

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 14 OF 2022

*(From the decision of the Commission for Mediation and Arbitration of DSM at Ilala
(Mbeni: Arbitrator) dated 19th April 2019 in Labour Dispute
No. CMA/DSM/ILA/R.550/17/833)*

BETWEEN

EXIM BANK (T) LTD.....APPLICANT

VERSUS

AGNES A. TEMBA.....RESPONDENT

RULING

K. T. R. MTEULE, J.

20th July 2022 & 04th August 2022

This ruling is in respect of a preliminary objection raised by the respondent against an application seeking for revision of an award issued by the Commission for Mediation and Arbitration of Dar Es Salaam, Ilala (CMA) in Labour Dispute No. CMA/DSM/ILA/R.550/17/833. The said award was issued by Hon. Mbeni (Arbitrator) on 12th April 2019.

In opposing the application, the respondent filed a counter affidavit accompanied with a notice of preliminary objection is to the effect that:-

- i) The application for revision is time barred.

- ii) The application for revision is incompetent for it has defective notice of representation as per Section 56 (c) of the Labour In situation Act No. 7 of 2004 and Rule 43 (1) (a) and (b) of the Labour Court Rules, GN. No. 106 of 2007
- iii) The notice of application is bad in law for not containing list of documents to be relied upon as per Rule 24 (2) (f) of the Court Rules, GN. No. 106 of 2007
- iv) That the Court was wrongly moved by supplementary affidavit.

Both parties to the application are represented. The respondent was represented by Ms. Mary Brown, Advocate, whereas the applicant enjoyed the legal services styled as Locus Attorney. The preliminary objection was disposed of by way of written submission. I thank both parties for adhering to the Court schedules.

Arguing in support of the preliminary objection regarding the time of refiling the application Ms. Brown submitted that on 18th December 2020 the applicant's application No. 433 of 2019 was struck out for being defective with a leave to refile on 04th January 2021, however the same was filed was admitted on 05th January 2021 accompanied with supplementary affidavit as a ground of delay. In such

circumstances he is of the view that the application was filed out of time. Supporting her position, she cited the case of **Isamilo Plaza Co. Ltd. v. Mwajuma Musa**, Labour Revision No. 54 of 2019, High Court of Tanzania, at Mwanza, (unreported).

On second point of law Ms. Brown submitted that the application is incompetent for having defective notice of representation which contains the name of Stanbic Bank. She stated that the respondent on her knowledge has no case with Stanbic Bank which is unknown party in these proceedings. She bolstering her position by citing the case of **Hamza Omary Abeid v. Pro Mining Services**, Labour Revision No. 54 of 2019, High Court of Tanzania, at Mwanza, (unreported).

Regarding list of documents, it was submitted by Mr. Brown that **Rule 24 (2) (f) of the Labour Court Rules** makes it mandatory for the application to have a list of documents to be relied upon but the said list is missing in this application. Strengthening her stand she cited the case of **Simon Kamoga v. Shanta Mining Co. Limited**, Labour Revision No. 18 of 2019, High Court of Tanzania, at Mbeya, (unreported).

In reply Mr. Muganyizi submitted on first objection that the application for revision is not time barred as the respondent filed their application and attached a supplementary affidavit stating the reason for having their application admitted a day after the deadline had passed. Referring to the supplementary affidavit, Mr. Muganyizi stated that the application was returned for rectification by the online filings system - JSDS system, and it was rectified on the same date of 4th January 2021 and returned to JSDS where it was subsequently admitted on 5th January 2021.

Mr. Muganyizi challenged the respondent's contention that the term supplementary affidavit does not feature under **Rule 24 of the labour Court Rules** hence it cannot be part of the application. He stated that the mere absence of the word "supplementary affidavit" does not mean that it is not accepted in the Court or cannot be filed or be part of an application. He stated that supplementary affidavit is permitted in our Courts of law in addition to or to supplement an affidavit. In his view, supplementary affidavit is sworn by a party who is not in the main affidavit and their case, the affidavit was sworn by Edmund Mwasanga and the supplement sworn by Muganyizi Shubi to supplement what was stated in the affidavit of

Edmund. They thus prayed for the objection to be dismissed for lacking merit.

On the second objection Mr. Muganyizi stated that the Applicant mistakenly wrote "Stanbic" instead of "Exim". According to him, the error does not mean that the Advocates for the applicant has no authority on two reasons; Firstly, the error is a typographical since in the entire Application, there is no other area that the word Stanbic is depicted other than the notice of representation. Secondly, he drew the Court's attention to the signatures signed in the entire application which are the same being done by head of legal unit and therefore principal officer- Edmund Mwasanga. Mr. Muganyizi is of the view that if they were not mandated as the respondent contends, the signature would have been different in the notice of representation. Muganyizi concluded that the error of the name Stanbic is a clerical error as the applicant Advocate meant to write Exim.

