

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

**REVISION APPLICATION NO. 133 OF 2023**

*(Arising from the decision of the Commission for Mediation and Arbitration of Pwani at Kibaha dated 26<sup>th</sup> day of May 2023 in Labour Dispute No. CMA/PWN/KBH/91/2022/03/2023 by (Lyimo: Arbitrator)*

**CHRISTOPHER EDWARD MAPUNDA ..... APPLICANT**

**VERSUS**

**WORLD ISLAMIC PROPAGATION**

**AND HUMANITARIAN SERVICES.....RESPONDENT**

**RULING**

Date of last order 07<sup>TH</sup> Sept 2023

Date of ruling -3<sup>rd</sup> October 2023

**OPIYO, J.**

This ruling emanates from Revision Application No. 133 of 2023 which was filed by the applicant against the CMA award in a Labour Dispute No. CMA/PWN/KBH/91/2022. This application is actively opposed by respondent who raised three points of preliminary objections, the same is to the effect that: -

- i) That the application is incurably defective for being supported with a fatally and incurably defective affidavit

which contravenes Rule 24(3) (a), (c) and (d) of the Labour Court Rules, G.N No. 106 of 2007.

- ii) That the application is bad in law for citing contradictory provision of law.
- iii) That the application is incompetent for contravening Rule 46(1), (2) and (3) of the Labour Court Rules, GN. No. 106 of 2007.

Historical background of this application is extracted from CMA record, affidavit and counter affidavit filed by the parties as stated hereunder. The applicant was employed by the Respondent as a Teacher, for specific task from 01<sup>st</sup> April 2022 to 31<sup>st</sup> December 2022. The respondent decided not to renew the employment contract, applicant was aggrieved hence filed the matter at CMA challenging the respondent's decision. The mediation failed likewise attracted arbitration process. At CMA the arbitrator found that the termination was fairly ended, hence awarded nothing to the applicant. Being resentful with the award the applicant filed the present application, which met the above three objections.

The hearing of the preliminary objections proceeded orally. The respondent was represented by Ms. Hawa Turusia and Mr. Martin Frank, Advocates while the applicant appeared himself.

Starting with the 1<sup>st</sup> point of objection, Ms. Turusia submitted that the affidavit is fatally defective as it contravenes Rule 24(3)(a)(c) and (d) of Labour Court Rules. According to the above provision, each affidavit made for this purpose must accordingly comply to it in that it must have names, description and address of the parties, statement of legal issues and reliefs. Supporting his case, he cited the case of **Hamza Omary Abeid Vs. Pro Mining Service**, Revision No. 54 of 2029, High Court of Tanzania, Labour Division, at Tanzania, (unreported), in this case the application was struck out for the matter being incompetent stating what the affidavit as per Labour Court Rules shall contain. This shows that, the affidavit at hand for omitting the above contents it is fatally defective. She further cited the case of **Real Assets Holding Co. Ltd Vs. Japhet Casmir and 1500 others**, Labour Revision No. 10 of 2014, HCD, 2015 part 1 Pg 148, where Hon. Judge Mipawa stated that omission to comply with Rule 24 is an irregularity that goes to the root of the matter.

On second preliminary objection, Ms. Turusia submitted that the application is bad for citing contradictory provision of law. She argued that that, the application is made under Rule 28 and 26 of the Labour Court Rules, which provision are covering different prayers. Rule 26 is for review and Rule 28 is for revision. This means the court has not been properly moved for citing contradictory provisions. According to her it is a settled law that a party seeking a relief in court should cite proper enabling provision so as to move the court for the relief sought. She cited the case of **Godrey Consumer Product Ltd Vs. Target International (T) Ltd** Misc Commercial Application No. 111 of 2020, High Court Commercial Division at Dar es Salaam to fortify her argument.

It was further submitted that, since the two provisions are enabling provision for relief sought by the applicant it should not be left for the Court to decide which provision to be applied, as it will defeat the purpose of having those provisions of the law, specific for respective reliefs. Therefore, it is a duty of parties requesting the relief to ensure the court is properly moved to grant the relief sought.

On the third limb of the preliminary objection, that the application is incompetent for contravening Rule 46 (1) (2) and (3) of Labour Court

Rules GN No. 106 of 2007. He stated that the applicant contravened the requirement of the above provisions, as there was no index filed before this court. Therefore, the application is fatal for not complying with the above rules which is mandatory. Therefore as the word used is shall, it means must be performed. In bolstering his stand, he cited the case of the case of ***Hamza Omary (supra)*** in expounding the principle under Section 53(2) of cap 2 RE 2020 this Court observed that the use of the word shall, show the requirement is mandatory. On that basis he is of the view that the applicant failed to comply with mandatory requirement of the law, and it is liable to be struck out.

In reply the applicant doubted the preliminary objection on its relevance with the present application. He stated that the matter brought before this Court has Reference No. CMA/PWN/KBH/91/2022 but the documents of the respondent including notice of representation and notice of opposition refers to file with reference No. CMA/PWN/KBH/1/2022. Therefore to his argument is that the notice of preliminary objection and counter affidavit refers to the different dispute altogether while this matter depends on the records from CMA.

