

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 234 OF 2021

BETWEEN

COCACOLA KWANZA LIMITED APPLICANT

AND

VENANCE MLEKANI RESPONDENT

RULING

Date of last order: 11/03/2022

Date of Ruling: 28/3/2022

B. E. K. Mganga, J

On 1st November 2007, applicant employed the respondent as assistant accountant but terminated on 22nd April 2014, she terminated employment of the applicant on ground that respondent committed gross negligence. Respondent was aggrieved by the said termination as a result, on 19th May 2014 he filed labour dispute No CMA/DSM/KIN/ARB.76/14 before the Commission for Mediation and Arbitration (CMA) claiming to be paid unpaid salaries, unpaid leave, reinstatement, severance allowance and be issued with a certificate of service on ground that he was unfairly terminated.

On 28th September 2020, Hon. Alfred Massay, arbitrator, having heard evidence of both sides issued an award that termination was not a proper sanction to the respondent hence unfair termination. In the award, the arbitrator ordered applicant to pay (i) TZS 17,052,000/= as 12 months' salary compensation for unfair termination, (ii) TZS 1,421,000/= being notice pay and (iii) TZS 2,678,038.46 being severance pay.

Applicant was aggrieved by the said award hence this application for revision. In the affidavit in support of the notice of application, Neema Kingson, the Human Resources Manager of the applicant raised one ground, namely, that the arbitrator erred in law and fact in holding that termination was not a proper sanction to the respondent.

Respondent resisted the application by filing the counter affidavit stating that there is no justifiable reasons for the award to be revised.

During hearing of the application Mr. Innocent Mushi, learned counsel for the applicant, prayed to adopt the affidavit sworn by **Neema Kingson** in support of the application to form part of his submissions. On the other hand, Ms. Regina Herman, learned counsel for the Respondent adopted the counter affidavit of Venance Mlekani to oppose the application. I examined the affidavit in support of the application and found that the jurat of attestation bears the name of **Scolastica Augustine** and

not **Neema Kingson**. With that observation, I asked the parties to address the court whether the application is competent or not.

Responding to the issue raised by the court, both learned counsels submitted that the application is defective and made a prayer that it should be struck out. Counsel for the applicant prayed leave to refile, of which was not objected to by counsel for the respondent.

The jurat of attestation shows that the affidavit was sworn by Scolastica Augustine who was identified to Omari Ally Ngatanga Commissioner for oaths by Innocent Felix Mushy. I have examined the verification clause and find that the person who verified the information contained in the affidavit is Neema Kingson. But the person who appeared before the commissioner for oaths is Scolastica Augustine, who, has nothing to do with the application because it is not shown that she is privy to the information contained in the affidavit. Therefore, the jurat of attestation is defective.

It is my view that since the jurat of attestation bears the name of Scolastica Augustine who is not the deponent instead of Neema Kinson, the whole affidavit becomes incurably defective. I entirely agree with submissions by both counsel that the application is defective because in terms of Rule 24(1) of the Labour Court Rules, GN. No. 106 of 2007, the

application to the court, must be by notice of application. Further, in terms of Rule 24(3) of GN. No. 106 of 2007 (supra), the Notice of application must be supported by an affidavit. It is my view therefore that, since the affidavit in support of the application is incurably defective, there is no application as the notice of application is not supported by an affidavit. That being the position, I find that, the application is not properly before the court. I therefore struck it out and grant seven (7) days leave within which to the applicant to file a proper application.

Dated at Dar es Salaam this 28th March 2022.




B.E.K. Mganga
JUDGE