

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

REVISION NO. 740 OF 2019

BETWEEN

UAP INSURANCE (T) LTDAPPLICANT

VERSUS

YUDA SHAYO & 6 OTHERS RESPONDENTS

RULING

Date of Last Order: 26/08/2020

Date of Ruling: 18/12/2020

Aboud, J.

This ruling is in respect of the preliminary objections raised by respondent's Counsel, Mr. Benedict Bahati Bagiliye against the application for revision in opposing the decision of the Commission for Mediation and Arbitration (herein CMA). The preliminary objections are to the effect that:-

1. That this Honourable Court has no jurisdiction to hear this application for it is hopelessly time barred.
2. That the Notice of application and the Chamber summons are fatally defective for containing grounds of material facts and the legal issues contrary to the enabling provisions of the law.

3. That the affidavit in support of the application is fatally defective for containing a defective verification for not revealing the true source of information.
4. That the affidavit in support of the application is fatally defective for verifying falsity and swearing falsity before the Commissioner for Oaths and thereby making both the verification clause and the jurat of attestation fatally defective.
5. That the whole application is fatally defective for not revealing and disclosing who the 6 others are.
6. That the Labour Revision No. 740 of 2019 is fatally defective for want of Notice of intention to seek for revision for the following defects:-
 - i. That the purported Notice of intention to seek for revision was filed in Court out of time.
 - ii. That the purported Notice of intention to seek for revision was not served to the respondents.

The preliminary objections were ordered to be argued by way of written submissions. At the hearing both parties were represented by Learned Counsels. The applicant enjoyed the service of Ms. Samah

Salah whereas the respondents were represented by Mr. Benedict Bahati Bagiliye.

Arguing in support of the preliminary objections Mr. Benedict Bahati Bagiliye, Learned Counsel for the respondents withdrew the 1st 6th and the 7th points of preliminary objections and preferred to argue on the remaining points.

Regarding the 2nd preliminary objection on record he submitted that, the law demands that notice of application and chamber summons need only to contain prayers or reliefs sought and not grounds of material facts and legal issues as provided under Rule 24 (2) (a) (b) (c) (d) (e) (f) of the Labour Court Rules, GN. No. 106 of 2007 (herein referred as the Labour Court Rules). It was argued that the applicant's notice of application contained grounds of material facts and legal issues contrary to the provision above, he therefore prayed for the same to be struck out for being defective. To strengthen his submission he cited the case of **Ahmed Mbaraka vs. Abdul Hamad Mohamed Kassam & Another**, Civ. Appl. No. 23 of 2011 (unreported).

Mr. Benedict Bagiliye went on to argue that, the applicant cited irrelevant provisions in the chamber summons. He submitted that, the application is made under section 91 (3) of the Employment and Labour Relations Act, [CAP 366 RE 2019] (herein to be referred as The Act), Rule 24 (1) (a) (b) (c) (d) (e) (f) and Rule 24 (3) (a) (b) (c) (d) of the Labour Court Rules. It is his argument that, the proper provision ought to have been cited in this application is Rule 24 (11) of the Labour Court Rules. He argued that, the law is settled that wrong citation or failure to cite the specific provision of the law is as good as non-citation and renders the application incompetent for failure to move the court correctly. He thus, prayed for the application to be struck out.

Turning to the fourth preliminary objection on record the learned Counsel submitted that, the applicant's affidavit is defective in the sense that the verification clause does not distinguish matters of belief and those in the knowledge of the deponent. To cement his argument he cited the Court of Appeal case of **Salima Vuai Foun Vs. Registrar of Co-op Societies and three others** [1995] TLS 75 and the case of **Anatol Peter Rwebangira Vs. The Principal Secretary, Ministry of Defence and National Service and the**

Hon. Attorney General, Civ. Appl. No. 548/04 of 2018 (unreported) where the importance of specifying the facts known to the deponents knowledge and the ones of belief was emphasized.

It was further submitted that, an affidavit being a substitute for oral evidence should only contain statements of facts and information which the witness deposes either of own personal knowledge. He argued that, the deponent in paragraph 1 of the affidavit introduced himself as the Applicant's Chief Executive Officer however he had falsely verified in the verification clause that, he is the Applicant's Legal Counsel. He added that, the deponent falsely states that the amount to be paid as salary arrears to Getrude Telsphol is Tshs. 1,689,000/= while the figure in the award is Tshs. 1,680,000/=. The Learned Counsel strongly submitted that the affidavit in question contain falsity and untruth information, thus, the same should be struck out.

Responding to the second preliminary objection Ms. Samah Salah submitted that, the fact that the applicant included the grounds for revision of the CMA award in the notice of application and chamber summons is not a fatal error attracting the drastic measure proposed by the respondent. She argued that, the respondent's

second preliminary objection does not meet the test of principles of preliminary objection enunciated in the case of **Mukisa Biscuit Manufacturing Co. Ltd. vs. West End Distributors Ltd.** [1969] EA 696 CA, EA.

The Learned Counsel added that, the respondent's objection against the indication of grounds of an application in the notice and chamber summons is nothing but a mere technicality which has no basis in administration of justice. To support her submission she cited the case of **Abdulnasser Mohamed Vs. Mussa Hussein Juma**, Land Case No. 06 of 2018 HC, Tanga where Hon. Mruma, J., held that:-

'It is high time now for the court to administer substantive justice as opposed to legal technicalities which denies the party of his rights to a fair hearing due to failure to adhere to procedural requirements unrelated to the claim in question'.

