

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

MISCELLANEOUS LABOUR APPLICATION NO. 503 OF 2019

BETWEEN

HUSSEIN ALLY & 13 OTHERSAPPLICANTS

VERSUS

TANZANIA HIDES AND SKIN

DAR ES SALAAM.....1ST RESPONDENT

CONSOLIDATED HOLDINGS

CORPORATION..... 2ND RESPONDENT

TREASURY REGISTRAR..... 3RD RESPONDENT

ATTORNEY GENERAL..... 4TH RESPONDENT

RULING

Date of Last Order: 01/04/2020

Date of Ruling: 08/05/2020

Aboud, J.

This is an application for extension of time to file application for revision against the decision of defunct Industrial Court of Tanzania in Inquiry No. 24 of 1997 by J.B. Tendwa, Deputy Chairman. The application was made under the provision of Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c), (d) and Rule 56 (1) of the Labour Court Rules GN. 106 of 2007 (herein the Rules). The

application was opposed by Ms. Careen Masonda, State Attorney who raised two preliminary objections on points of law namely:-

- a) The application is incompetent for being supported by an affidavit which contravenes the provisions of Rule 24 (3) (a) (c) (d) of the Labour Court Rules GN. 106 of 2007.
- b) The Application is bad in law for being supported by an affidavit that contains a defective jurat contrary to Section 4 of The Oath and Statutory Declarations Act [CAP 34 RE 2002].

At the hearing of the preliminary objection the applicants were represented by Mr. Hans Mwasakyeni, learned counsel whereas the respondents were represented by Ms. Careen Masonda, State Attorney.

Submitting in support of the first preliminary objection Ms. Careen submitted that, Rule 24 (3) of the Rules provides for guidelines and procedure to be followed when filing Application in this Honourable Court.

She stated that, Rule 24 (3) (a) (c) (d) of the Rules requires the affidavit clearly and concisely to set out, names, descriptions and addresses of the parties, a statement of legal issues that arises from the material facts as well as the relief sought. She submitted that, the joint affidavit filed in this application does not adhere to the requirements stipulated under Rule 24 (3) of the Rules, hence renders the whole application incompetent for being supported by a defective affidavit. To strengthen her submission she referred the cases of **Reli Assets Holding Co. Ltd. Vs. Japhet Casmil & 1500 Others, Rev. No. 10 of 2014 HC Labour Division TBR [2015] LCCD 1** and the case **D.P Shapriya and Co. Ltd. Vs. Bish International B.V**, Civ. Appl. No. 53 of 2002 (unreported).

On the second ground she submitted that, the applicants' joint affidavit is incurably defective, it does not specifically indicate if the deponents have sworn or affirmed according to their religion. She argued that the said affidavit contravenes section 4 (b) of the Oath and Statutory Declaration Act, [CAP 34 RE 2002]. She added that a deponent has to swear or affirm and the same have to be specifically indicated in jurat of attestation. To robust her argument she referred the court to case of **Mtumwa Selemani (Hawa Mtumwa**

Selemani) Vs. The Registered Trustees of the Evangelistic Assemblies of God (T) Kijitonyama Church, Miscellaneous Land Application No. 268 of 2016, High Court, Land Division where Makuru, J. held that:-

“It is apparent that the affidavit ought to be sworn or affirmed by the deponent before the Commissioner for Oaths. It is thus my considered view that it is important for the deponent to declare in the jurat of attestation that she/he swore/affirmed the affidavit before the Commissioner for Oath”.

Ms. Careen therefore prayed for the application to be dismissed with costs in it’s entirety as the joint affidavit is incurably defective.

In rebuttal Mr. Hans Mwasakyeni admitted that the joint affidavit is bad in law but raised a defense that the applicants are unrepresented laymen and they were misled by unqualified person on legal matters. The learned Counsel prayed for the application to be allowed for the interest of justice since the Court of Appeal has developed the overriding objective principle to deal with cases justly

and at proportionate cost which its root source is Article 107 (2) (e) of **The Constitutional of the United Republic of Tanzania**, 1977 as amended from time to time. To strengthen his arguments he cited the case of **Mondoroso Village Council, Sukenya Village Council and Soitsambu Village Council Vs. Tanzania Breweries Limited, Tanzania Conservation Limited, Ngorongoro District Council, Commissioner for Lands and the Attorney General**, Civil Appeal No. 66 of 2017.

After evaluating parties' submissions, applicants' supported affidavit, respondent's counter affidavit, the relevant applicable Labour Laws and practice, I find the issues for determination are whether the applicants' joint affidavit is defective and to what relief are the parties entitled.

