

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

REVISION NO. 259 OF 2021

BETWEEN

EFC MICROFINANCE BANK LIMITED APPLICANT

VERSUS

HAPPY RICHARD RESPONDENT

RULING

S. M. MAGHIMBI, J

This ruling is in respect of the preliminary objections raised by the respondent's Counsel, Mr. Francis Munuo, on point of law that:

- i. The revision proceedings have been instituted by a non-existing entity/person.
- ii. That the affidavit of the applicant is incurably defective for contravening the mandatory provisions on the provisions on the principle of attestation under the Notaries Public and Commission for Oath Act [CAP 12 RE 2019].
- iii. That the affidavit is defective for not conforming to the mandatory requirements under Rule 24 (3) (a) (b) of the Labor Court Rules, GN 106 of 2007 (herein the Labour Court Rules).

The preliminary objections were argued by way of written submissions, the applicant was represented by Mr. Cleophance James, learned advocate. While filing his submissions to support the objections, Mr. Munuo came up with another preliminary objection not included in the objections above. He stated that the application at hand is time

barred, arguing that the question of time limitation can be raised at any stage of proceedings citing the case of **China Friendship Textile Co. Ltd v. Our Lady of Usambara** Sisters [2006] TLR 70. On my part I need not be detained much by this application. I had asked Mr. Cleophance to produce the electronic filing form which is the relevant document to prove the time within which the document was filed in court. The form was brought and it showed that the application was electronically filed on the 01/07/2021 hence within time.

As to the first preliminary objection on record Mr. Munuo submitted that at the time of instituting the application to the court, the applicant did not legally exist under the laws of the United Republic of Tanzania. He stated that through the public notice issued on 25/08/2020 by the Bank of Tanzania the applicant was taken over by Mwanga Community Bank Limited with effect from 12/09/2019 and subsequently, approved the merger of Mwanga Community Bank Limited and Hakika Microfinance Limited with a license to operate from 30/07/2020. Consequently, revoked the license of among others EFC Microfinance Bank Limited. He added that following such revocation all the assets and liabilities of the EFC Microfinance Bank Limited were transferred to Mwanga Hakika Microfinance Bank.

Mr. Munuo further argued that revocation of the applicant's license ceased the life span of the applicant into existence. He strongly submitted that the applicant is neither natural person nor a juristic person, he is therefore a non-existing entity. To support his position, he cited range of cases to wit, **Fort Hall Bakery Supply Company V. Fredrick Muigai Wangoe** {1959} EA 474, **Singida Sisal Production**

& General Supply V. Rofal General Trading Limited & 4 Others, Commercial Review No. 17/2017 High Court of Tanzania (Commercial Division) At Dar Es Salaam (unreported), **Change Tanzania Limited V. Registrar, Business Registration and Licensing Agency** Miscellaneous Commercial Case No 27 of 2019 High Court of Tanzania (Commercial Division) at Dar Es Salaam (unreported). He therefore urged the court to dismiss the application for want of proper party.

Regarding the second preliminary objection he submitted that the affidavit in support of the application is incurably defective for contravening the mandatory provisions of section 7 of the Notary Public and Commissioner for Oaths Act Cap 12 R.E. 2019.

'No commissioner for oaths shall exercise any of his powers as a commissioner for oaths in any proceedings or matter in which he is advocate to any of the parties or in which he is interested.'

Mr. Munuo argued that in the instant application, the applicant's affidavit is sworn by Flora Felician, Human Resource Officer of the applicant. That the said affidavit was attested by Nancy Kissanga, who is the head of legal department of the applicant as it is reflected at page 4 of the award. He added that the said Nancy Kisanga testified at the CMA for the applicant as DW2 as well as in the previous Revision No. 966/2019 which was struck out, she was appointed to be one of the applicant's representatives.

Turning to the last preliminary objection Mr. Munuo submitted that the applicant's affidavit does not state chronological material facts of the

case contrary to the provisions of Rule 24 (3) (b) of the Labour Rules. He stated that the material facts are stated randomly. He further submitted that the affidavit is defective for failure to state names, description and address of the parties violating Rule 24 (3) (a) of the Labour Rules. He argued that such affidavit is incurably defective as it was the position in the case **of Berkely Electric Ltd V. Christopher Mussa and Another**, Revision No. 236/2008 and the case of **Ezekiel Andrew V. African life Tanzania**, Labour Revision No. 346 of 2009.