She added that, the decision above is also the legal position provided under Article 107A (1) (e) of the Constitution of the United Republic of Tanzania of 1977 [CAP 2], which was also emphasized in

the Court of Appeal case of **Yakobo Magoiga Gichere Vs. Peninah**, Civ. Appl. No. 55 of 2017 (unreported). The Learned Counsel was of the view that, the inclusion of grounds in the disputed documents helps the Court and the applicant to properly prepare for hearing of the matter as the grounds are well stated in advance. She therefore prayed for the relevant preliminary objection to be dismissed for want of merit.

Regarding the preliminary objection of applicable provisions in the chamber summons she submitted that, section 91 (3) of the Act which was cited by the respondents in their submission was not cited by the applicant in the chamber summons as enabling provision. She stated that the Learned Counsel for the respondent misled himself in that aspect. She argued that Rule 24 (11) of the Labour Court Rules proposed to be cited by the respondent's Counsel only gives directions as to which applications can be brought by way of chamber summons but does not give the Court direction or power to grant the requested order. The Learned Counsel strongly submitted that she cited proper enabling provisions in the chamber summons. She added that even if it is found that there is none citation then wrong citation does not render the application incompetent. To cement her

submission she cited the Court of appeal case of **Samwel Munsiro vs. Chacha Mwikwambe**, Civ. Appl. No. 539/08 of 2019.

As to the fourth preliminary objection Ms. Samah Salah submitted that, the respondent has not been able to state which matters deponed in the affidavit could not be in the knowledge of the deponent and the basis of such a conclusion. She stated that in this case the deponent indicated that all facts deponed in the affidavit were within his knowledge. She added that there are no matters of belief to be identified in the verification clause as alleged by the respondent's Counsel. In alternative she argued that, even if it were to be found the verification clause is defective, the defect can be cured by amendments and does not render the application incompetent. She sought her support 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.

Turning to the preliminary objection of defective verification clause and jurat of attestation for verifying falsity, the Learned Counsel submitted that, the question of whether or not the deponent held two positions is a matter of evidence which cannot be determined by way of a preliminary objection. As to the amount to be

paid to Getrude Telsphol she stated that, it was a mere clerical error which can be corrected without prejudice to the respondents. She therefore prayed for the preliminary objections to be overruled.

In rejoinder the respondent's Counsel submitted that, the second preliminary objection raised by the respondents fits within the principles established in the case of **Mukisa Biscuit** (supra) and does not need further evidence to be proved. It was submitted the claim regarding the grounds of material facts and legal issues in the notice of application and chamber summons that, were for making the respondents and the Court to understand the matter clearly have no legal legs to stand. It was also submitted that, if that is the position the law would have clearly stated so. On the remaining preliminary objections, the Learned Counsel reiterated his submission in chief and strongly urged the Court to strike out the application for being accompanied by defective notice of application, chamber summons and affidavit.

After consideration of parties' submissions, court record, the relevant labour laws and practice, I find the issue for determination in this matter is whether the preliminary objections raised by the respondents have merit.

As it is submitted above the respondent's Counsel abandoned some of the preliminary objections raised. So, regarding the second preliminary objection on record the respondent argued that, the notice of application and chamber summons are defective for containing grounds of material facts and legal issues. The Court notes that, its format of the notice of application is governed by rule 24 (2) of the Labour Court Rules. The relevant provision is to the effect that:-

'Rule 24 (2) The notice of an application shall substantially comply with Form No. 4 in the schedule to the Rules, signed by the party bringing the application and filed and shall contain the following information:-

(a) The title of the matter;

(b) The case number assigned to the matter by the registrar;

(c) The relief sought;

(d) An address at which that party will accept notices and service of all documents in the proceedings;

- (e) A notice shall advise the other party that if he intends to oppose the matter, that party shall deliver a counter affidavit within fifteen days after the application has been served, failure of which the matter may proceed ex-parte; and*
- (f) A list and attachment of the documents that are material and relevant to the application’.*

The above provision provides for the mandatory contents of the notice of application which should also be in conformity with form no. LCF 4. As rightly submitted by the respondent's Counsel the grounds for revision are not supposed to be included in the notice of application. I have cross checked the notice of application at hand, as correctly submitted by the respondents' Learned Counsel it contain grounds in which the application is based. The Learned Counsel for the applicant argued that, the inclusion of grounds in the disputed document was for the purpose of helping the Court and the applicant to properly prepare for hearing of the matter as the grounds are well stated in advance. With due respect, that is a very wrong

understanding by the applicant's counsel of what should be contained in the notice of application. I entirely agree with the respondents' Counsel that, if the inclusion of the relevant grounds in the notice of application were necessary the law would have stated so.

In this aspect I wish to state that, if parties would be allowed to come up with their own format of documents to be filled in Court, there will be no uniformity and relevance of the mandatory stipulated provisions of the law as it is in the issue at hand. In my view the inclusion of the grounds for revision in the notice of application was not a mere defect which this court will close eyes on it as the applicant's counsel would wish. The applicant's application is in violation of the mandatory provision of the law which specifically set out the format of the notice of application in this court. That being the position, I say the first preliminary objection raised by the respondents is upheld.

The applicant's Legal Counsel urged the Court not to strike out the application as the defects at hand are minor and can be rectified. In my view the defects in question are not minor and cannot be rectified by the overriding principle. It should be noted that, in this court the notice of application is the document used to initiate

proceedings, so failure to comply with its legal requirement (s) renders it to be defective. Consequently, I find the whole application incompetent for being initiated by defective notice of application and chamber summons.

Having upheld the second preliminary objection I find no reason to belabour much on the remaining points of preliminary objection as the first objection has an impact of disposing the matter at hand. In the result the present application is incompetent and is hereby struck out from the Court's registry. For the interest of justice the applicant is granted leave to file proper application on or before 11/01/2021.

It is so ordered.



I.D. Aboud
JUDGE
18/12/2020