

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

**APPLICATION FOR REVISION NO. 19 OF 2021**

**BETWEEN**

**MUSTAFA S. WAMBALI ..... APPLICANT**

**VERSUS**

**BAHARI EAGLES FOUNDATION LIMITED ..... RESPONDENT**

**RULING**

*Date of Last Order: 08/12/2021*

*Date of Ruling: 25/01/2022*

**I. Arufani, J.**

This ruling is for the point of preliminary objection raised in the matter at hand by the respondent which read as follows:-

- 1. That the applicant's affidavit in support of the application for revision offends the mandatory provisions of Order XIX Rule 3 (1) of the Civil Procedure Code, Cap 33 (R.E 2019).*

When the matter came for hearing the above quoted point of preliminary objection, Mr. Adam Mwambene, Learned Counsel for the respondent prayed to argue the point of preliminary objection by way of written submission. As his prayer was not objected by Mr. Hamza Rajab, Personal Representative for the applicant the prayer was

granted. Therefore, the point of preliminary objection was argued by way of written submission.

The counsel for the respondent stated in his submission that, after reading the applicant's affidavit supporting the application, they have noted that, although the deponent has not disclosed anywhere in the affidavit that he has a legal background but he has deposed in verification clause of his affidavit that, all what has been stated in the affidavit originates from his own knowledge. He cited in his submission the provision of Rule 24 (3) of the Labour Court Rules, GN. No. 106 of 2007 (hereinafter referred as the Rules) which provides for what is required to be contained in an affidavit for supporting any application filed in the labour court.

He argued that, paragraphs (b) and (c) of the above cited provision of the law shows the deponent making a statement of material facts in an affidavit is also required to reduce the material facts deposed in his affidavit into statement of legal issues. He argued that, in reducing the statement of material facts into legal issues, legal expertise is required. He submitted it is not true that the deponent of the affidavit supporting the application at hand would have been able to reduce the statement of material facts in his

affidavit into statements of legal issues by using his own knowledge. To his view the applicant had to get an assistance of legal expert.

He argued that, in order for the applicant to comply with the mandatory requirements of the provision of Order XIX Rule 3 (1) of the Civil Procedure Code, Cap 33 R.E 2019 (hereinafter referred as the CPC) he was required to specify in the verification clause of his affidavit which matters are deposed from his own knowledge and which matters are deposed from the advice or information he received from his legal expert representing him in the matter. To support his argument, he referred the court to the cases of **Rashid Ally Kadegere V. Jumanne Masinde**, Misc. Land Application No. 323 of 2019 HC Land Division at DSM (unreported), **Salima Vuai Fom V. Registrar of Cooperative Societies & Three Other**, [1995] TLR 75 and **Kubach & Saybook Ltd. V. Hashim Kassam & Sons Ltd**, (1972) HCD no 228 which insisted on the requirement of distinguishing matters deposed in an affidavit on information received by the deponent and believed to be true and the matters deposed on the deponent's own knowledge. At the end he prayed the court to strike out the application in total for being supported by defective affidavit.

In his reply the applicant stated that all facts deposed in his affidavit are according to his own knowledge. He stated there was no basis for the respondent to argue he could have not deposed the said facts on his own knowledge. He argued that, the respondent has not stated which facts are limited to his own knowledge and which he was not allowed to depose on his own knowledge. He referred the court to the case of **Shose Sinare V. Stanbic Bank Tanzania Limited & Another**, Civil Appeal No. 89 of 2020, CAT at DSM (unreported) where the Court of Appeal restated the definition of the term preliminary objection as defined in the famous case of **Mukisa Biscuits Manufacturing Company Ltd. V. West End Distributors Ltd**, [1969] EA 696.

He argued further that, the respondent's preliminary objection cannot be sustained as the CPC is not applicable in the court where there is no lacuna in the laws applicable in the labour court. To support his argument, he referred the court to the cases of **Sadiki Tonogo V. Heavy Lifters Co. Ltd.**, Revision No. 464 of 2013 HC Labour Division at DSM, **Globelea Tanzania Service Ltd. V. Evarist Sessa**, Misc. Application No. 47 of 2010 and **Hussein Ally & 13 Others V. Tanzania Hides and Skin Dar es Salaam & Others**, Misc. Labour Application No. 503 of 2019 (All unreported).

Generally, the court stated in the cited cases that, the practice of the High Court Labour Division is guided by labour laws and its Rules of practice. At the end he prayed the preliminary objection be dismissed with costs and the date for hearing the application be fixed.

In his rejoinder the counsel for the respondent reiterated what he stated in his submission in chief and added that, the nature of an affidavit will always remain the same whether is in criminal, civil or any other matter. He stated that, the Labour Court Rules do not provide anything contrary to what is provided under Order XIX Rule 3 (1) of the CPC. He argued further that, although it is true that there is no application before the labour court is required to be made under the CPC but when it comes to the nature of the affidavit the CPC can be invoked. In fine he prayed the application be struck out in total.

After carefully considered the submissions made by both sides and considered the point of preliminary objection raised by the respondent the court has found the issue to determine in this matter is whether the affidavit supporting the present application is offending mandatory requirement of Order XIX Rule 3 (1) of the CPC. The court has found before indulging into determination of the said issue it is proper to state at this juncture that, the affidavit in support

of any application filed in the labour court is governed by Rule 24 of the Rules.

The cited provision of the law provides for what should be contained in an affidavit supporting the application filed in the labour court. Among the facts required to be stated in an affidavit supporting the application as provided under sub rule (3) (b) and (c) of the cited Rule are the statement of the material facts of the case and the statement of the legal issues arising from the deposed material facts.

