

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

REVISION NO. 41 OF 2020

BETWEEN

MICHAEL KABUME..... APPLICANT

AND

KNAUF GYPSUM (T) LTD..... RESPONDENT

RULING

Date of Last Order: 22/09/2020

Date of Judgment: 02/10/2020

A. E. MWIPOPO, J.

The respondent herein namely **KNAUF GYPSUM (T) LTD** filed Notice of the Preliminary Objection (P.O) containing the following points of law:

- i. The Affidavit is defective for containing arguments rather than facts.

The Court ordered hearing of the P.O. to proceed by way of written submissions, the order which complied by both parties.

The Respondent who is represented by Ms. Esther Peter, Advocate, submitted that the Affidavit is defective for containing argument rather than facts. The present application supported by the Affidavit of the Applicant

himself contains argument and matter Applicant cannot verify. The arguments are found in paragraph 20 and 21 the Applicant raised arguments and included prayers on his Affidavit contrary to the rules of preparing an Affidavit. This is contrary to the requirements of Rule 24(2) of GN No. 106 of 2007 which limits an Affidavit to only contain facts and material issues. Under Rule 24 (3) of the Labour Courts Rules, GN No.106 of 2007, the Affidavit shall contain statement of facts and issues derived from the said facts. The nature of the averment in the Affidavit is of legal argument which cannot be contained in an Affidavit as they are not facts nor material issues hence been extraneous arguments included in an Affidavit. An affidavit for use in court, being a substitute for oral evidence, should only contain elements of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true. Such an affidavit must not contain an extraneous matter by way of objection or prayer or legal arguments or conclusion. Thus, Affidavit should have been struck out.

In alternative, the said offensive paragraph cannot be expunged from the Affidavit and the matter to proceed as paragraph 20 and 21 and their sub-paragraphs are the foundation upon which the whole application for revision rests upon. If such paragraphs are expunged, then the whole

revision will collapse and lose meaning. In such instances the court tends to strike out the whole affidavit.

In reply, Mr. Akiza Rugemarila Kabigumila, Advocate for the Applicant submitted that the P.O. is devoid of merit and it is aimed to waste precious time of this honorable court. A preliminary objection should be a point of law and not a matter of facts as it were enunciated in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) E. A No. 696**. Whereby by the Court of Appeal of East Africa had this to say;

"A preliminary objection consists of point of law which has been pleaded or which arises by clear implication, and which if argued as a preliminary point, may dispose of the suit".

The court precede that;

"A preliminary objection is in nature of what used to be a demurrer. It arises a pure point of law which argued on the assumption that all the facts pleaded by the other side is correct and it cannot be raised if any fact has to be ascertained or what is south is the exercise of judicial discretion".

The Respondent has raised a preliminary objection that the Affidavit is defective for containing arguments rather than facts. This phrase by itself is not certain as we ought to have seen disputed paragraphs said to contain arguments are being pointed out. Even if the Respondent would have

pointed out the disputed paragraph 20 and 21 of the Applicant's Affidavit still the said paragraphs contain facts well known and conversant to the deponent and the same has been verified to be true for Applicant's best knowledge and beliefs.

The instant Application is the Labour case whereby its Affidavit is different with other cases. Rule 24 of the Labour Court Rules, 2007 GN. 106 of 2007 provides the contents of the Affidavit of which the Applicant has complied with. This was propounded in the case of **Sophia Kweka Vs. the Director Nabaki Africa Ltd**, Misc. Application No. 242 of 2013, High Court of Tanzania, Labour Division, at Dar es Salaam, (Unreported), whereby it was held that:-

"In my view, the import of rule 24(3) of the Rule, is to prescribe special specie of affidavits peculiar to Labour practice. Affidavit in this Court, are to be extinguished from Affidavits in ordinary civil cases, whose contents are prescribed by law plus judicial precedents which are part of our jurisprudence. It is my considered opinion that by clear specifying contents of affidavit, the law deliberately plain-language contents of affidavits so that parties (particularly unrepresented employees), would not have to be confused by a plethora of precedents regarding proper contents of affidavit"

The cited case of **Uganda Vs. Commissioner of Prison ex parte Matovu (1996) EZ 514** (Reported) is irrelevant, immaterial to this case and therefore extinguishable as it is not a labour case which has got its own

rules otherwise relying on this case (political one), to substitute into labour disputes will occasion into mockery of justice.

The Applicant was of the view that he was narrating facts which are known to the Applicant's best knowledge and skill and the same was verified, we wonder how can Respondent question the knowledge and beliefs of the Applicant? Therefore, the raised preliminary objection is not meritorious and devoid of merits for being a matter of fact than law henceforth, the same should be dismissed with cost.

In rejoinder, the respondent's Counsel retaliated her submission in chief.

I commence the determination of the P.O. by the statement that the Affidavit in Labour Cases before the Labour Court are provided and governed by the Labour Court Rules, G.N. No. 106 of 2007. Rule 24 (3) of the G.N. No. 106 of 2007, provides for the content of the Affidavit in support of the Application. The Rule reads as follows, I quote:-

24(3) 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;

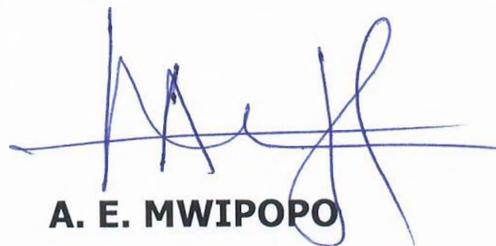
(c) a statement of the legal issues that arise from the material facts; and

(d) the reliefs sought.

This Court in the cited case of **Sophia Kweka Vs. Director Nabaki Africa, (supra)**, held that the Affidavit in Labour Court is special specie of Affidavit peculiar to Labour Practice and is distinguishable from the Affidavit in the ordinary cases.

From the rule, the Affidavit in labour cases contains statement of legal issues arising from the material facts and the relief sought (prayers). In the present application, paragraph 19 and 20 of the Applicant's Affidavit contains the material facts on which the application is based. The contents of paragraph 21 of the Affidavit are legal issues that arose from the material facts.

Therefore, I find the P.O. have no merits and the Affidavit is valid for being made according to Rule 24 (3) of the Labour Court Rules, 2007. The P.O is dismissed and the hearing of the Revision Application to proceed on merits.



A. E. MWIPOPO
JUDGE
02/10/2020