

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 9 OF 2020

(C/O Labour Dispute No. KTV/CMA/42/2019)

ALBERT M. CHABRUMA 1ST APPLICANT

EDWARD COSMAS SEWW 2ND APPLICANT

HASSAN RISASI HAJI 3RD APPLICANT

VERSUS

CHINA RAILWAY SEVENTH GROUP CO. LTD RESPONDENT

RULING

Date: 18/10/2021 & 08/11/2021

Nkwabi, J.:

Devastated as they could be, the applicants found themselves served with a notice of preliminary objection which contains four points of law. This is because the least the preliminary objection could affect the applicants is to delay the result of their application, the worst, it could lead to dismissal of their application. That, notwithstanding, the four points of law are:

1. The affidavit in support of the Application is incurably defective.
2. The application is bad hence not maintainable for skipping to refer the mandatory enabling provisions of the law.

3. The application is bad in law for skipping the mandatory format of the law required in the applications of this kind.
4. The application is not maintainable for being omnibus application.

The applicants filed this application in this court seeking (a) stay of execution of CMA award dated 28/05/2020, (b) revision of the CMA award among other reliefs. The chamber summons is supported by the affidavit of the 1st applicant, Albert. The copy of the CMA award, which dismissed the labour dispute and ordered the applicants to pay the respondent salary of 4 days as notice for breach of contract without notice, was attached as one of annexures to this application.

Parties were ordered to argue the P.O. by way of written submissions, they filed, the respondent, however, did not file her rejoinder. The 2nd leg of the preliminary objection was withdrawn by the respondent.

On the complaint that the affidavit in support of the Application is incurably defective. Mr. Albet Nkuhi for the respondent argued that the affidavit offends mandatory requirement of the law as it contains legal arguments

and conclusions (paragraph 3, conclusions on paragraphs 2 and 5). Too, the affidavit falls short of the format of affidavit required by the law under rule 24(3) of Labour Court Rules. He cited **DPP v Dodoli Kapufi & Patson Tusilile Criminal Application No. 11/2008** (CAT) and **Uganda v. Commissioner of Prisons, Exparte Matovu [1966]1 EA 514:**

As a general rule of practice and procedure, an affidavit for use in court for being substitute for oral evidence, should only contain statement of facts and circumstances to which the witness disposes either of his own personal knowledge or from information which he believes to be true. Such an affidavit must not contain extraneous matters by way of objection or prayer or legal argument or conclusion.

and **D.T. Dobie (T) Limited v Phantom Mordern Transport (1985) Limited, Civil Application No. 141 of 2001** (CAT) held:

An affidavit should state facts and my view do not include controverted evidence in the suit.

Submitting on the preliminary point on objection on the application is bad in law for skipping the mandatory format of the law required in the applications



of this kind, Mr. Nkuhi argued the affidavit is required to comply with Rule 24(3) of the Labour Court Rules by clearly and concisely set out the names, description and addresses of the parties; a statement of the material facts in a chronological order on which the application is based; a statement of the legal issues that arise from the material facts and the relief sought. He referred this court to **Ezekiel Andrew v Africanlife Tanzania Labour Division, DSM Revision No. 346/2009**, S.C. Moshi, J:

It is mandatory for the affidavit to set out names, description and addresses of the parties, statement of material facts, statement of legal issues and relief sought.

On the last leg of preliminary objection, Mr. Nkuhi urged the application combines two unrelated applications in the same application is untenable as omnibus. The applications are stay of execution without actual execution proceedings and application for revision of the award of CMA hence susceptible to confuse issues. They are governed by different laws and different legal provisions. The application is rendered incompetent, he stressed citing **Mohamed Salimin v Jumanne Omary Mapesa Civil Application No. 103/2014** (CAT):

*There is one difficulty relating to this application. As it is, the application is omnibus for combining two or more unrelated applications. As this court has held for time(s) without number an omnibus application renders the application incompetent and is liable to be struck out – See **Bibie Hamad Khalid v Mahamed Enterprises (T) Limited and Hamis Khalid Othman, Civil application No. 6 of 2011** (unreported).*

He insisted for striking out of this application in the circumstances citing **Rutagatina, C.L. v The Advocates Committee and Clavery Mitindo Ngalapa, Civil Application No. 98 of 2010** (CAT) in the context of the Court of Appeal of Tanzania Rules the CAT held:

In the totality of the foregoing we are satisfied that the rules do not provide for an omnibus application. For this reason, we hereby strike out this omnibus application.

Reverting to the complaint about skipping the mandatory format of the law required in the applications of this kind, it was urged for the applicant that the application is bad in law for that reason. It offends Rule 24(1), (2), (3)

of the Labour Court Rules as per **Ezekiel Andrew v Africanlife Tanzania Labour Division, DSM Revision No. 346/2009**, S.C. Moshi, J:

Rule 24(1) which provides that any application shall be made on notice to all persons who have interest in the application is mandatory and no a mere technicality.

