

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 627 OF 2019**

**BETWEEN**

**MENGO FRANK FREDRICK & 72 OTHERS.....APPLICANT**

**VERSUS**

**EAST COAST OIL & FATS LTD..... RESPONDENT**

**RULING**

Date of Last Order: 07/09/2020

Date of Ruling: 18/12/2020

**About, J.**

This ruling is in respect of the preliminary objections raised by the respondent against an application for extension of time to file revision in opposing the decision in Labour Dispute No. CMA/DSM/TEM/307/2017/214/17 of the Commission for Mediation and Arbitration (herein CMA). The preliminary objections are to the effect that:-

- i. The applicant's affidavit in support of the application for extension of time is hopelessly incurably defective for not being signed and dated.

- ii. The applicant's affidavit in support of the application for extension of time is also incurably defective for suffering improper verification clause.
- iii. The applicant's affidavit is further more incurably defective for suffering improper jurat of attestation.

The preliminary objections were argued by way of written submissions. At the hearing of the preliminary objections the applicant was represented by Mr. Ismail Amin, Learned Counsel while Mr. Mwambene Adam, Learned Counsel was for the respondent.

Arguing in support of the first preliminary objection Mr. Adam submitted that, it is trite principle of law that the affidavit should be signed and dated. He stated that in this application it is apparent that the applicant's affidavit lacks signature, date and place where it was taken, which are serious irregularities that goes to the root of the case. In support to his submission he cited the case of **Nicodemus G. Mwita v. Bulynhulu Gold Mine Ltd.**, Revision No. 17 of 2012, [2013] LCCD 1.

On the second ground of preliminary objection Mr. Adam Mwambene submitted that, the applicant's affidavit has two defects.

Firstly that there is no verification to paragraphs no. 2, 3, 4, and 5. He argued that the applicant attempted to verify only the subparagraphs contrary to Order VI Rule 15 of the Civil Procedure Code, Cap 33 R.E 2019 which is applicable by virtue of Rule 55 (1) of Labour Court Rules, GN 106 of 2007 (herein referred as the Labour Court Rules). Secondly, he argued that the purported verification failed to differentiate as to which among those verified paragraphs are true according to his knowledge and which ones were advice from his Counsel which he believe to be true. To robust his argument he cited many cases including the case of **Suleman vs. South British Insurance Co. Ltd.** [1965] E.A 65.

On the third preliminary objection the respondent's Counsel submitted that, the applicant's affidavit is defective for having improper jurat of attestation which is contrary to Section 10 of the Oaths and Statutory Declarations Act, Cap 34 R.E 2019. It was also submitted that, the relevant provision provide the manner in which the jurat of attestation ought to appear in the prescribed form where it is mandatory for a Commissioner of Oath to state and specify in the jurat of attestation how he/she knows the deponent and, if he knows him or he was introduced by someone else. However, the applicant in

this application failed to comply with the relevant legal requirements. The respondent's Counsel argued that such omission renders the whole affidavit incurably defective. He referred this Court to the case of **Peter Nagari Kivuyo v. Mamlaka ya Maji Safi Taka**, LCD 2014, Rev. No. 80 of 2013, Case No.75.

He therefore prays the court to strike out the application for being supported by defective affidavit.

Opposing the first preliminary objection Mr. Amin Mmari submitted that, the applicant's affidavit was duly signed and dated and if there are any defects the same would not have been admitted by the Hon. Registrar.

On the second preliminary objection the applicant's Counsel argued that applicant's affidavit contains proper verification clause and did not leave any matter unattended. It was argued that, the defect in the verification clause does not warrant dismissal of the application but the same can be rectified by amendments. He sought support of his argument from among others in the Court of Appeal case of **Sanyou Service Station Ltd. v. BP Tanzania**, HC, Civil

Appl. No. 185 of 2018, Land Division. at DSM. He therefore, prayed for the relevant objection to be overruled.

