

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 433 OF 2019**

**BETWEEN**

**EXIM BANK (T) LIMITED .....APPLICANT**

**VERSUS**

**AGNESS A. TEMBA ..... RESPONDENT**

**RULING**

Date of Last Order: 31/08/2020

Date of Ruling: 18/12/2020

**About, J.**

In this matter the applicant filed an application for revision against an award of the Commission for Mediation and Arbitration (herein CMA) delivered on 12/04/2019 by Hon. Mbeni M. S, Arbitrator in Labour Dispute No. CMA/DSM/ILA/R.550/17/833. The application is supported by the affidavit of Mikidadi M. Mgoma, the applicant's Principal Officer.

On the other hand the respondent filed a counter affidavit challenging the application. In addition the respondent's Counsel

raised a preliminary objection thereto which is the subject matter of this ruling. The relevant preliminary objection is to the effect that:-

- (i) The application is incurably defective for being accompanied by the defective affidavit.

The preliminary objection was argued by way of written submission. At the hearing both parties enjoyed the services of Learned Counsels. Mr. Fredrick Mbise and Mr. Benson Mphatso appeared for the applicant while Mr. Steven Urassa was for the respondent.

Arguing in support of the preliminary objection Mr. Steven Urassa submitted that, the applicant's application is supported by defective affidavit in the sense that the deponent generalized all paragraphs from 1 to 12 to be true to his own knowledge and belief. He stated that under the circumstance it is difficult to understand which paragraphs are true of his own knowledge and which are his belief. To strengthen his argument he cited the case of **Electrics Inter Co. Vs. Archplan Inter and 2 Others**, HC, DSM, Civ. Case No. 367 of 1998 where it was held that:-

*'The word "and" used between the words knowledge and belief means, in my*

*interpretation both. Thus contents are true both to deponent's knowledge and belief. The affidavit will be defective if contents which are true of the deponent's own knowledge are not severed from those which are true to his belief in respect of which may have to provide grounds'.*

Therefore, the Learned Counsel urged the Court to strike out the application as it was decided in the cases of **Salima Vuai Foun vs. Registrar of Corporative of Society** [1995] TLR no. 75 and the case of **Madeni Kipande vs. Mkoloko Hamis Gayo & another**, HC, Misc. Land Appl. No. 1057 of 2017.

Responding to the application Mr. Fredrick Mbise did not waste precious time of the court and conceded to the preliminary objection in issue. He therefore asked the Court to strike out the application and grant leave to the applicant to file fresh application.

Having gone through and considered the Court's records, labour laws and practice as well as submissions by both parties, it is my view that the issue for determination before the Court is whether the preliminary objection in question is meritorious.

As submitted above the applicant's Counsel conceded to the preliminary objection raised by the respondent. I had a glance on the affidavit in question, as rightly submitted by both parties the deponent did not specify which facts are true of his own knowledge and the ones based on his belief. The relevant verification clause provides as follows:-

*'I **MIKIDADI M. NGOMA**, do hereby verify that all what is stated in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 herein above is true to the best of own knowledge and belief and what is stated in paragraphs 13 (i) (ii) (iii), 14 (i) (ii) (iii) (iv), 15 (i) (ii) are based on the information given to me by my Advocate which I verily believe to be true'.*

As a general rule affidavits must be confined to statements which the deponent is able of his own knowledge to prove and where there are information obtained from other sources they have to be disclosed. The relevance of distinguishing the facts based on knowledge and those of believe was emphasized in the Court of Appeal in case of **Anatol Peter Rwebangira Vs. The Principal Secretary, Ministry of Defence and National Service & The**



**Hon. Attorney General**, Civ. Appl. No. 548/04 of 2018 where it was held that:-

*'It is thus settled law that, if the facts contained in the affidavit are based on knowledge, then it can safely verified as such. However, the law does not allow a blanket or rather a general verification that the facts contained in the entire affidavit are based on what is true according to knowledge, belief and information without specifying the respective paragraphs. In the present application, according to the applicant's verification clause which we have earlier on reproduced, it is not possible to decipher the facts which are true based on the applicant's knowledge and those based on his belief'.*

In that case the Court went on to state that:-

*'We say so because one that is against the rule governing the modus of verification clause in an affidavit; and two, without the specification, neither the Court nor the respondents can safely gauge as to which of the deponent facts are based on the applicant's own knowledge and what are based on his belief'.*

In view of the above decision which is bound to this Court, I find the present application incompetent for being accompanied by a defective affidavit. It is the position of the Court as reflected in a number of cases that, the remedy for a defective application is to strike out it out. Consequently the present application is struck out accordingly as prayed by both parties. However, for the interest of justice the applicant is granted leave to file proper application on or before 04/01/2021.

It is so ordered.



I.D. Aboud

**JUDGE**

18/12/2020