

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 07 OF 2023**

(From the decision of the Commission for Mediation and Arbitration at Temeke in Labour Dispute No. CMA/DSM/TMK/235/2021, Chuwa, P.M.: Arbitrator, Dated 22<sup>nd</sup> November, 2022)

**BETWEEN**

**MOSES GILBERT KITIIME ..... 1<sup>ST</sup> APPLICANT**

**KADAWI LUCAS LIMBU ..... 2<sup>ND</sup> APPLICANT**

**MUUMIN CHAULEMA ..... 3<sup>RD</sup> APPLICANT**

**AZIZI SALUM MWESHA ..... 4<sup>TH</sup> APPLICANT**

**FATUMA AKILI MTONGWELE ..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

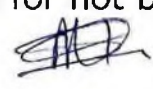
**THE REGISTERED TRUSTEES OF EAGT ..... RESPONDENT**

**RULING**

**OPIYO, J.**

This is a ruling in relation to the preliminary objection by the respondent to the applicants' application to the effect base on the following points of law:-

1. That, the application is timed barred in terms of Section 91(1)(a) of the Employment and Labour Relations Act 366 R.E 2019.
2. That, the affidavit in support of the application is fatally defective in law for being sworn by Muslims and affirmed by Christians.
3. That, the affidavit supporting an application is defective for not being property verified.



4. That, the affidavit supporting the application is incurably defective for not being dated and signed.

The application was heard by way of written submissions. Both sides were represented. Applicants were represented by Cheba Suleiman Kameya and respondents by Yesse Mtungi Rugaiya


With regard to the first objection Mr. Rugaiya, the counsel for the respondents submitted that the application is time barred in terms of section 91 (4) of the Employment and Labour Relations Act (CAP 366 R.E: 20191 which provides that whoever is aggrieved with the decision of the Commission, is mandatorily obliged to file an application to challenge the said decision or award within six weeks after the delivery. He argued that, the decision by the Commission was ready for collection on 22<sup>nd</sup> November, 2022, however the applicants filed their respective application on 9<sup>th</sup> January 2023 when the time to file their application for revision had already expired. From the date when the copy of the decision was ready for collection on the 22<sup>nd</sup>, the applicant had time until on 2<sup>nd</sup> of January 2023 to have filed his application, but they did not. Therefore, when they filed on 9<sup>th</sup>, they were already out of time. Thus it is undisputed that, this application was filed out



of the prescribed time. He therefore prayed that, this matter be dismissed for the Court has no powers to entertain matters filed out of time.


In reply to this point of objection, it is applicants' submission that the application is not time barred. That the application was submitted online in time through the electronic filing system on 30<sup>th</sup> Dec. 2022, which was 38<sup>th</sup> day after the Commission day of decision. He therefore, disputed the application being filed out of time.

He continued that according to section rule 21 (1) of Judicature and Application of Laws (Electronic Filing) Rules, 2018 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 a specific time is set by the court or it is rejected. He also referred to the case of **Cosmas Yohana Karadis v Cotex Industries Limited Rev No 86 ya 2021 HC**, Labour Division to substantiate his argument. In that case it was held that since the court started using electronic filing systems according to rule 21 (1) of the electronic Filling Rules, the Document is taken to have been filed upon being submitted electronically.



He then contended that due to the above arguments and supporting authorities he cited the application before this court was filed within time, hence it is his submission that the preliminary objection be dismissed.

Perusal of the records revealed that the application was indeed filed online before the expiration of the prescribed time, that is on the 30<sup>th</sup> day. It is the hard copy that was marked to have been filed on 9<sup>th</sup> January 2022 after expiration of the six weeks prescribed period. The issue is whether the electronic filing is the one that counts, i.e. whether electronic filing is a sufficient filing or until the corresponding hard copies are filed at the registry. According to the above authorities cited by Mr. Kameya, the provision of rule 21(1) above as emphasised in the case of **Cosmas Yohana Karadis (supra)** the electronic filing constitutes a proper filing not physical filing of the hard copy. That makes the filing within time of this application. The date on which the document was electronically admitted in Court becomes the date of filing (see the case of **Stephano Mollel and 4 Others v. A1 Hotel and Resort Ltd**, Revision Application No. 90 of 2020. This application is therefore not time barred as argued by Mr. Rugaiya. The first objection is thus, stands overruled.



On second objection, Mr. Rugaiya submitted that, it is a cardinal principle in law governing the affidavits that the deponent must indicate on the affidavit that he/she deposes the facts as Christian of which he will be required to swear, or he deposes the facts as a Muslim where he will be required to affirm. He submitted that, the applicants' affidavit does not identify as to who deposed as a Christian and who deposed as a Muslim. Therefore, the affidavit in support of the application before this court is defective as it contravenes the mandatory requirement of law which requires it to be properly deponed.