On the last preliminary objection, Mr. Amin Mmari submitted that, the jurat was duly sworn by the applicant on 24/09/2019 and was signed on the same date. He admitted that in the jurat it was not stated whether the deponent was personally known by the commission for oath or was introduced to him by someone else. The learned Counsel argued that such a circumstance was also discussed in the case of **Elfazi Nyatenga & Anothers v. Caspian Mining Ltd.** Civil Appl. No. 44/08 of 2017, CAT at Mwanza, where the Court after long considerations of the defective jurat in the interest of justice overruled the preliminary objection and proceeded with hearing of the application.

The Learned Counsel further urged the Court to observe the principle of Overriding objective as provided under Part III Section 6 of Written Laws (Miscellaneous Amendment) (No. 3) Act of 2018. He cited chain of cases to back up his argument. He concluded by a prayer that, the preliminary objections be dismissed so as to let the matter proceed in merit.

In rejoinder the respondent reiterated his submission in chief.

Having carefully considered parties submissions, court records, as well as relevant Labour laws and practice, I find the issue to be determined by the Court is whether the preliminary objections raised by the respondent have merit.

To start with the first preliminary objection the respondent alleged that the affidavit in question is not dated and signed. Unfortunately in his submission the respondent did not specifically state which part of the affidavit was not signed and dated as alleged. With due diligence I have cross checked the affidavit in question and it is apparent that, it is duly signed and dated as rightly submitted by the applicant's Counsel. That being the case I find the first preliminary objection has no merit and is hereby overruled.

Turning to the second preliminary objection, the respondent argued that, the applicant's affidavit is defective because the purported verification fail to differentiate as to which among those verified paragraphs are true according to the deponent's knowledge and which one he believe to be true. On the other hand the applicant's Counsel argued that, the applicant's affidavit contains

proper verification clause. For easy of reference I hereunder reproduce the disputed verification clause:-

*"I, MENGO FRANK FREDRICK being the appointed Representative of the applicants in this application do hereby verify that what is stated in paragraphs 1, 2.1, 2.2, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 5.1 and 5.2 herein above is true to the best of my knowledge and belief."*

Unfortunately the labour laws did not specifically state the manner in which verification clause should be. However, the Labour Court Rules under Rule 55 (1) empowers the Court to adopt any procedure it deems appropriate in the circumstance.

To invoke the powers granted above this Court will apply the provision of the Civil Procedure Code (CAP 33 RE 2019), specifically Order VI Rule 15 (2) which provides as follows:-

*"Order VI Rule 15 (2) the person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verified upon information received and believed to be true."*

Looking at the verification clause in question it is crystal clear that, the deponent did not specify the facts of his own knowledge and the information he received and believed to be true. The position of the law above was emphasized in the case of **Salim Vuai Fom v. Registrar of Cooperative Societies and Three others** [1995] T.L.R. 75. In that case, the deponent did not state the facts which were true of his own knowledge or as advised by his advocate or of information and belief. The Court of Appeal of Tanzania held that the Affidavit was defective and incompetent. It was further observed that where an affidavit is made on information, it should not be acted upon by any court unless the source of information is specified.

The relevance of distinguishing the facts based on knowledge and those of belief was also elaborated in a recent Court of Appeal decision 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'.*

Also 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'.*

Being bound by the Court of appeal decisions cited above, since the deponent in the verification clause did not specify which matters are based on his own knowledge and which one are based on his belief, I find the affidavit accompanying the application is defective,

hence renders the application incompetent. The applicant's Counsel prays the Court to apply the overriding objective and dismiss the preliminary objection in question. In my view as it has been stated in a number of cases, the overriding principle cannot be applied blindly against the mandatory requirement of the law which goes to the root of the matter. Under the circumstances, I am of the view that the preliminary objection has merit.

On the basis of the above discussion, I therefore find no need to exercise my mind on the third preliminary objection because the second preliminary objection has an impact of disposing the matter.

Having upheld the second preliminary objection I find the only remedy for incompetent application is striking out the whole application. Consequently the present application is struck out from the Court's registry for being defective.

It is so ordered.



I.D. Aboud

**JUDGE**

18/12/2020