On the issue of wrong citation, he submitted that, he believes wrong citation of the provision does not make the application incompetent before the court based on requirement under Article 107A (2)(e) of the Constitution of the United Republic of Tanzania where courts are urged to avoid technicalities in furthering substantive justice.

On the preliminary objections regarding index, the applicant submitted that the pagination of the pleadings from both parties are just similar. That, even the respondent did not comply to Rule 46(1)(2) and (3) of Labour Court Rules, GN No. 106 of 2007 as she also attaches no index in her application.

On the preliminary objection regarding contradictory provision of the law, the applicant admitted that in his application he added rule 26(1)(2)(a)(b)(c) which truly talks about review, but he thinks there is no harm by citing provision on review in an application for revision for which relevant provision has been cited as well. He further added that since there is no contradiction, then the same lacks stand of being point of preliminary objection. Supporting his stand, he cited the case of **Said Choki Vs. Dar es Salaam Development Corporation**, Rev. No. 164 of 2022 Pg 7. In this case there was a citation of more than one provisions, it was held that provided that

the provisions cited are sufficient to move the court, citing other provisions should be tolerated. On that basis the preliminary objection has to be overruled, he submitted.

Regarding defectiveness of the affidavit, the applicant submitted that he compared with the respondent's counter affidavit he found they are similar. He stated that his affidavit has title, case No. and all other details the respondent claims to have been violated are there.

On reliefs sought and statement of legal issues he submitted that paragraph 18 of his affidavit recognizes Annexure C1 which contains legal issues and reliefs sought. He continued to submit that stated that affidavits in such applications are slightly different from what the respondents counsel is familiar with, but he believes his affidavit has complied with Rule 24 of G.N No. 106 of 2007. He thus prayed for the preliminary objection to be overruled as they lack merits.

In rejoinder Mr. Frank submitted that he reiterated their submissions in chief, but challenged the affidavit by having Annexure which contain reliefs and legal issues. He added that, the affidavit is still defective, on the reason that annexure is not an affidavit.

Having carefully considered parties submissions, Court records, as well as relevant labour laws and practice, I proceed to determine the objections raised as follows.

In the first preliminary objection that the applicant's affidavit lacks names, description, and address of the parties, statement of legal issues and relief sought. It is true, according to Rule 24(a), (c) of the Labour Court Rules, the affidavit of this Court has got its uniqueness as it directs inclusion of legal issues and reliefs prayed for names and description of parties in the affidavit. Further to that, the provision itself uses the word "**SHALL**" the relevant provision shows that the same is coached in mandatory terms in accordance with **Section 53 of the Interpretation of Laws Act, Cap 1 R.E 2019**. Having such legal stand, I agree with the respondent's Counsels that the applicant failed to comply with the mandatory requirements of Rule 24(a) and (c) of G.N No. 106 of 2007 in filing his application. His argument that the legal issues and reliefs sought has been included in the annextures as per paragraph 8 of his affidavit is unfounded as well, because the annextures is not part of affidavit for the context of what has to be contained in the affidavit as directed by rule 24 cited above.



All the described items are to be found in the affidavit itself. This Preliminary objection is thus upheld.

On the second preliminary objection, it is an established principle that failure to cite proper provision or incomplete citation of enabling provision of the law makes an application incompetent and the only remedy is to strike it out. This has been a position in many cases including **Edward Bachwa & Another v. The Attorney General & Another, Civ. Appl. No. 128 of 2006 (CA) DSM (unreported)** and many others where the Court held that, wrong citation of the law, section, subsection or non citation of the law will not move the court to do what is asked and renders the application incompetent.

The same was held in the case of **Gauntam Jayram Chavda v. Covell Mathews Partnership**, Taxation Reference No. 20 of 2004, Court of Appeal of Tanzania, at Dar es salaam, (unreported), whereby the application for reference was struck out for being incompetent.

Turning to the present application, the applicant's notice of application, chamber summons contained **Rule 26 of G.N No. 106 of 2007** which is relevant to the application for review and not revision, that's means in this application there are two distinct

prayers. The principle regarding distinct prayers has been addressed by the Court of Appeal in numerous decisions including the case of **Ali Chaman v. Karagwe District Council & Another**, Civil Application No. 411/4 of 2017, CAT, at Bukoba, (unreported) at page 6. It was held -

*"After having dispassionately examined the notice of motion and the reliefs sought by the applicant, I agree with Mr. Kabunga together with the applicant's concession that the application is not properly before the Court because of being omnibus. I say so because, it seeks three distinct reliefs which are one, extension of time to give a notice of appeal against the High Court decision; two, extension of time to file an application for leave to appeal to the Court of Appeal; and three, leave to appeal to the Court of Appeal. This application goes contrary to the spirit of Rules 44-66 which govern applications as they each provide for a distinct application according to the type or category of relief sought."*

The above authority has its relevance in this application, as it contains two prayers regarding review and revision. Under such circumstances I have to say this Court was not properly moved to exercise its revisional power.

Based on the above finding, I proceed to conclude that the application is incompetent before this court. It is therefore struck out with no order as to costs.



A handwritten signature in blue ink, appearing to be 'M. P. Opiyo'.

**M. P. OPIYO,**

**JUDGE**

**3/10/2023**