He stressed, application without notice is incompetent and liable to be struck out.

The irregularities are fundamental, cannot be served by the overriding objective principle backing it **by Marin D Kumaliya & 117 others v Iron and Steel Ltd, civil application No. 70/2018** (CAT):

While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court. We are loath to accept Mr. Seka's prayer because doing so would bless he respondent's inaction and render superfluous the rules of the Court that the respondent thrashed so brazenly.

He rested his submission by praying the PO be upheld and the application be struck with costs.

Mr. Sindamenya, learned advocate engaged for drawing the submission maintained that a counsel who prefers preliminary objections to every case in front of him/her to hunt for a shortcut winning of any case put to him is a sort of cowardness, a success which is very much discouraged by the mother law of the land. He placed reliance on the overriding objective principle the construction of the Civil Procedure Code:

The general rule is to the effect that Procedural rules are handmaiden in the administration of Justice, that they are there to facilitate the dispensation of substantial justice, therefore that a strict construction of the Civil procedure code is discouraged, that all the rules should be given a literal interpretation, thus rules of procedure do not give parties any rights rather that they only provide for the mode of settling disputes.

Mr. Sindamenya referred this court to the case of **Khaki Camera Prix (1970) HCD 235** the Judge said:

In deciding appeals a fair court endeavor not to allow technicalities to cause failure of Justice but rather looks at the

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substance of the matter on its emphasis that Court further provided that "Rules should not harass the parties.

Having read the objections, he has diagnosed that the objections raised from paragraphs 1, 2, 3 and 4 are overruled by Article 107A (1)(e) of the United Republic of Tanzania Constitution 1977 (as amended from time to time) and the overriding principle/ the construction of the Civil Procedure Code, hence are meritless, pregnant with no substance in them. The preliminary objection is hopelessly drawn and prays it be struck out with punitive costs, he stressed.

Mr. Sindamenya, however, seems to have not seen the decision of the Court of Appeal in **Mondorosi village Council & 2 others v Tanzania Breweries Limited & 4 others, Civil Appeal No. 66/2017** the Court of Appeal of Tanzania had these to say:

Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case

Further there is a recent decision of the High Court in **Misc. Civil Application No. 16/2019 Elikana Bwenda v Sylivester Kubondo** dated **12/03/2020** Matuma J. had these to say:

*I have come across a chain of authorities in the Court of Appeal decisions which forbids omnibus application. Some of the authorities in addition to that of **Ali Chamani supra** are; **Siri Nassir Hussein Siri versus Rashid Musa Mchomba (administrator of the Estate of the deceased Musha Mchomba Massawe), Civil application No. 23 of 2014, Mohamed Salimini versus Jumanne Omary Mapesa, Civil application No. 23 of 2014, just to mention a few.***

In all the herein cited authorities, the court held that different and distinct applications should be filed separately and that lumping them together renders the application incompetent and liable to be strike out.

I follow suit of what the High court in the case of **Elikana Bwenda** did and hold that the application is incompetent and has to be struck out for being omnibus.

I am of the view that it would be surprising, where an application is tainted with several defects labeled as incurably defective in that the affidavit in support of the Application is incurably defective. The application is bad in law for skipping the mandatory format of the law required in the applications of this kind and the application is not maintainable for being omnibus application can just survive the assault by placing reliance on the Constitution and the CPC as Mr. Sindamenya has tried to do.

I would also observe that the preliminary objection on omnibus application is sufficient to dispose of the application, but I hasten to add here that, even if omnibus irregularity would not suffice to strike out the application, the combination of the three irregularities would suffice.

In fine, the preliminary objection on points of law is sustained. The application is therefore ruled incompetent. I strike it out with costs.

It is so ordered.

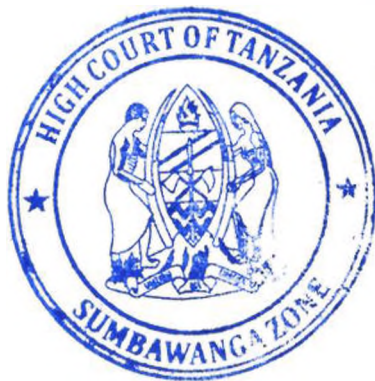
DATED at SUMBAWANGA this 8th day of November, 2021.



J. F. Nkwabi
J. F. Nkwabi,

JUDGE

Court: Ruling delivered in chambers this 8th day of November, 2021 in the presence of the applicants in person and Mr. Mungula Sylivester, learned counsel, holding brief for Mr. Sylivester Nkuhi, learned counsel, for the Respondent.



J.F. Nkwabi

J.F. Nkwabi

JUDGE