

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

REVISION NO. 164 OF 2020

BETWEEN

SAID CHOKI.....APPLICANT

AND

**DAR ES SALAAM DEVELOPMENT
CORPORATION..... RESPONDENT**

RULING

Date of Last Order: 24/09/2020

Date of Ruling: 13/11/2020

A. E. MWIPOPO J.

Dar Es Salaam Development Corporation, the Respondent in this application, filed a Notice of the Preliminary Objection (P.O) on 17th May, 2020 containing six points of law. The points of law raised in the P.O. are basically that the Affidavit in support of the Application is defective, the Notice of Application is bad in law and that the application is brought under wrong provision of the law.

The court ordered the hearing of the Preliminary Objection to proceed by way of written submissions. Both parties to the application were represented. The applicant is represented by Mr. George Kawemba,

Advocate, whereas the respondent is represented by Ms. Bahati Mabula, Personal Representative.

The Respondent's counsel submitted in support of the P.O. that the Notice of Application is supported by defective Affidavit which is contrary to Rule 24 (3) of The Labour Court Rules, G.N. No. 106 of 2007. The Affidavit does not contain legal issues arising from material facts, address of the parties and statement of material facts in chronological orders. Moreover, the jurat of attestation does not indicate if the deponent was known to the Commissioner for oath or was identified by a person known to the Commissioner for oath. Also the Applicant verified that information contained in the Affidavit are based on his best knowledge and belief at the same time which is not proper. In support of the argument the Respondent cited the case of **Angyelile Elias Mkumbwa vs. Coca Cola Kwanza Limited**, Misc. Application No. 06 of 2019, High Court Labour Division, at Mbeya, (Unreported).

Further, the Respondent submitted that the Notice of Application is defective for being brought under wrong provision of law, the list and attachment of the documents to be entailed to the application and for not advising the other party to file the Counter Affidavit if he intends. The Applicant also did not cite the moving provision in the application. The applicant prayed for the preliminary objection to be upheld and the application be dismissed.

Replying to the Respondent's submission, the Applicant Counsel submitted that the Affidavit in support of the application does not contravene rule 24(3) of the Labour Court Rules, 2007, as it contained therein material facts in chronological order in paragraph 4 - 7, legal issues arising from material facts in paragraph 8 (i-vii) and the address of the parties are contained in the end of the Affidavit. The Purpose of the Affidavit is to effects services of the document to the parties. That being the case the address can be placed anywhere.

Further, it was submitted by the Applicant that the deponent was known to the Commissioner for oath that is the reason the phrase that is the reason the phrase that deponent was "introduced to me by" was cancelled. Concerning the allegation that the verification clause to show that the words belief and own knowledge cannot being used together the Applicant argued that the use of the word belief does not mean that the belief should be information imported from other source. Even Order XIX rule 3(1) of the Cap. 33 R.E. 2019 does not provide that the statements based on belief should be information received from other sources.

Regarding the defects in the Notice of Application, it was submitted by the Applicant that despite the omission to include statement advising the other party to oppose the application, the Respondent filed his counter affidavit within time. Also, Applicant's allegation that the list of documents

is unfounded as the list of impugned decision was attached. The Applicant prayed for the Court to take judicial notice of the same.

The Applicant further submitted that this application is brought under more than one section which gives jurisdiction to this Court to entertain the matter. The Applicant cited section 94 (1) (b) (d) (e) of the Employment and Labour Relations Act, 2007, rule 24(1), (2) (a) (b) (c) (d) (e) (f), (3) (b) (c) (d) and rule 28(1) (c) (d) (e) of the Labour Court Rules, 2007. The above cited provisions are sufficient to move the Court to hear and determine the application. The Applicant prayed for the preliminary objection be overruled and dismissed with cost.

From above submissions, I will determine each of the point of the P.O. as submitted by the parties.

