

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVISION NO. 975 OF 2019

**JOHNSON MWAKISOMAAPPLICANT
VERSUS
IPSOS TANZANIA LIMITEDRESPONDENT**

JUDGEMENT

Date of last order: 25/06/2021

Date of Judgement: 02/07/2021

M. Mnyukwa, J

The applicant filed the present Revision No 975 of 2019 through a Notice of Application and Chamber Summons supported by an Affidavit of one Johnson Nyakisomwa. The Chamber Summons was filed under section 91(1) (a) (b), section 91(2) (b), section 91(4) (a) (b) and 91(b) (i) of the Employment and Labour Relations Act, No 6 of 2004 and Rules 24(1) (1) (2) (a) (b) (c) (d), 28(1) (c) (d) (e) of the Labour Court Rules. GN No 106 of 2007.

The application was filed against his employer IPSOS Tanzania Ltd. The prayers and orders sought in the chamber summons are that

- (a) The court to revise and set aside the CMA Award issued on 29th January 2019 in Labour Dispute No CMA/DSM/ILA/R.1082/16/27.
- (b) Any other order on reliefs that this court may deem just and fit to grant.

Upon being served with a copy of an application for revision the respondent IPSOS TANZANIA LIMITED filed a Counter Affidavit along

with a Notice of Preliminary Objection on the grounds that the application is incompetent for offending Rule 24(3) d. 46(1) (2) and (3) of the Labour Court Rules, GN No. 106 of 2007. With leave of this court the preliminary objection was disposed of by way of oral submissions.

Submitting on the grounds of preliminary objection raised, respondent urged that the application filed before this court is incompetent for offending Rule 24(3) (d) of the Labour Court Rules GN No 106 of 2007 which requires the application to be supported by an affidavit which shall clearly and concisely set out the reliefs sought. He submitted that on the face of record, the affidavit filed therein does not set out reliefs sought.

It was also submitted by the respondent's counsel that the applicant contravenes the requirement of Rule 46(1) (2) and (3) of the Labour Court Rules, GN No 106 of 2007 because there was no pagination and the Index was not filed before this court. Therefore, the application suffers by offending the above requirements.

He further submitted that compliance with the above Rules is mandatory since the word shall as it has been interpreted by the interpretation of Laws Act, Cap 1 R.E 2019 under section 53(2) means when the word shall is used in conferring a function, such word shall be interpreted to mean that the word so conferred must be complied with.

The respondent's counsel supported his argument by referring the case of **Reli Assets Holding Company Ltd vs Japhet Kashmir and others, Labour Division., TBR, Revision No 10 of 2014**

(2015) LCCD (1), Mipawa J (as he then was) in which the court stated that the requirements of the Affidavit must be adhered by the deponent.

The learned counsel of the respondent submitted that since the Affidavit of the applicant is defective as it does not clearly states the reliefs sought, he prayed the application to be dismissed in its entirety.

In reply, the applicant submitted that they have complied with Rule 24(3) (d) of the Labour Court Rules, GN No 106 of 2007 since the prayers and reliefs sought are shown in the applicant's Notice of Application and Chamber Summons. The applicant concluded by submitted that paragraph 10 of the applicant's Affidavit provides reliefs sought.

Regarding the provisions of Rule 46(1) (2) (3) the applicant submitted that lack of pagination and Index is not fatal to make the application incompetent because the same can be cured by the overriding objective which emphasize the court not to be bound by technicalities. Therefore, he prayed the preliminary objection to be overruled.

In rejoinder, the counsel for respondent reiterated what he had submitted in chief and insisted that Laws and Rules should be followed.

After considering the submissions of the parties, I find the issue to be determined is whether the application for revision is incompetent for offending the provisions of the Labour Court Rules GN No. 106 of 2007.

I have gone through the court's file, I find that prior to this application the applicant filed Revision No 188 of 2019 against his employer IPSOS TANZANIA LIMITED. When the revision come for hearing the respondent raised the preliminary objection on the ground that the application was incompetent for offending Rule 24(3) (a) (b) (c) and (d) of the Labour Court Rules GN No. 106 of 2007 for not being signed by the applicant and the whole application contravened Rule 46(1) (2) and (3) of the Labour Court Rules GN 106 OF 2007 for lacking pagination. On 20th December 2019, the learned judge who presided the revision ordered the application to be struck out for being incompetent after the applicant has conceded to the preliminary objection raised. The applicant was then granted leave to file a proper application within fourteen days from the date of the order. This resulted the applicant to file the current application on 31st December 2019.

In the present application the respondent argued that the application is incompetent for offending Rule 24 (3) d of the Labour Court Rules, GN No 106 of 2007. The Rules provides that;

"Rule 24(3) (d) the application shall be supported by an affidavit, which shall clearly and concisely set out the reliefs sought." (emphasis is mine)

From the submission of the parties, the applicant states that paragraph 10 of the applicant's affidavit provides that the prayers and reliefs sought are available in the Notice of Application and in the chamber summons which form part of the application.

In respect to that ground I agree with the respondent argument that the rules of drafting the Affidavit should be followed. In the case of **Reli Assets Holding Company Ltd vs Japhet Kasmir and 1500 others, Labour Division., TBR, Revision No 10 of 2014 (2015) LCCD (1), Mipawa** J insisted on the compliance with the simplified rules and requirements of an affidavit as spelt out in the Labour Court Rules.

Now borrowing the words of Judge Mipawa (as he then was) in the case of **Reli Assets Holding Company Ltd Vs. Japhet Kasmir and 1500 others** (cited above), the court stated that, "omission of the applicant to include paragraph (c) and (d) of Rule 24(3) of the Labour Court Rules so as to form part of the affidavit it is an irregularity which goes to the root of the matter."

The counsel for respondent also object the application by offending Rule 46(1) (2) and (3) of the Labour Court Rules GN No 106 of 2007. The applicant conceded with that objection but averred that the irregularity is not fatal as it can be cured by the overriding objective.

Much as I understand that the orders of the court should be respected and complied with. It is a common knowledge that court orders are made up with the basic purpose of regulating proceedings. It is expected in the present application the applicant to comply with the order of the court since the earlier application was struck on the same preliminary objection raised in the present application. The notion that the same can be cured by the overriding objective, in my view that was

not an intention of that principle. The overriding objective among other things aimed to enable the court to deal with cases justly. As it was rightly said in the case of **Onesmo Olengurumwa vs Minister of State in the President's Office Regional Administrative and Local Government and Attorney General, Misc. Civil Cause No 24 of 2019, HC at Dar es Salaam (Unreported)** that overriding objective principle is not meant to paralyze court business. If the non-compliance with the court order will be cured by the overriding objective, it will create bad precedent.

On the basis of the foregoing analysis it is clear that the applicant has failed to follow the rules of procedure of filing labour dispute before this court and to comply with the order of the court.

In the final result since the applicant failed to comply with the order of the court and the rules of procedure, I find the present application to be incompetent. I accordingly uphold the preliminary objection and strike out the application. Applicant is granted seven days leave to file a proper application.



M. Mnyukwa

JUDGE

02/07/2021

Judgment delivered in the presence of Mecky Humbo, representative form RAAWU for applicant and Methusaleh Boaz Mafwere, Advocate of the respondent, together with Honorate Mrutu, representative of the employer.



M. Mnyukwa

JUDGE

02/07/2021

Labour Court TZ.