On the first issue that whether the applicants' affidavit is defective, I would say, generally in civil matters affidavit is governed by Order XIX of the Civil Procedure Code, [CAP 33 RE 2002]. Its format has been elaborated by the Court of Appeal of Tanzania in the case of **D.B. Shapriya and Co. Ltd. Vs. Bish International BV**

Civil Application No. 53 of 2002, where it was held that:-

“Affidavit has been defined as a written document containing material and relevant facts or statement relating to the matter in question or issue and sworn by the deponent before a person or officer duly authorized to administer any oath or affirmation or take any affidavit. It follows from this definition that an affidavit is governed by certain rules and requirements that have to be followed.”

However, the affidavit filed in this Court is quite different from other affidavits filed in normal civil matters. In this Court affidavit is governed by Rule 24 (3) (a) (b) (c) (d) of the Rules. The relevant rule is to the effect that:-

“The application shall be supported by an affidavit, which shall clearly and concisely set out:-

- a) The names, description and addresses of the parties;

- b) A statement of the material facts in a chronological order, on which the application is based;
- c) A statement of the legal issues that arises from the material facts and;
- d) The relief sought.”

The above provision has been elaborated in a number of cases including the case of **Reli Assets Holding Co. Ltd. Vs. Japhet & 1500 Others Revision No. 10 of 2014 HC Labour Division Tabora Sub-registry (Unreported)**, where was held that:-

“It is my considered opinion that, guided by the Labour laws and Rules that an affidavit in Labour and Employment matters is governed by and large by Rules and requirement as spelt out in Rule 24 (3) (a) (b) (c) and (d) of the Labour Court Rules GN No. 106 of 2007, therefore a deponent must follow.”

In the present application the respondent’s counsel alleged that the application filed in this court was supported by an affidavit which

does not contain description and addresses of the parties, a statement of the legal issues that arises from material facts and the relief sought as required in Rule 24 (3) of the Rules cited above, which renders the whole application defective. I have gone through the disputed Applicant's joint affidavit and indeed it does not comply with the mandatory requirement of the provision cited above. The requirements stipulated in the provision of Rule 24 (3) of the Rules are mandatory and have to be complied with. Since the applicants herein have not complied with the relevant provision, is an omission which renders the application incurably defective.

In this court, an application must be initiated by notice of application and chamber summons supported by an affidavit. Thus, in the event the court found the supporting affidavit is defective, it goes without say that the whole application is left with no legs to stand in this Court and has to be struck out from its Registry.

As regard to the respondent Counsel's submission that the jurat of attestation is defective as it does not state if the deponents sworn or affirmed as is required under the Law, it is crystal clear from the record that, in the relevant affidavit the deponents have not

specifically attested on the basis of their religious faith, instead they both affirm and swear at the same time. The applicants were supposed to attest according to their faith as the normal practice requires that Muslims do affirm while Christians they swear. This is also the position in the case of **Mtumwa Selemani (supra)** the Honourable Judge Makuru (rtd) reflected very clear that a deponent has to either swear or affirm and cannot apply both in attestations. In this application, applicants contravened the relevant position of the law as regard to the affidavit in support of their application as discussed above. Hence the whole affidavit in question is rendered defective.

On the second issue as to the relief of the parties, the Court considered the applicants counsel submission that, the applicants are laymen and were unrepresented so they had no knowledge of law. However, it is a well established principle that ignorance of law is not a defense. Therefore this Court cannot pretend to be blind and ignore this position of the law in the present application.

The Court also noted the applicants' prayer of invoking the overriding objective, but such principle cannot be applied blindly too. This is the position in the case of **Mondoroso Village Council,**

Sukenya Village Council and Soitsambu Village Council Vs. Tanzania Breweries Limited, Tanzania Conservation Limited, Ngorongoro District Council, Commissioner for Lands and the Attorney General, Civil Appeal No. 66 of 2017, Kwariko, J.A. held that:-

“Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the **procedural law which go to the very foundation of the case**”.

On the basis of the above discussion, I have no hesitation to say that the Applicant’s failure to comply with the mandatory provisions of Rule 24 (3) of the Rules impacts negatively the legitimacy of their application to be properly filed in court. The defect in the affidavit that, it has no description and addresses of the parties, no legal issues, relief sought and a proper jurat of attestation goes to the very foundation of the application because that is where the court derives the issues to be determined and identifies the reliefs sought by the applicant.

In the result I sustain both grounds of the preliminary objection that affidavit in supporting of the application is defective for contravening Rule 24 (3) (a) (c) (d) of the Rules. Consequently, I struck out this application for being supported by a defective affidavit. And for the interest of justice the Court grants fourteen (14) days leave to the applicants to file fresh and proper application before the court.

It so ordered.



I.D. Aboud

JUDGE

08/05/2020