Mr. Muganyizi invited the court to find the clerical error falling under overriding objectives under **Section 3A and 3B of the Civil procedure Code R.E 2019** which requires the Court to adhere to just, expeditious and affordable resolution of disputes by avoiding technicalities that do not go to the root of the matter.

Regarding list of document Mr. Muganyizi submitted that the applicant's affidavit has not referred to any documents that's why the same was not attached in the application. On such circumstances he is of the view that this objection is untenable and should be dismissed as well.

Having considered parties' submissions regarding the preliminary objections, I find that this Court is called upon to determine whether the points of preliminary objections constitute merit.

It is well known principle of law that a preliminary objection has to be resolved first before the main suit. As was stated in the case of Thabit **Ramadhan Maziku and another vs Amina Khamis Tyela and another**, Civil Appeal No. 98 of 2021 also cited in the case of **Bank of Tanzania Ltd. V. Devran P. Valambia**, Civil Application No. 15 of 2002 (CAT) (unreported) it was held:-

"The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of the application because there is a point of law that will dispose of the matter summarily."

The above principle paves the way in resolving points of law raised by the respondent in this application. Starting with the first preliminary objection it was respondent's argument that the matter was time barred by being admitted on 05th January 2021 and filing of supplementary affidavit does not warrant applicant's application to acquire a status of being filed in time also the same is not recognized by the law.

Since the matter at hand was filed by way of E-filing then the relevant provision is **Rule 21 (1) of the Judicature and Application of Laws (Electronic filing) Rules, GN. 58 of 2018** provides that:-

"A document shall be considered to have been filed if it is submitted through the electronic filing system before midnight, East African time, on the date it is submitted, unless specific time is set by the court or it is rejected."

Being guided by the above provision, the application at hand was duly filed electronically on 4th day of January, 2021 which was the last day as per Court order of refiling, as it is stipulated in the print out and the same admitted on 05th January 2021 in such

circumstances the respondent allegation that was filed out of time lacks merit.

On second preliminary objection regarding notice of representation, the respondent's contended that the application is incompetent on the ground that the one who mentioned in the notice of representation is not the applicant but the stranger, on such basis he of the view that since the notice of representation mentioned STANBIC BANK instead of EXIM BANK then the applicant's counsel lacks locus stand, as the applicant did not file a notice of representation in accordance with **Section 56 (c) of the Labour Institution Act (supra) and Rule 43 (1) of the Labour Court Rules, GN. No. 106 of 2007**. While the applicant argued that this ground is meritless and the principle of overriding should be applied. It is well established principle of law that notice of representation is mandatory as per **Rule 43 (1) of the Labour Court Rules** which directs:-

"A representative who acts on behalf of any party in any proceedings shall, by a written notice advise the Registrar and all other parties of the following particulars;

(a) The name of the representative.

(b) The postal address and place of employment or business and any available fax number e- mail and telephone number”.

The above provision directs that if any party in a labour dispute opts to be represented, then the representative agent has to adhere the above section. In the case at hand the applicant's application is drawn and filed by an advocate who represent a strange party, and not applicant by filing notice of representation which contain the different name in total and not clerical error as alleged, in my view since the issue of representing is serious matter which involves parties' rights, considering the law which directs the same to be mandatory. Therefore, the applicant did not comply with the law and this renders the application to be incompetent.

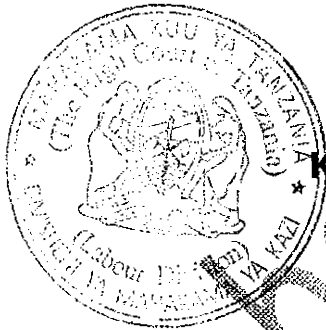
The applicant tried to convince this Court in using Overriding Objective principle in catering the defect. Being aware of provisions of overriding objective, their applicability has been tested by Court of Appeal in numerous decisions, including the case of **Martin D. Kumalija & 117 Others v. Iron and Steel Ltd.**, Civil Application No. 70/18 of 2018 (unreported), it was insisted the need of applying the overriding objective principle with reason and without offending clear provisions of the law. This Court being bounded by Court of

Appeal decisions I find wise the same to be honoured by this Court in applying overriding objective principle by considering the law.

From the above legal reasoning I have no any hesitation to say that the second preliminary objection is sustained, therefore no need to address the remained preliminary objections. Finally, I struck out the application for being defective. Each party to take care of its own cost.

It is so ordered.

Dated at Dar es Salaam this 04th day of August, 2022.



A handwritten signature in black ink, appearing to be 'KRM', is written over the seal and the text below.

KATARINA REVOCATI MTEULE

JUDGE

04/08/2022