidavit containing information from one Nurdin Ibrahim, therefore this is hearsay evidence. The case of Anatol Peter Rwebangira Vs. The principal Secretary, Ministry of Defence and National Service of another cited with approval the decision of the Court of Appeal in the case of Salim Vuai Fom Vs. Registrar of Co-operative TLR(1995) where it was held that: "1. Where affidavit is made on information, it should not be acted upon by any Court unless the source of information are specified.

2. As nowhere in the affidavit, either as whole or in any particular paragraph, it is stated that the facts deposed to or any of them, and if so which ones, are true to the deponent's knowledge, or as advise by his advocate, or are true to his information and belief, the affidavit was defective and incompetent, and was properly rejected by the Chief Justice". The Court of Appeal had the same position in the case of Protas Kongogelo Vs. TTCL, Civil Application on 119 of 2006, CAT at Dar es Salaam. In the present case it is clear that the verification Clause does show that all information in the paragraphs are true to the application own knowledge while there is a paragraph which its source of information is not applicants own knowledge. The source of information in that paragraph is somebody else. Therefore I find the affidavit to be defective.

The remedy for defective affidavit is it renders the application incompetent and nullity as it was held in the case of Justin Joel K. Moshi Vs. CMC Lad Rover (T) Ltd, Civil Application No. 93 of 2009, CAT, at Dar es Salaam. The case of Sanyou Service Station Ltd. Vs. BP Tanzania Ltd (Now PUMA ENERGY (T) LTD) is not applicable in this case since in Sanyou Service Station Ltd case there was no verification Clause in the Affidavit in support of the Application while in the present case there is verification Clause that does not provide true information. Therefore, I hereby strike out this

application for being supported by a defective affidavit. The Applicant is given leave to re-file the Application within 14 days from today.

It is so ordered.

A handwritten signature in black ink, appearing to be 'A.E. Mwipopo', written over a horizontal line.

A.E. Mwipopo

JUDGE

06/03/2020