

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

REVISION APPLICATION NO. 86 OF 2023

*(Arising from an Award issued on 02/3/2023 by Hon. Ng'washi, Y, Arbitrator, in Labour dispute No.
CMA/DSM/KIN/428/2020/297 at Kinondoni)*

ZUHURA SULEIMAN KINYUMBI..... APPLICANT

VERSUS

LONAGRO TANZANIA LIMITED RESPONDENT

RULING

*Date of last Order: 12/06/2023
Date of Ruling: 23/06/2023*

B. E. K. Mganga, J.

Brief facts of this application are that, Zuhura Suleiman Kinyumbi, the applicant was an employee of Lonagro Tanzania Ltd, the respondent. Applicant's place of work was at Mpanda within Katavi Region. On 22nd May 2020 while at Mpanda, she was served with a notice to attend the disciplinary hearing allegedly that (i) she failed to exercise her duties to the extent of staying with the respondent's money amounting to TZS 420,600/= for two weeks without depositing the same in the respondent's bank account and (ii) gross negligence allegedly that she gave

respondent's client spare parts without issuing gate pass to the security. In the said notice to attend the disciplinary hearing, applicant was informed that the disciplinary hearing will be held on 28th May 2020 at 10:00hrs at Lonagro Dar es Salaam Board room within Dar es Salaam region. Applicant travelled from Katavi to Dar es salaam to attend the said disciplinary hearing as a result, after conclusion of hearing, she was found guilty as charged and her employment was terminated on the same date.

Aggrieved with termination, applicant filed Labour dispute No. CMA/DSM/KIN/428/2020/297 before the Commission for Mediation and Arbitration henceforth CMA at Kinondoni complaining that termination was unfair. In the referral form (CMA F1) applicant indicated that she was claiming to be paid notice, annual leave, salary arrears, severance pay, 12 months salary compensation and be issued with a Certificate of Service. On 2nd March 2023, Hon. Ng'washi, Y, Arbitrator, issued an award in favour of the respondent that termination was fair both substantively and procedurally. The arbitrator found that applicant was entitled to be paid fare and costs for transportation of her luggage from Mpanda to Dar es Salaam. Applicant was further aggrieved hence she filed this application for

revision. In her affidavit in support of the application, applicant raised three issues namely: -

1. *Whether there were valid reasons for termination of her employment contract.*
2. *Whether respondent followed procedures in terminating her employment contract.*
3. *Whether the arbitrator was justified to award terminal benefits without assigning reasons.*

In resisting the application, respondent filed both the Notice of Opposition and the counter affidavit of Beatrice Yuda Maswaga, her Administration Manager.

By consent of the parties, the application was argued by way of written submissions.

In her written submissions, respondent raised a preliminary objection that the application is incompetent because it is supported by a defective affidavit. It was submitted further on behalf of the respondent that the verification clause in the affidavit in support of the Notice of Application is defective making the whole affidavit defective. Counsel for the respondent cited the case of *Sameer Esmail v. Kone Pasno*, Revision Application No. 428 of 2021, HC(unreported) and *Jamal S. Mkumba and Another v.*

Attorney General, Civil Application No. 240/01 of 2019, CAT(unreported) and prayed that the application be dismissed. In the same written submissions, respondent raised another preliminary objection that applicant filed her written submissions out of time scheduled by the court without leave. Respondent cited the case of **Monica Dickson v. Hussein J. Wasuha(KNY CHAMA CHA WAFANYABIASHARA)**, PC Civil Appeal No. 04 of 2019, HC(unreported) and prayed that the application should be dismissed for want of prosecution.

Since those preliminary objections were raised in final submissions by the respondent, in her rejoinder written submissions, applicant prayed the court to apply the overriding objective principle and determine the matter on merit because she is unrepresented layperson which is why, she failed to comply with submission schedules. Applicant cited the case of **DPP v. Stephano Charles Mwanjemba @ Baba Isaka**, DC Criminal Appeal No. 15 of 2019, HC(Unreported) to implore the court to use the overriding objective principle and determine the application on merit. On defectiveness of the verification clause, applicant submitted that respondent has raised this preliminary objection through the back door because respondent was supposed to raise that preliminary objection

before the court has issued submission orders. Applicant submitted further that the preliminary objection relating to defectiveness of the verification clause does not go to the jurisdiction of the court and does not finalize the application because the court may only strike it out and that applicant may refile it.

I have considered submissions of the parties on the two preliminary objections and for obvious reason, I will start with the preliminary objection relating to defectiveness of the verification clause. I entirely agree with submissions by the applicant that respondent was supposed to raise the said preliminary objection at the earliest before the court has issued submission orders. Nevertheless, that does not bar the court to determine competence of this application. In her submissions on the preliminary objection relating to defectiveness of the affidavit, applicant did not state that verification was properly done. In my view, applicant impliedly conceded that the verification clause is defective making the whole affidavit in support of the application defective. I have examined the verification clause and find that it was defective making the whole affidavit in support of the Notice of Application defective. Since the affidavit in support of the Notice of Application is defective, the whole application is incompetent. In

other words, there is no application before the court. I am of that view because, in terms of Rule 24(3) of the Labour Court Rules, GN. No. 106 2007, the application must be supported by an affidavit.

Guided by the decisions of this court and the Court of Appeal in *Pasno's case*(supra) and *Mkumba's case* (supra), I hereby strike out this application. The prayer by the respondent for the court to dismiss this application is not tenable in law for two reasons. One, incompetent application is liable to be struck out and not to be dismissed because there is no application before the court. Two, the court has jurisdiction to determine the application and has not heard the parties on merit. Applicant has an option of refiling the application after adhering to the procedure subject to the Law of Limitation.

It is my view that submissions by the respondent that the application should be dismissed for want of prosecution because applicant failed to adhere to submissions schedules are inconsequential in the application at hand. I am of that view because the application is incompetent. Even if applicant would have filed her written submissions as scheduled, still those submissions would have served nothing because the application is

incompetent. I therefore reject the prayer of dismissal of the application advanced by the respondent.

For the foregoing, I will not discuss the issues raised by the applicant and submissions made thereon by the parties.

As I have held hereinabove, the application is incompetent liable to be struck out as I hereby do.

Dated at Dar es Salaam on this 23rd June 2023



B. E. K. Mganga
JUDGE

Ruling delivered on this 23rd June 2023 in chambers in the presence of Zuhura Suleiman Kinyumbi, Applicant and Arnold Luoga, Advocate holding brief of Steven Shitindi, Advocate for the Respondent.



B. E. K. Mganga
JUDGE