

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

MISC.APPLICATION NO 514 OF 2020
(Arising from Complaint No. 22 of 2010)

BETWEEN

1. **ZAITUNI YAHAYA MANGO**
(AS Administratrix of the estate of the
late **MANGO YAHAYA**.....**1ST APPLICANT**
2. **DICKSON MHANDO**.....**2ND APPLICANT**
3. **HAMISI R. MANG'ANDO**.....**3RD APPLICANT**
4. **ATHUMANI MDACHI**.....**4TH APPLICANT**
5. **ALLY MRISHO SEDUMA**.....**5TH APPLICANT**
6. **JUMA AHAMADI MAFUNGWA** (As Administrator of
the estate of the late **MOHAMED ALLY KILIMO**.....**6TH APPLICANT**
7. **VINCENT MNUNKA**.....**7TH APPLICANT**
8. **JEREMIA KANENGE MWAKALIKUA** (As Administrator
of the estate of the late **MARTIN MWAKALIKU**.....**8TH APPLICANT**
9. **FAUSTIN L. NYATI**.....**9TH APPLICANT**
10. **AMIR SHABANI**.....**10TH APPLICANT**
11. **ISSA JANJA**.....**11TH APPLICANT**
12. **ASII RAMADHANI**.....**12TH APPLICANT**
13. **WILFRED SAIDI**.....**13TH APPLICANT**
14. **JOSEPH MATOZI**.....**14TH APPLICANT**

VERSUS

1. **JESSIE MNGUTO, LIQUIDATOR**
TANZANIA SISAL AUTHORITY.....**1ST RESPONDENT**
2. **TREASURY REGISTRAR**.....**2ND RESPONDENT**

3. ATTORNEY GENERAL.....3RD RESPONDENT
4. KATANI LIMITED.....4TH RESPONDENT
5. TANZANIA SISAL BOARD.....5TH RESPONDENT

RULING

S.M. MAGHIMBI, J:

The application beforehand was lodged under the provisions of Rule 24(1)(a)-(f), 3(a)-(d); 55(1) and (2), 56(1) and 94(1) of the Labour Court Rules, 2007. The applicants are seeking for extension of time within which to file Application to set aside the dismissal Order of the Applicant's Complaint No. 22 of 2010 dated 18th November 2011. Upon being served with a copy of the said Application, the 2nd, 3rd and 5th Respondents lodged a notice of preliminary objection on points of law that:

- (i) The Application is incompetent for being supported by an affidavit which is invalid and contrary to Rule 24 (3)(a), (b) (c) and (d) of the Labour Court Rules, 2007;
- (ii) The Application is incompetent in law for not being accompanied by index contrary to Rule 46(3) of the Labour Court Rules, GN. No. 106 of 2007

On the 06th September, 2021 the Court Ordered that the Preliminary Objection be disposed of by way of written submission. The respondents'

submissions in support of the objection were drawn and filed by Ms. Lightness Msuya, learned State Attorney while the applicant's submissions were drawn and filed by Mr. Obediodom Chanjarika, learned Advocate.

On the first limb of objection that the Application is incompetent for being supported by an affidavit which is invalid and, contrary to Rule 24 (3) (c) (d) of the Labour Court Rules, 2007; Ms. Msuya argued that the Affidavits Sworn and Affirmed by the Applicants does not meet the mandatory requirements of Rule 24 (3)(a) (c) and (d) of the Labour Court Rules, 2007. That in the cited Rule, the word shall is used and in clause (c) and (d) there is a requirement that the affidavit should contain a statement of legal issues that arise from the material facts; and the reliefs sought. She then argued that the word "**shall**" which used in the provision of Rule 24(3) of the Labour Court Rules above conferred a function which must be performed by the provision of Section 53(2) of the Interpretation of the Laws Act, Cap 1 R.E 2019.

She submitted further that the affidavits Sworn by the applicants and filed in this Court to support the Application does not contain the names, description and address of the parties, a statement of legal issues that arise from the material facts and the reliefs, as mandatorily required by the

law cited above. She then supported her submissions by citing the case of **Hamza Omary Abeid Versus Promining Services Labour Revision No. 54 of 2019 High Court Labour Division at Mwanza at page 6** where the Court had this to say:

"it can be gathered from the above quoted rule that all affidavits in support of applications like this (labour matter) must contain all what has been stipulated in in the above provision. I have gone through the affidavit filed in by the counsel of the applicant and have found the same lacks some requirements set out under the above rule, it does not contain statement of material facts, does not contain statement of legal issues on which the application is based, it does not contain the relief sought. The affidavit filed by the learned counsel for the applicant does not meet the criteria set by the law it is thus defective" emphasis is mine.

She went on submitting that drawing inspiration from the case of **Hamza Omary Abeid Versus Promining Services** above, the Affidavits in support of the application filed by the Applicants in this Application are defective for failure to meet the mandatory requirement under **to Rule 24**

(3) (c) (d) of the Labour Court Rules, 2007. Citing the case of **Johnson Mwakisoma Vs. IPSOS Tanzania Limited Revision No. 975 of 2019** High Court of Dar es Salaam Labour Division, where application of the same defect was struck out, her prayer was that the application is incompetent and ought to be struck out.

In reply, Mr. Chanjarika started by arguing that the counter affidavit filed by the respondent is similar to the one filed by the applicants. That this Court has power to order for the amendment of an affidavit which defects and that it is only the substantive part of the affidavit that cannot be amended. That the respondent's complaint against the applicant's affidavit is about the form and not substance and in the circumstances this application is amendable. He supported his submission by citing the case of **Phantom Modern Transport (1985) LTD Vs. D.T. Dobie (t) LTD, Civil Application No. 15/2001** where the court held that it had power to order an amendment of the affidavit. He hence prayed that the court orders amendments of the affidavit as striking out the application will cause unnecessary delay.

In rejoinder, Ms. Msuya submitted that the overriding principle is not meant to overhaul the rules of procedure, but facilitate their application.

She supported her submission by citing the case of **Puma Energy Tanzania Ltd vs Ruby Roadways Tanzania Ltd (Civil Appeal No.35 of 2018) [2020] TZCA 186; (15 April 2020)**. She reiterated her submission that since the applicant has failed to comply with mandatory requirements of the Rules, the application should be struck out.

Having considered the parties submissions for and against the preliminary objection, I don't think I need to be detained much by the objection. It is obvious that the applicants admit not to have complied with the mandatory requirements of Rule 24 (3)(a) (c) and (d) of the Rules. They have admitted to the omission, only arguing that the omission is curable by amendment as it is the form that is defective and not the substance. With respect to the arguments raised by Mr. Chanjarika, the omission is not in the form, it is rather the substance.

The cited Rule clearly requires the affidavit to state the statement of legal issues that arise from the material facts; and the reliefs sought. This is the very substance of the affidavit in labor matters, what are the legal issues intended to be tabled for determination and the reliefs sought therein. The contents are hence the backbone, flesh and blood of the affidavit and the pleadings and they cannot be diminished to an issue of

form of the affidavit. Therefore the omission to state the legal issues in the applicant's affidavit is a fatal irregularity rendering the affidavit incurably defective. The affidavit is therefore struck out from the records. Having been so struck out, the Chamber application remains incompetent as well, as it is not supported by an affidavit. Consequently the application is hereby struck out for being incompetent.

Dated at Dar es Salaam this 03rd day of December, 2021.




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S.M. MAGHIMBI
JUDGE