

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

LABOUR REVISION NO. 353 OF 2020

BETWEEN

AHMED K. KOHOYE & 7 OTHERS..... APPLICANTS

VERSUS

LESSO CONCRETE CO. LTD..... RESPONDENT

RULING

Date of Last Order: 18/08/2021

Date of Judgement: 01/10/2021

I. ARUFANI, J.

This ruling is in respect of preliminary objection on point of law raised by the respondent's Counsel that:-

The application is defective for contravening the mandatory provisions of Rule 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 2007 (herein GN. No. 106 of 2007).

The preliminary objection was argued orally and both parties were represented by learned advocates. While Mr. Desidery Ndibalema represented the applicants, Mr. Rico Adolf represented the respondent.

Arguing in support of the preliminary objection Mr. Adolf submitted that, the application is defective for failure to comply with Rule 24 (3) (a) of the GN. No. 106 of 2007. He argued that the said provision of the law states that, the application shall be supported by

an affidavit which shall clearly and concisely set out the names description and addresses of the parties. Mr. Adolf said the word used in the provision is "*shall*" which denotes that it is a mandatory requirement. He cited section 53 (2) of the Interpretation of Laws Act, Cap 1 RE. 2019 to support his argument.

Mr. Adolf went on to submit that looking at the affidavit supporting the applicant's application, it does not clearly and concisely describe the names, description and addresses of the parties and therefore is defective. He argued that the effect of failure to comply with the cited provision has been discussed in the case of **National Union of Mine and Energy Workers of Tanzania V. Dangote Cement Industries and Another**, Application No. 4 of 2020 where the court stated at page 5 that, where the affidavit is not in compliance with Rule 24 (3) of the GN. No. 106 of 2007 it renders the affidavit incurably defective and that defect cannot be cured by overriding objective principle.

He added that the same position was maintained in the case of **Kusenza L. Mbogo V. Caspian Ltd.**, Revision No. 942 of 2019 HC, Labour Division at DSM and **Hamza Omary Abeid V. Pro Mining Services**, Labour Revision No. 54 of 2019, HC Labour Division at

Mwanza together with the case of **Raphael Ng'wandu Luhende V. Vocatonal Education and Training Authority**, Misc. Labour Application No. 05 of 2021, HC at Iringa (All unreported).

In line with the mentioned decisions Mr. Adolf urged the court to adopt the wisdom of the mentioned decisions and strike out the present application for failure to observe the mandatory requirement of Rule 24 (3) (a) of the GN. No. 106 of 2007.

In response to the preliminary objection Mr. Ndibalema, submitted that the preliminary objection raised by the respondent has no legs to stand on because Rule 24 (3) of the GN. No. 106 of 2007 has been complied with. He stated that, the description of names of the parties has been done as they are shown at the title of the affidavit and their addresses is shown at the foot of the affidavit. He added that, the affidavit itself gives description of the matter from paragraphs 1 to 8 of the affidavit.

He argued that Rule 24 (3) (a) of the GN. No. 106 of 2007 is silent when the parties are more than one but to the best of compliance with the rule is that they put the names of the parties at the beginning of the application itself. He submitted that the omission to mention other six parties does not prejudice the rights of the parties in the

matter. To support his submission, he cited the case of **Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)** CAT at Mtwara (unreported) where it was stated that the said defect can be cured by overriding objective principle.

Mr. Ndibalema argued further that the cases cited by the counsel for the respondent are all distinguishable because most of them were based on rule 24 (3) (c) and (d) of the GN. No. 106 of 2007. He added that they are not good law in the preliminary objection raised and argued by the counsel for the respondent thus, the court can depart from those decisions as they are not binding the court.

In conclusion Mr. Ndibalema submitted that the provision of rule 24 (3) (a) of the GN. No. 106 of 2007 has been complied with and prays for the preliminary objection raised by the respondent to be dismissed and the matter to proceed for the interest of justice.

In rejoinder Mr. Adolf submitted that the counsel for the applicant has argued that the contravened rule is silent when the matter involves more than one parties. However, the words used in the particular rule are names and addresses which are plural therefore it signifies that when there is more than one parties their names and addresses should be described. He said the counsel has argued that the addresses are on

the foot of the affidavit. However, the affidavit being a substitute of oral evidence its contents have to be attested. He therefore argued that, the addresses at the footnote does not form part of the affidavit and paragraphs verified by the deponent.

As for the decision of the CAT in the case of **Gasper Peter** (supra) he submitted that the counsel for the applicant is misleading the court. He said at page 12 of the judgment it is shown the decision was made on missing documents of the memorandum of appeal which originated from the labour dispute and not about missing name and addresses of the parties in the supporting affidavit for the revision. He finally reiterated his submission in chief together with all the decisions cited and prays for the application to be struck out.

After considering the rival submissions of the parties, court records and relevant law I find the court is called upon to determine whether the preliminary objection raised by the respondent's counsel is meritorious. The affidavit in Labour court is governed by Rule 24 (3) GN. No. 106 of 2007 which provides as follows:-

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

- a) **the names, descriptions and addresses of parties;***

- b) *a statement of material facts in chronological order, on which the application is based;*
 - c) *a statement of the legal issues that arise from the material facts; and*
 - d) *the reliefs sought.'*
- (Emphasis is mine).

The requirement to comply with the above provision was emphasized in the case of **Raphael Nangumi V. Desktop Production Limited, Revision No. 193 of 2018**, HCLD at Dar Es Salaam, Muruke, J., (unreported), where it was stated that:-

'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. The word "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 above position was also restated in the case of **Kuzenza L. Mbogo** (supra). The applicant's supporting affidavit lacks the

requirement set under Rule 24 (3) (a) GN. No. 106 of 2007 quoted above. The applicant's Counsel argued that the names and description of the parties are in the front of the affidavit. I had a glance on the affidavit in question. On the outset I have found it is crystal clear that the names, descriptions and addresses of the parties are not stipulated in the paragraphs of the affidavit as argued by the counsel for the applicants. In my view the alleged foot of the affidavit which the counsel for the applicants argued is showing address of the parties is not part of the affidavit recognized by the law. Therefore, I am satisfied that the affidavit at hand is defective for failure to comply with Rule 24 (3) (a) of GN. No. 106 of 2007.

I am not disregarding argument raised by the counsel for the applicants in relation to the applicability of the overriding objective principle in the present application. Applicability of the said principle of the law has been discussed in a range of decisions. In that regard I subscribe to the view taken by my brother Dyansobera, J in the case of **National Union of Mine and Energy Workers of Tanzania** (supra) where he held that:-

'It is true that there is an overriding principle which may assist parties to attain substantive justice, however, I should be hasted to state that such principle should not be used as a

shield to protect and help parties circumvent the legal requirements'.

In labour court the affidavit should comply with the provision cited above and contrary to that such an affidavit will be contravening the law. The provision is there to limit parties to confine their affidavit on the format stipulated above. In the absence of such provision each party would have come with his/her own format of the affidavit.

In the premises, the affidavit is found to be defective and rendered the application before the court incompetent. Therefore, it is hereby struck out from the Court's registry. For the interest of justice leave is granted to the applicants to re-file in the court a competent application within fourteen (14) days from the date of this ruling if the applicants still wish to pursue the matter. It is so ordered.

Dated at Dar es Salaam this 1st day of October, 2021.



I. Arufani

I. Arufani

JUDGE

01/10/2021

Court: Ruling delivered today 01st day of October, 2021 in the presence of the first applicant in person and in the absence of the respondent. Right of appeal is fully explained.



I. Arufani

I. Arufani

JUDGE

01/10/2021

Labour Court TZ.