On the basis of the above submission Mr. Munuo prayed for the dismissal of the application. He insisted that the current preliminary objections were also raised in Revision No. 966 of 2019, that the applicant conceded to the said preliminary objections and the matter was struck out with leave to refile however, the applicant continue to make the same mistake in this application.

Responding to the objections, Mr. Cleophance argued the 1st and 2nd preliminary objection jointly. He stated that the relevant preliminary objections do not qualify to be preliminary objections because the present application emanates from the CMA which was instituted by the respondent against the applicant herein. He argued that the allegation that EFC Tanzania Microfinance Bank Limited exists or not needs proof thus such objection is not a pure point of law. He strongly submitted that the application at hand has been brought to challenge the CMA's award delivered on 29/11/2019 between the same parties herein.

Mr. Cleophance went on to submit that as to whether Nancy Kisanga is the head of the applicant's legal department also requires

proof. He insisted that the disputed affidavit is properly attested by the Commissioner for oath.

Regarding the third preliminary objection he said that the same lacks merit. He strongly submitted that the disputed affidavit complied with rule 24 (3) (a) (b) of the Labour Court Rules. He argued that the rule does not provide the format of the affidavit but only provides what should be contained in the affidavit. He urged the court to uphold the overriding objective principles and disregard unnecessary technicalities.

In rejoinder Mr. Munuo reiterated his submission in chief and beseech the court to uphold the preliminary objections and struck out the application with costs.

I have dully considered the submission of the parties, Court's records, relevant labour laws and practice with eyes of caution. Starting with the objection that the applicant is a non-existing entity, I am in agreement with Mr. Munuo's submissions that the relevant preliminary objections do not qualify to be preliminary objections. It will require evidence to show whether or not the said EFC was liquidated or not and has now changed ownership. What is relevant on the face of records is that the party who was also a party at the CMA is not challenging the CMA award. I have also posed to ask myself on the danger that the respondent is putting herself in by alleging that the respondent is a non-existing entity. Her award will (if upheld) be executed against the same applicant that she is claiming does not exist. So if we are to yield to her objection that the said applicant is a non-existing entity, who does she expect to execute the award against? Well it is not a matter for me at

this date and time, I was just trying to imagine how one can embark into a stone war while shielding herself in a glass house.

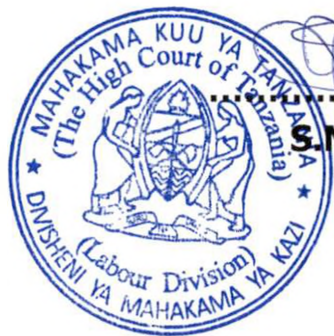
Coming to the last objection on the defects of the affidavit in support of the application, the respondent argued that the same is incurably defective for contravening the mandatory provisions of Section 7 of the Notary Public and Commissioner for Oaths Act Cap 12 R.E. 2019. Mr. Munuo argued that the applicant's affidavit is sworn by Flora Felician, Human Resource Officer of the applicant and attested by Nancy Kissanga, who is the head of legal department of the applicant as it is reflected at page 4 of the award. That the said Nancy Kisanga testified at the CMA for the applicant as DW2 as well as in the previous Revision No. 966/2019 which was struck out hence she has interest in the matter.

In reply, Mr. Cleophance argued that the fact as to whether Nancy Kisanga is the head of the applicant's legal department also requires proof hence the disputed affidavit is properly attested by the Commissioner for oath.

On my part I find this objection to have merits. I am seized with the decision of the CMA as it is part of the records of this application. It is undisputed that the said Nancy was actually DW2 at the CMA because this fact was not denied by Mr. Cleophas. I don't think I need to wait until the end of the Revision and while having wasted so much time, I then come to determine that Nancy had interest disqualifying her from attesting the affidavit. If she has interest she does, we don't need to be clogged by technicality while the issue is clearly on the records of the decision of the CMA. On that note, I hereby sustain this objection the

affidavit in support of the application is incurably defective as it is in contravention of Section 7 of the Notary Public and Commissioner for Oaths Act Cap 12 R.E. 2019. It is therefore expunged from the records. Having expunged the affidavit from the records, the application before me becomes incompetent for lacking affidavit contrary to Rule 24(3) of the Labor Court Rule, G.N. 106/2007. Consequently, it is hereby struck out.

Dated at Dar-es-salaam this 22nd day of October, 2021.




S.M. MAGHIMBI.
JUDGE.