In reply to the second objection, Mr. Kameya stated that preliminary objection that the affidavit supporting the application is fatally defective in law for being sworn by Muslims and Affirmed by Christians is total misconceived in this matter due to the undisputed fact that in their joint affidavit it was clearly stated in 1<sup>st</sup> paragraph of the affidavit as Christian/Muslim and at the Jurat of attestation those who are Christians did sworn and those who are Muslims did affirm.

He argued that, the respondent's counsel is misleading this honorable court by citing the case of **Richard Mgwililanga v. Paulina Mtandi** which is irrelevant in supporting 2<sup>nd</sup> point of preliminary objection. The cited case

elaborate about defect verification clause and not what he was submitting in this point of preliminary objection. Thus, he concluded that, this point of objection and argument raised by counsel for the respondent is baseless, hence, it is his humble prayer that this honorable court dismissed it with costs.

Determining this objection entailed perusal of the affidavit to see if the allegation that the Muslims sworn and Christians affirmed in the affidavit contrary to law are true. Making reference to the first paragraph of the applicant's affidavit which indicates how oath is taken, it is noted that the paragraph does not give a chance of knowing who is a Muslim, thus affirming and who is a Christian, thus, swearing among the deponents in the affidavit. All deponents have been listed followed by indication of Muslim/Christian and swearing/affirming. From that indication, one would not tell who is who and who is swearing and who is affirming. This is contrary to the law requiring each deponent to indicate his religious inclination that has a bearing on how he takes an oath whether by swearing or affirming. By so indicating, I am in agreement with the advocate for the respondent that the affidavit that does not sort out who is who for proper oath taking is fatally defective, as the affidavit needs to show who among the deponents is a Christian or Muslim,





short of that, the same is not properly deposed, rendering it defective. The second objection is therefore upheld.

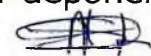
In holding that the affidavit is fatally defective in the above second objection is enough to dispose of the matter without a need to dwell on the rest of the points of objection. However, I wish to say something in relation to the fourth objection that the affidavit in support of the application is defective for not being dated and signed. The submission by the objector in this point is that immediately after stating the facts on an affidavit in support of their application at the foot of the last paragraph, the applicants are required to date and sign the facts provided. But, in the affidavit that is before this court, the applicants did not sign and date the facts, which make the affidavit defective as the same did not show when it was made and confirmed by the applicants.

Mr. Kameya in response stated that the applicant's affidavit is properly signed by both applicant and well dated, thus this particular objection is misguided and intended to mislead the court. He further contended that there is no law which imposes a mandatory requirement that date and signatures in the affidavit must be provided specifically at certain place in



the affidavit. It can be anywhere. Thus, to him, provided the page that was signed by all applicants and dated was attached after jurat of attestation was enough and does not make the affidavit fatally defective. He put emphasis on the need for the court in accordance to Section 3A and 3B of Civil Procedure Code [CAP. 33 RE.2019] and Article 107(2) (e) of the Constitution of United Republic of Tanzania to uphold the Overriding objective Principle, and employ all available means to dispose disputes fairly and timely without being bogged with legal technicalities.

By the above contention Mr. Kameya in essence agrees that the positioning of the signatures and date are not immediately after the paragraphs. They are actually placed after the jurat of attestation which comes after the verification clause. This is weird, because what are signed are the facts stated in the affidavit as to when the same was made and signed, followed by the verification on the truthfulness of those facts in the verification clause. Consequently, the same has to be attested by commissioner for oaths. Mr. Kameya's argument that as there is no law that provides for format of an affidavit, any phrase can be placed anywhere is misconceived, because an affidavit need to have a logical format. One cannot be correct in putting the date and place where the affidavit was made and signatures of deponents





at the end of an affidavit as he did in the affidavit in support of this application in the name of there being no settled format. The signature, date and place where the affidavit was made has to follow paragraphs of facts because that is what is stated to have been made as confirmed by the parties in the verification clause. Leaving hanging at the hand of the document is in my view an unacceptable misplacement. Tolerance on such misplacement will eventually dilute important principle of law advocating consistency or uniformity in legal drafting. In my considered view, lenience should be limited to only when the change is slight and still maintains logical format. For the reason, an affidavit that does not conform to the logical format is fatally defective.

It a settled principle of law that, a defective affidavit renders an application as incompetent and subject to be struck out as per the position of the Court in the case of **Richard Mywililanga Vs Paulina Mandi Misc. Criminal Application No. 55 of 2021, (HC, Iringa)**, at page 6& 7 cited by Rugaiya in his submission.



In the premises, the finding of this court is that, the application is incompetent before the Court for being accompanied by defective affidavit. It is hereby struck out with no order as to costs.



A handwritten signature in black ink, appearing to be 'M. P. Opiyo', written over a horizontal line.

**M. P. OPIYO,**  
**JUDGE**  
**17/7/2023**