The Respondent submitted that the defective Affidavit in support of application is defective for failure to contain legal issues arising from material facts, address of the parties, statement of material facts in chronological orders, defective jurat of attestation and the Applicant verified that information contained in the Affidavit are based on his best knowledge and belief at the same time. The Applicant opposed the Respondent submission and argued that the Affidavit has no defects as it was made according to the law.

I have read the Affidavit in issue and I find that it contains material facts in chronological orders in paragraph 4 - 7 and legal issues arising from material facts in paragraph 8 (i-vii). The Affidavit does not contain the address of the parties therein but the addresses are found at the end of the Affidavit. I'm of the opinion that there is no injustice caused to the Respondent by address of the parties to be at the end of the Affidavit as the purpose of the Affidavit is to effects services of the document to the parties. The Respondent herein was able to serve the Applicant with the documents within time which shows that the omission or misplacement did not affect the Respondent.

Further, the jurat of attestation shows that the phrase that deponent was "introduced to me by" was cancelled and leave the part which shows that the deponent was known to the Commissioner for oath. Thus the jurat of attestation in the affidavit was properly made according to the law.

Concerning the Respondent's argument that the verification clause contains the words "belief" and "own knowledge" which cannot be used together, I'm of the opinion that the use of the word "belief" does not mean that the belief should be information imported from other source. Reading the Affidavit, it is clear that there is no paragraph which contain information from another source. Thus, despite of the use of the word

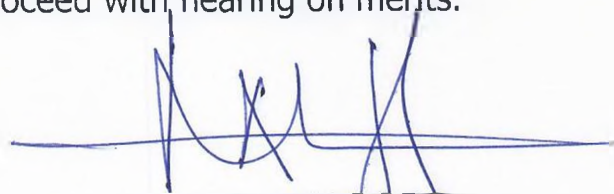
"belief" in verification clause, there is no facts whatsoever in the affidavit which was obtained from other source. The Affidavit in the Labour Court contains legal issues and relief sought which is unique to the affidavit used in normal civil cases. The legal issues and relief sought are not facts but what the Applicant believe to be issues in dispute in the present application and possible remedies before the Court. Thus, it is clear that the case **Angyelile Elias Mkumbwa vs. Coca Cola Kwanza Limited, (Supra)**, cited by the Respondent herein is distinguishable as legal issues and reliefs sought were not considered. Therefore, I find that there was no facts in the Affidavit which the information was obtained from other source.

Regarding the defects in the Notice of Application, the Respondent submitted that the Notice of Application is defective for being brought under wrong provision of law which do not move the Court, for not containing the list and attachment of the relevant documents to the application and for not advising the other party to file the Counter Affidavit if he intends. In reply, the Applicant argued that the Application was properly brought and there are more than one moving provision cited in the Application. The Applicant also stated that despite the omission to entail notice advising the other party to file counter affidavit and the list of documents attached, The Respondent filed his counter affidavit within time and the Commission ruling was attached.

Reading the Notice of Application and accompanied Chamber Summons it is clear that the application is brought under more than one moving provision which gives jurisdiction to this Court to entertain the matter. The Applicant cited among other provisions section 94 (1) (b) (d) (e) of the Employment and Labour Relations Act, 2007, and rule 28(1) (c) (d) (e) of the Labour Court Rules, 2007. The above cited provisions are sufficient to move the Court to hear and determine the application for revision.

Regarding the omission to advise the other part to file counter affidavit and to attach the list of material and relevant document to the application, I'm of the view that the omission is not fatal as there is no injustice caused to the Respondent. The Respondent was able to file counter affidavit, notice of opposition and other relevant documents within time. Also, the Applicant attached the impugned CMA ruling despite omission to attach the list of the document. Thus, I find all points of the Preliminary Objection have no merits.

Therefore, I overrule the objection for want of merits. The Application to proceed with hearing on merits.

A handwritten signature in blue ink, consisting of a series of loops and flourishes, positioned above the printed name of the judge.

A. E. MWIROPO

JUDGE

13/11/2020