

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

**MISCELLANEOUS LABOUR APPLICATION NO. 501 OF 2019**

**BETWEEN**

**ALFRED DEMOSO SEVERIN & 72 OTHERS..... APPLICANTS**

**VERSUS**

**IRON & STEEL CO.LTD ..... RESPONDENT**

**(ORIGINATING FROM CMA/DSM/KIN/R.28/16/500)**

**RULING**

Date of Last Order: 25/08/2020

Date of Ruling: 30/10/2020

**Aboud, J.**

This ruling is in respect of the preliminary objection raised by respondent's Counsel against the application for revision of the decision of the Commission for Mediation and Arbitration:-

- a) This application is fatally defective for being non-starter as it lacks corresponding award hence in contravention of Rule 44(7) of the Labour Court Rules, G.N .No. 106 of 2004.

- b) This application is defective for being in contravention of Section 44(1) of the Advocates Act Cap 341 RE 2002.
- c) This application is defective for being supported by single affidavit of Alfred Demoso Severin.

The application is supported by the affidavit of the applicant Alfred Demonso Severin. In opposition, the respondent filed a counter affidavit of Idrisa Ally, the respondent's Human Resource Manager.

Hearing was by way of written submission, both parties adhered to the schedule hence this Ruling.

On the first ground of preliminary objection Mr. Shayo submitted that the Applicant's prayer in the notice of application does not correspond to the enabling provision since the enabling provisions are in respect of representative suit and joinder of parties.

He stated that in this Application the Applicants were obliged to attach together with their Application copies of all documents previously issued and submitted. This mandatory requirement is pursuant to Rule 44 (1) of GN. 106 of 2007 (supra). The present

Application is not accompanied with the copy of the Award which is fatal to the Applicant's Application, as it makes the Application incomplete and defective, therefore the Court lacks an opportunity to examine all the documents for purpose of arriving at a just decision.

He argued that the purpose of the requirement of Rule 44 (1) is to give the Court full information of the matter and also to present such information to the other party for purpose of adequate defense, objection or even non objection. But this purpose cannot be achieved in this Application because of the Applicants' failure to attach the copies of necessary documents. This being the case the Application becomes non-starter.

He further argued for the court to arrive at a just decision and for purpose of proper records he noted that the Applicant have cited Section 94 (1) (b)(1) of the Employment and Labour Relations Act, Act No. 6 of 2004. He have gone through the said provision but the same not available. The available provision is Section 94 (1) (b) (i) of Act No. 6 of 2004.

On second point of preliminary objection, Mr. Shayo submitted that the present Application is defective for contravening Section

44(1) of the Advocates Act Cap 341 R.E. 2002 which provides that instruments must be endorsed with the name and address of the drawer. In the present Application, the Applicants have got a personal representative by the name of Zakaria LawiJorojig as a drawer of the Applicants' Application instruments but this personal representative failed to comply with the above provision of the Advocates Act to sign and endorse his address on the instruments.

He argued that this is a serious defect because not only it makes the Application defective but also it carries with it criminality that is punishable by fine. This Court has several times directed parties or representatives including advocates who draw court's instruments to put their signatures and addresses in compliance with the law. This position was held in the case of **RICHARS MARWA VS EL HILLAL MINERALS LTD, REVISION NO 16 OF 2014, HIGH COURT LABOUR DIVISION, DAR ES SALAAM, ASHURA ABULKADRI VS. THE DIRECTOR TILAPIA HOTEL, CIVIL APPLICATION NO 2 OF 2005, CAT MWANZA (UNREPORTED)**.

Regarding affidavit Mr. Shayo submitted that by considering the present Application is for joinder of parties and representative suit, it was expected to see that the Application is supported by either (i) the

Applicant's joint Affidavit or (ii) each Applicant's individual Affidavit. This is not a mere expectation as it is the requirement of the law as provided under Rule 24 (3) of GN. 106 of 2007. As the present Application is brought by numerous persons then the interpretation of the above cited rule is to support the Application by numerous affidavit or jointly Affidavit. Since the present Application is supported by a single Affidavit of one **ALFRED DEMOSO SEVERINI**, the Application becomes defective and is liable to be struck out.

They thus prayed for the same to be struck out.

On other hand Mr. Zackaria submitted that the Advocates Act cap. 341 R.E.2002 is a general law governing the function of Advocates generally including the conduct of their professional writings in which personal address must be provided as stated by the respondent. But this matter before the Hon. Court is brought up under the provisions of Employment and Labour Relations Act Na. 6 of 2004 and the Labour Institutions Act Na. 7 of 2004 and Labour Court Rules GN. Na. 106 of 2007 made under these Acts which are the specific Acts dealing with the matter.

He argued that these instrument do not require the applicants who are not necessarily professional advocate (section 56 (a) and (b) of the act Na, 7 of 2004) to write their addresses.

In this matter at hand, it will not be fair to expect person who are not Advocates complying with what is not provided by the specific act dealing with the matter.

He further argued that when there is a conflict of General Law and specific act, the specific act supersedes the General Law.

On affidavit Mr. Zackaria argued that this application is for a representative suit for Court leave so that the 73 complainants can file application for revision on H.R Lukeha's Arbitration award. There are no parties sought to be joined in case. It is also very difficult to have all 73 complainants to swear an affidavit individually nor is it possible all of them to sign one the only important thing is to comply with rule 24 (3) of GN. 106 of 2007.

Therefore there is nothing wrong for one ALFRED DEMOSO SEVERINI to have sworn and signed an affidavit which expresses the

73 applicants' wish to get Court's leave to file an application for Revision.

He thus prayed for the preliminary objection to be disregarded

Having carefully considered both submissions, court records, as well as relevant Labour laws and practice, I find worth to start in answering the second ground of preliminary objection as disposed of the matter.

On second point of preliminary objection, the respondent maintained that the Applicant's prayer in the notice of application does not correspond to the enabling provision since the enabling provisions are in respect of representative suit and joinder of parties and the affidavit is defective for contravening Rule 44(1) of G.N No. 106 of 2007.

On other side the applicant contend that it is neither easy to have all 73 complainants to swear an affidavit individually nor is it possible all of them to sign the same.

The question before this Court of law is whether such defect goes to the root of the case.

The relevant provisions to this question is Rule 44(1) of G.N No. 106 of 2007, I quote:-

Rule 44 (1) "The Court may join any number of persons, whether jointly and severally, separately, or in the alternative as parties in the proceedings, if the relief depends on *the* determination of substantially the same question of law or facts."

Having gone through the applicant's affidavit it does not show whether it is joint or separately, which in my view the applicant has already assume to represent other without the leave of the Court. That means it will affect the right of the parties especially in executing the award.

Under the circumstances, I am of the view that the preliminary objection has merit. Consequently, the application is struck out with leave to refile on or before 20/12/202. Therefore I find no need to labour much on other grounds.



I.D. Aboud  
**JUDGE**  
30/10/2020