

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 653 OF 2019

BETWEEN

MUSSA M. MOHAMED..... APPLICANT

VERSUS

**TANZANIA RAILWAY CORPORATION
FORMERLY KNOWN AS RELI ASSETS**

HOLDING COMPANY.....RESPONDENT

RULING

Date of Last Order: 28/05/2021

Date of Ruling: 02/06/2021

Z. G. Muruke, J.

Mussa M. Mohamed filed application for condonation before Commission for Mediation and Arbitration to be able to claim for gratuity of Tshs. 265,005,877.34 from respondent. After hearing, Commission (CMA) dismissed application for lack of merits. Being dissatisfied applicant filed present revision. Respondent filed counter affidavit together with notice of preliminary objection that application is incompetent for being supported by defective affidavit.

On the date set for hearing applicant counsel Rozi Mery Kigiriti conceded to the preliminary objection on account of affidavit not complying with Rule 24(3) c & d of the Labour Court Rules. She thus asked court to

struck of the application with leave of 14 days to file competent application for interest of justice.

Clearly, the affidavit above sworn in support of application lacks **one**: Statement of legal issues, **two** relief sought. Same is contrary to Rule 24(3)(c) and (d) of the Labour Court Rules 2007 GN 106/2007. The said Rule requires supporting affidavit before this Court's proceedings to set out legal issues and reliefs. For clarity Rule 24(3) of the Labour Court Rules provides that:-

24 (3) The application shall be supported by an affidavit, which shall clearly and concisely set out-

- a) The names, description and address of the parties; (Not applicable)*
- b) A statement of the material facts in a chronological order, on which the application is based; (Not applicable)***
- c) A statement of legal issues that arise from the material facts; and***
- (d) the reliefs sought. [emphasis mine]***

It must be understood that the Labour Court as a specialized court and Division of the High Court has its Labour Laws and Rules enacted and passed by the legislature with the aim of guiding the Labour Court to achieve its purpose.

Affidavit in Labour and Employment matters is governed by rules and requirements as spelt out in Rule 24(3)(a)(b)(c) and (d) above of the Labour Court Rules GN No. 106 of 2007. Therefore a deponent must follow

the same. Since the applicant did not follow the rules the affidavit is defective.

The applicant was wrong for not complying with the simplified **rules** and **requirements** of an affidavit as spelt out under Rule 24(3)(c) and (d) which are mandatory to be in the affidavit to form part thereof. The words "The Application **shall be supported by an affidavit, which shall clearly and concisely set out (a)....(b).....(c).....(d)** pre-supposes the mandatory requirement in the circumstances. The language of Rule 24(3)(c) and (d) is couched on mandatory way.

According to the records from CMA to this court, applicant is requesting for right to be heard.

It is elementary principle of the law that, Natural justice demand, parties to the case to be heard before an order can be made to the prejudice of their rights. Failure to hear a party is an error which goes to the root of the matter and is fatal. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without being afforded a chance of being heard.** The right to be heard is a valued right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

Much as I admit that due diligence by counsel for the applicant would reduced number of applications filed, but that is pure and simple

negligence of an advocate, and not otherwise. It sounds unfair and inequitable, in my considered opinion **for a part to Civil litigations to be punished for an error committed by the advocates and more specifically where the error is within the advocate professionalism. Throughout history, courts of law have assumed the position of custodians of justice. It therefore comes as a surprise and indeed it lowers down the reputation and respect of the courts when parties submitting themselves to the jurisdiction of the court loses their cases for wrongs committed by their advocates or representative.**

It is now an established position of the law that in exercise of their duty of administration **of Justice**, courts of law are required to give substantive justice priority to legal technicalities. **There are many authorities supporting that position. The Court of Appeal of Tanzania as per Munuo, J.A., in the case of China Henan International Co. – operation Group Co. Ltd Vs. Salvand K.A. Rwegasira, Civil Application No. 43 of 2006, for instance, took the view that procedural rules are there to guide for an orderly and systematic presentation of a cause so as to help the substantive law and not to enslave the same. In particular the justice of Appeal had the following to say and I quote.**

" It is a well-established principal that the object of courts is to decide the rights of the parties and not to punish them for mistakes they make in conduct of their cases by deciding otherwise than in accordance with their rights. I know of no kind of error or mistakes which if not fraudulent or intended to

overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the indiscipline but for the sake of deciding matters in controversy."

In the up short, Revision application is incompetent for being accompanied by affidavit that has contravened Rule 24(3)(c) &(d) of the Labour Court Rules GN No. 106/2007. Thus struck out. For interest of justice and being guided by Rule 55(1)&(2) of the Labour Court Rules GN 106/2007, applicant is granted fourteen (14) days leave to file proper application.


Z.G. Muruke
JUDGE
02/06/2021

Ruling delivered in the presence of Xavier Ndalaha, learned state attorney for the respondent and Amos Enock holding brief of Rozimery Kigiriti for the applicant.


Z.G. Muruke
JUDGE
02/06/2021