

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

**REVISION APPLICATION NO. 283 OF 2022**

*(Arising from labour dispute No. CMA/DSM/KIN/210/21/53/21)*

**FRANS JOHN MUSHI.....APPLICANT**

**VERSUS**

**MILLIAN GAMALIELI MAKERE.....RESPONDENT**

**RULING**

**K.T.R, Mteule, J**

**23<sup>rd</sup> March, 2023 & 23<sup>rd</sup> March, 2023**

This Ruling concerns points of Law raised in the preliminary objection raised by the Counsel for the Respondent asserting defects in the Chamber summons in support of this Application. The Application is lodged to seek revision of the Decision of the CMA in Labour Dispute **No. CMA/DSM/KIN/210/21/53/21** arising from the Commission for Mediation and Arbitration of Dar es Salaam Kinondoni.

The Preliminary Objection is heard by written submissions where Advocate Michael Kabuzya, Counsel for the Respondent asserted that the chamber

summons before this Court does not bear seal of the Court and it is not signed and dated.

He referred to the case of **Dr. Fortunatus Wanyantika Mosha vs. Dr. William Shija & Attorney General, Misc. Civil Cause No. 15 of 1995** which referred with approval the case of **Kaur and others vs. City Auction Mart (1967) E.A 108** According to Kabuzya, in the case of **Fortunatus Masha**, similar errors occurred page 2 at paragraph 2 the Court decided that a chamber summons is incompetent if it does not bear a Court seal and signed and dated by the District Registrar.

Advocate Kabuzya submitted that the error renders the chamber summons invalid as it contravenes **order 5 Rule 2 of the Civil Procedure Code, Cap 33 of R.E 2019 (CPC).**

Mr. Kabuzya submitted that the findings in this case held this defect as demonstrating lack of seriousness which renders the matter depleted. He also referred to **Order V Rule 2 of the CPC** where I quote the language used in this provision of **CPC** as "shall" which refers to must as defined by **Section 53 of the interpretation of the Laws Act.**

Mr. Kabuzya therefore prayed for the Court to strike out the matter or dismiss it.

Mr. Denise Mwamkwala, the Applicant's Personal Representative made a counter submission to the Respondent's submission by stating that the application is not brought under the **CPC** but under the **Employment and Labour Relations Act, Cap 366 of the R.E 2019** & the **Labour Court Rules G.N No. 106 of 2007**. According to Mr. Mwamkwala, Rule 24 do not mandatorily require a chamber summons to be signed by the Registrar. He submitted that even in the case of Dr. Fortunatus, cited by the Respondent's counsel, the subject matter was election and what the counsel has quoted was the submission of the counsel.

According to Denise, in Labour cases, Chamber summons is not mandatory. According to him, the law requires an application to be supported by an affidavit. In his view, CPC does not apply in Labour court unless the law is silent on the matter.

He prayed for the preliminary objection to be overruled for having not mentioned any Labour law in violation.

Having considered the parties' submissions, I note that Mr. Mwamkwala is not disputing the fact that the Chamber summons is not signed sealed and dated by the Registrar. His contention is that this is not a requirement since the labour law did not provide such a requirement. He further

claimed that Chamber summons is not mandatory in the Application under **Rule 24 of G.N 106 of 2007**.

I will start with the relevance of Chamber summons in the Application under **Rule 24 of G.N 107 of 2007**. The said Chamber summons was brought by Mr. Mwamkwala who is challenging its relevance. In my view, so long as Mr. Mwamkwala has decided to bring it, he must comply with the format provided for the contents of Chamber summons. He cannot challenge its relevance while he is the one who brought it.

Regarding to the requirements of the Registrar's signature, I agree with Mr. Mwamkwala that the Labour Laws are silent on the guidance of how the Chamber summons should be drawn. But under **Rule 55** of the Labour Court Rules, where there is a lacuna in Labour Laws, the Court shall apply other procedural laws such as CPC. Since Mr. Denise admits silence in the Labour Laws concerning the requirement of having the Registrar sign date and seal the Chamber summons, then the Application of the CPC becomes inevitable.

From the above reasons, I find the preliminary Objection meritorious and uphold it. The Application is therefore struck out for being supported by a defective affidavit. Since this is a procedural error, and for interest of

substantive justice, I grant the applicant leave to refile it within 14 days from today. It is so ordered.

Dated at Dar es Salaam this 23<sup>rd</sup> Day of March 2023



**KATARINA REVOCATI MTEULE**

**JUDGE**

**23/03/2023**

