

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

REVISION APPLICATION NO. 368 OF 2021

BETWEEN

JENNIFER MLONDEZI & 3 OTHERS.....APPLICANTS

VERSUS

EBRAHIM HAJI CHARITABLE HEALTH CENTRE.....RESPONDENT

(From the decision Commission for Mediation & Arbitration of DSM at KIN)

Dated 16th January 2015

in

Labour Dispute No. CMA/DSM/ILA/R.273/2014/1267

RULING

17th May 2022 - 18th May 2022

K. T. R. MTEULE, J.

This ruling in respect of Preliminary objection raised in this Revision Application No. 368 of 2021 which was filed by the applicants challenging the CMA award in Labour Dispute No. CMA/DSM/ILA/R.273/2014/1267 by a way of revision. In response, the Respondent raised three points of preliminary objections which are:-

- i) That the application is hopelessly time barred.
- ii) The application is incurably defective for being supported by incurably defective affidavit for contravening Rule 24 (3) of the Labour Court Rules, GN. No. 106 of 2007.

iii) The application is bad in law as its affidavit contravenes S.8 of the Notary Public and Commissioner for oath, (Cap 12 R.E 2019).

The hearing of the preliminary objections was done by a way of oral submissions. The respondent's submission was done by Ms. Hawa Tursia, Advocate from G.Y. Hassam & Company Advocate while the applicant was represented by Mr. Andrew Chima from Jonas & Associates Law Chambers.

Stating with the 1st point of objection, Ms. Hawa Turusia referred to several applications which were filed by the Applicant but ending by being struck out for being incompetent with a leave to refile. She stated that the last application to be filed was Revision No. 297 of 2021 which was struck out on 8th September 2021 with no leave to refile. According to Ms. this behaviour of having Applicant's applications struck out and lastly with no leave to refile connotes that the applicant ought to seek leave of the court or extension of time to file any other application.

Ms. Hawa Turusia argued that once the application is struck out without leave to refile, it is as good as no record at all present in court. In this respect she is of the view that counting of time needs to

start from the date of the CMA award, which is 6th January 2015, almost 6 years ago. She added that the only remedy for delay is for the same to be dismissed as it was held in the case of **Hashim Madingo and 2 Others vs. Minister for Industry and Trade and 20thers**, Civil Appeal No. 27 of 2003 (unreported).

On second point of preliminary objection Ms. Hawa Turusia submitted that the application is defective for being supported by a defective affidavit contrary to Rule 24 (3) (a) of the Labour Court Rules, GN. No. 106 of 106. She stated that at paragraph 2 (1) the applicants stated the address of the advocates and not parties. In such circumstances she is of the view that it is difficult to establish whether the applicants are natural person or legal entity, for that reason it renders the application being incompetent.

In her submissions, Ms. Turusia dropped the third point of preliminary objection. She prayed for the application to be dismissed with cost.

In response, Mr. Andrew Chima for the Applicant disputed the assertion that the application is time barred. He submitted that the applicant has been constantly knocking the doors of this Court without a substantive hearing. She argued that the last application

which was Revision Application No. 297 of 2021 was dismissed on 8th September 2021.

Mr. Andrew Chima argued that when a matter is struck out it does not bar its further filing but it should be subject to the Law of Limitation. He disputed the counting and added that counting of days begins when the last application was withdrawn or struck out and not from the date when the decision was made by the lower Court.

It was further submission by Mr. Chima that since the previous application was struck out on 8th September 2021 and the present application was filed on 27th September 2021, it means that there was a lapse of 19 days from the date when the application was struck out to the date of filing of this Application. In this respect According to Mr. Chima, the application is within time as per Item 21 of the Schedule of the Law of Limitation Act. He challenged the case cited by the Respondent's Counsel asserting that it is distinguishable with this case on the ground that in that Case, the applicant was given opportunity of extension of 30 days, but he didn't file it within 30 days.

Regarding the second ground Mr. Andrew Chima submitted that the missing of names in affidavit does not warrant the application to be struck out while from the beginning the names of the parties are well stated. For that reason, he is of the view that the paragraph is not offensive and that the remedy available is to expunge the defective paragraph and not to strike out the entire application.

The respondent's Counsel filed a rejoinder, I will consider the contents in determining the application on merit.

Having considered the parties' submissions, the Court records, labour laws applicable and practice, on the raised preliminary objection, two issues need to be resolved. These issues are:-

- i) Whether the application is incurably defective for being supported by incurably defective affidavit contrary to Rule 24 (3) of the Labour Court Rules, GN. No. 106 of 2007.
- ii) Whether the application is time barred.

I will start with the first issue as to whether the application is incurably defective for having defective affidavit. According to the applicant, the affidavit of the applicant contravenes Rule 24 (3) (a) of the Labour Court Rules, GN. No.106 of 2007. For better appreciation

of the matter, I reproduce hereunder the contents of Rule 24 (3) (a) of GN. 106 of 2007. The Rule states:-

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

- (a) the names, description and addresses of the parties;*
- (b) a statement of the material facts in a 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."*

What I gather from Rule 24 (3), an affidavit needs to give a thorough description of the applicant. Paragraph 2.2.1 of the affidavit which is labelled to have name, description and address of the applicant reads as stated hereunder:-

"2. Names, Description and Address of the Parties:

2.1. That, we were employed by the Respondent in the year 1992 up to 2014 in the Medical Services and the Applicant's Address of services for purpose of this Application is in the care of;

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From the above quoted words, it is apparent that the names of the Applicants are missing in that description. The names of the parties should have been properly described including their physical address. It is not an offence to have the address of their advocates as a postal address for the purposes of service, but the name of the applicants and their physical address are important for the purposes of having an appropriate description required by the Rules. This is a fault which renders the affidavit incurably defective. As such, the defective affidavit make the entire application incompetent before the court. Consequently, I sustain the Respondent's point of preliminary objection that the application is incurably defective for being supported by incurably defective affidavit which contravenes **Rule 24 (3) of the Labour Court Rules, GN. No. 106 of 2007.**

Since the Court has already found the application to be incurably defective, I find no need to labour on the remaining points of

objection as this incompetence of the application is sufficient to dispose it off.

For the above reason, I hereby strike out this application for being defective. It is so ordered.

Dated at Dar es Salaam this 18th day of May, 2022.



KATARINA REVOCATI MTEULE

JUDGE

18/05/2022