

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 97 OF 2020**

**BETWEEN**

**MUSA KABASELE.....1<sup>ST</sup> APPLICANT**

**SARIA MAUKY.....2<sup>ND</sup> APPLICANT**

**AND**

**NYUMBA YA SANAA & CULTURE LTD..... RESPONDENT**

**RULING**

**Date of Last Order: 28/09/2020**

**Date of Ruling: 13/10/2020**

**A. E. MWIPOPO J**

Nyumba ya Sanaa & Culture Ltd, the Respondent in this application, filed a Notice of the Preliminary Objection (P.O) on 14<sup>th</sup> May, 2020 containing four points of law. The points of law raised in the P.O. are as follows;

1. Notice of Application is not supported by affidavit.
2. Notice of Application and Chamber Summons are made under wrong and or conflicting provision of the law.
3. The Affidavit in support of the Chamber Summons is incurably defective in the jurat.

4. That one Ms. Wagala Hamidu Shungu has no requisite *locus standi* to act on behalf of the Applicant either jointly or severally in the proceedings

The court ordered the hearing of the Preliminary Objection to proceed by way of written submissions. Both parties to the application were represented. The applicant is represented by Mr. Evodius Mguluka, Advocate, whereas the respondent is represented by Mr. Wagali H. Shungu, Personal Representative.

The respondent counsel submitted in support of three points of the P.O. after he decided to abandon the third point of the P.O. Thus, the remaining point of the P.O. are point no. 1, 2 and 4. In the first point of the P.O. the applicant submitted that the Notice of Application is not supported by Affidavit which is contrary to Rule 24 (3) of The Labour Court Rules, G.N. No. 106 of 2007. For that reason affidavit which was filed is in support of the Chamber Summons hence the Notice of Application has no Affidavit to Support it.

On the second point of the P.O., the respondent submitted that the Notice of Application and Chamber Summons are incompetent and untenable for wrong citation. The Applicant cited non existing law which is rule 24 (1) (a) (b) (c) (d) (e) and (f). Also he cited Rule 24 (11) which is not applicable in this application.



The fourth and last point of the P.O. is that Ms. Wagala Hamidu Shungu has no locus to appear as Applicant's Representative as there is no Notice of Representation which was filed in Court to show that he was appointed by the Applicants. The Respondent prayed for the application to be struck out for incompetency.

In reply, the Applicant submitted regarding the first point of the P.O. that Rule 24 (3) of the Labour Court Rules, 2007, does not command that there should be separate affidavit for each aspect in the application but the affidavit by the Applicants covers the entire application.

Then, the Applicant submitted on the second point of the P.O. that citing rule 24 (1) instead of rule 24 (2) was slip of the pen. The Applicant intended to cite rule 24 (2) (a) (b) (c) (d) (e) and (f) of the Labour Court Rules, 2007. It is a slip of the pen and he prays for the leave of the Court to allow for correction of the errors. Regarding rule 24 (11) of the Labour Court Rules, 2007, the Rule provides for any other applications for directions which is applicable in the present situation.

On the last point of the P.O. the Applicant submitted that Ms. Wagala Hamidu Shungu has represented the Applicants in the series of applications. Therefore, it is not wrong for Ms. Wagala Hamidu Shungu to represent the Applicants and the P.O. is overtaken by the events.

The Applicant concluded the submission by reminding this Court of the overriding objective principle which emphasize the duty of the Court to entertain substantive justice and not otherwise. Thus, the Applicant prayed for P.O. to be overruled and the application be heard on merits.

The Respondent did not file any rejoinder submission.

From above submissions, I will determine each of the point of the P.O. as submitted by both parties. The Respondent submitted on first point of the P.O. that the Notice of Application is not supported by Affidavit which is contrary to Rule 24 (3) of The Labour Court Rules, G.N. No. 106 of 2007 as the affidavit which was filed is in support of the Chamber Summons. Thus, the Notice of Application has no Affidavit to Support it. In contention, the Applicant submitted that Rule 24 (3) of the Labour Court Rules, 2007, does not command that there should be separate affidavit for each aspect in the application. The affidavit filed by the Applicants covers the entire application. I agree with the Applicant submission that rule 24 (3) of the Labour Court Rules, 2007, does not make it mandatory for the Applicant in Labour Application to file separate Affidavit for the Notice of Application and the Chamber Summons. It has been a practice for the Affidavit to be filed in support of then whole application. Thus, I find that the first point of the P.O. to have no merits.



The respondent submitted that the application is incompetent for containing wrong citation and irrelevant provision. The Applicant admitted that there was clerical errors in citing rule 24 (1) instead of rule 24 (2) of the Labour Court Rules and he prayed for the same to be rectified.

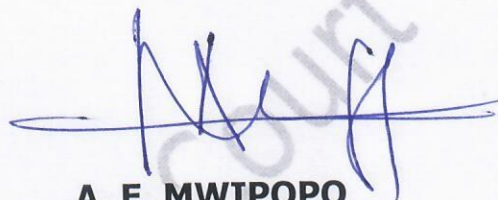
I have read the Notice of Application and the Chamber Summons where the Applicant cited Rule 56 (1), (3), rule 24 (1) (a) (b) (c) (d) (e) (f), Rule 3 (a) (b) (c) (d) and Rule 24 (11) of the Labour Court Rules, 2007 as the moving provision. Among the Rules cited, there is no single rule which vest this Court with jurisdiction to extend the time limit of six weeks for filing Revision Application against the Commission for Mediation and Arbitration decision as provided under section 91 (1) (a) and (b) of the Employment and Labour Relations Act, 2004.

Rule 56 (1) of the Labour Court Rules provides for power of the Court to extend or abridge any period prescribed by the Rules. The time limitation in Revision Application to this Court from the Commission for Mediation and Arbitration decision is provided under the Employment and Labour Relations Act, 2004 hence Rule 56 (1) is not applicable. Rule 56 (3) provides for power of the Court to condone with the period prescribed by the Court thus it also not applicable in this situation. The same is for Rule 24 as general it does not move this Court to entertain application for extension of time to file revision application out of time. The applicant was supposed to invite the Court

through Rule 55 (1) and (2) of the Labour Court Rules, 2007, to adopt procedure that is appropriate in the circumstances where the Rules do not provide for the procedure to be followed. Thus, the Court was not properly moved and as result the application is not properly before the Court.

.Therefore, the application is struck for failure to cite a moving provision. The Applicant is granted 14 days leave starting from today to file a proper application. As the second point of the P.O. has disposed of the Application, I'm not going to determine the last point of the P.O.

It is so ordered.



**A. E. MWIPOPO**  
**JUDGE**  
**13/10/2020**