However, although the cited provision of the law provides for what should be contained in an affidavit supporting any application filed in the labour court but it does not provide for how the affidavit in support of an application filed in the labour court should be verified. That being the position of the law the court has found it is required to invoke Rule 55 (1) of the Rules which allows the court to adopt procedures provided in other law to regulate any proceedings before the court. The stated position of the law takes the court to Order XIX Rule 3 (1) of the CPC alleged by the respondent was violated in the affidavit of the applicant which state as follows:-

*"Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory*

*applications on which statements of his belief may be admitted: Provided that, the grounds thereof are stated."*

The wording of the above quoted provision of the law shows clearly that, an affidavit in support of an application filed in the court is required to be confined to the facts which the deponent is able of his own knowledge to prove. Where the affidavit is deposed on facts received from other person or source and believed to be true the deponent is required by the cited provision of the law to disclose the sources of the said facts. That being the requirement of the law the court has carefully considered the submission made by the counsel for the respondent that the applicant has deposed legal issues in his affidavit which cannot be said are within his own knowledge as he has not stated he has any legal background but he has verified them as the facts which are within his own knowledge.

The court has found it is true as rightly argued by the counsel for the respondent that the applicant has verified his affidavit by stating all paragraphs of his affidavit are true to the best of his own knowledge. That being how the affidavit of the applicant is verified the court has keenly going through the legal issues deposed by the applicant in his affidavit as appearing at paragraphs 4.0 to 4.9 of his affidavit but failed to see anything special in the said paragraphs

which can be said with accuracy that cannot be proved by the applicant as required by the law.

The court has arrived to the above finding after seeing there is no law stating a party in any application filed in the labour court cannot verify the legal issues deposed in his affidavit on his own knowledge if he has no legal background as argued by the counsel for the respondent. To the view of this court the requirement provided in the law is for the deponent to be able to prove the facts he has deposed on his own knowledge. The court has found to say the applicant cannot have knowledge of the legal issues deposed in his affidavit as he has no legal background and the legal issues deposed in his affidavit need an assistance of a legal expert has no legal basis.

The above finding of the court is basing on the fact that, there are some people though they have not attended any legal training but they have legal knowledge of some matters relating to the law. These people cannot be denied the right to depose legal facts which are within their knowledge on the mere assertion that they have no legal background. What is required to be looked in an affidavit is whether the deponent can prove the fact he has deposed on his own



knowledge. As the applicant deposed in his affidavit and argued in his submission that all facts deposed in his affidavit are within his own knowledge there is nothing which can make the court to sustain the point of preliminary objection raised by the respondent.

The court has arrived to the above finding after seeing that, in order to say the applicant has no knowledge of the facts deposed in the paragraphs containing legal issues of his case the respondent will be required to give evidence to prove the deposed facts are not within the knowledge of the applicant but were received from his legal expert so as to require him to disclose the source of the said legal issues. That being the position of the matter the court has found the point of preliminary objection raised by the respondent cannot conform with the meaning of the term preliminary objection given in the case of **Shose Sinare** (supra) when referring the definition given in the celebrated case of case of **Mukisa Biscuits Manufacturing Company Ltd.** (supra) cited in the submission of the respondent.

The court has considered the position of the law stated in the cases cited by the counsel for the respondent to support his argument that the applicant was required to state in the verification

clause of his affidavit that, the legal issues appearing in his affidavit were information he received from his legal expert but found the said cases are distinguishable from the case at hand. The court has found while in the present application the applicant has deposed all facts in his affidavit on his own knowledge, the facts in the affidavit filed in the cited cases were deposed on personal knowledge of the deponents and on information and belief without specifying which facts were deposed on personal knowledge of the deponent and which were deposed basing on information and belief and their sources were not disclosed. The above stated finding caused the court to find the preliminary objection raised by the respondent cannot be sustained.

Notwithstanding the above stated finding of the court, the court has found the affidavit supporting the application of the applicant is not in conformity with what is required to be contained in an affidavit supporting an application filed in the labour court. The court has arrived to the above finding after seeing that, Rule 24 (3) of the Rules states the application filed in the labour court is required to be supported by an affidavit which shall be clear and concise in what is set in the affidavit. The court has found the affidavit supporting the application of the applicant is not clear and concise as it contains a lot

of quotations from the impugned award which the court has found were not required to be quoted in the affidavit.

As the affidavit in support of an application filed in the labour court is required to comply with what is provided under Rule 24 (3) of the Rules and the affidavit of the applicant is not in conformity with the requirement of the said law it cannot be said the application of the applicant is supported by a proper affidavit. Now the question is what should be done under that circumstance. The court has found in order to enable the court to understand clearly the material facts of the case and the legal issue raised by the applicant in his affidavit it is proper and just to strike out the application of the applicant as is supported by a defective affidavit.

In the premises the court has come to the settled finding that, although the point of preliminary objection raised by the respondent has not been sustained because of the above stated reason but the application is incompetent for being supported by an affidavit which is not clear and concise as required by the law. Consequently, the application is hereby struck out for being supported by a defective affidavit.

As the point used to strike out the application is not the point raised by the respondent but the point raised by the court suo moto, the court has found proper for the interest of justice to grant the applicant leave to refile in the court another application which will be supported by an affidavit which is in conformity with the law. The fresh application to be refiled in the court within thirty (30) days from the date of delivery of this ruling. It is so ordered.

Dated at Dar es Salaam this 25<sup>th</sup> day of January, 2022.



I. Arufani

**JUDGE**

25/01/2022

**Court:** Ruling delivered today 25<sup>th</sup> day of January, 2022 in the presence of the applicant in person and in the presence of Ms. Doris Kawonga, Advocate holding brief of Mr. Adam Mwambene, Advocate for the Respondent. Right of appeal to the Court of Appeal is full explained to the parties.



I. Arufani

**JUDGE**

25/01/2022