

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

MISCELLANEOUS LABOUR APPLICATION NO. 269 OF 2023

BETWEEN

REKHA VERMA APPLICANT

VERSUS

AIRMED HEALTHCARE COMPANY LIMITEDRESPONDENT

RULING

Date of last Order: 15/11/2023

Date of Ruling: 28/11/2023

MLYAMBINA, J.

This ruling tacitly addresses an integral issue surrounding protection of innate nature of home grown legal practitioners. It is all about the welfare of the legal fraternity to maintain its sanctity. Correspondingly, to give a smooth kick of the ruling, the issue is; *whether a foreign Advocate can attest an affidavit and be used in Tanzania automatically.* Or whether an affidavit for use in Tanzanian Courts can be taken out of jurisdiction automatically. The issue arose out of the preliminary objections raised by the Respondent's Counsel challenging an application for extension of time to file application for revision against the award of the Commission for Mediation and Arbitration (to be referred as 'CMA') in *Labour Dispute No. CMA/DSM/KIN/171/2023/69/2023* delivered on

23rd June, 2023 by Hon. Wilbard G. M. Arbitrator. The legal objection is styled; that, the application by the Applicant is incompetent before this honourable Court as the affidavit supporting the same is having an incurable defective jurat of attestation for being attested by incompetent person.

Along with the afore issue, the Respondent raised other two legal objections namely: *One*, the Applicant application for revision is incompetent before this honourable Court as the affidavit supporting being a substitute to oral testimony was not supposed to be a copy printed from the original. *Two*, the Applicant application for revision is incompetent before this honourable Court as the affidavit supporting the same is having an incurably defective verification clause as it is signed electronically, attested and only copy is filed with the Court.

The preliminary objections were argued by way of written submissions. Before the Court Mr. Epaphras Charles, leaned Counsel appeared for the Applicant. Mr. Hassan Mussa learned Counsel was for the Respondent.

As regards the first preliminary objection, Mr. Hassan argued that the jurat of attestation of the Applicant's supporting affidavit is defective for being attested by incompetent person. The affidavit was affirmed by the

Applicant who resides at Jaipur Rajasthan, India. Whereas, the attestation was also done in India before the attesting officer namely Prahlad Sharma.

It was Mr. Hassan's submission that the affidavit was attested by the person who is not authorized to practice in Tanzania Mainland. He argued that an affidavit being a substitute of oral evidence is a crucial document which its admission and reliance by the Court should depend on authenticity thereof. He stated that *The Notaries Public and Commissioner for Oath Act [Chapter 12 Revised Edition 2019]* (herein Cap 12 R.E. 2019) provide a category of persons who are qualified to attest in Tanzania. In support of his submission, Mr. Hassan cited *Section 3(1)(a), (b) of Cap 12 R. E. 2019* which is to the effect that:

3.-(1) Any of the following persons shall, except as provided in subsection (2), be entitled to practise as a notary public and Commissioner for Oaths in Mainland Tanzania in accordance with the provisions of this Act and to levy fees in accordance with the First Schedule-

(a) an Advocate; and

(b) a person entitled to practise as a notary public in England, Scotland, Northern Ireland or the Republic of Ireland.

In line of the above cited provision, Mr. Hassan argued that the provision in question was not complied with in the present case. He pleaded the Court not to rely to such affidavit. He went on to submit that the law relating to the administration of oath in Tanzania does not provide specifically about the document to which its oath is administered outside Tanzania Mainland. He was of the view that broad interpretation of *Section 10(2)(e) of Cap 12 R.E. 2019* is needed.

It was further argued by Mr. Hassan that as per *Section 10(2)(e) (supra)* only Administrative Officer of the United Republic of Tanzania is qualified to administer oath. He referred the meaning of an Administrative Officer as per *Section 3 of Diplomatic Consular Immunities and Privilege Act No. 365* and argued that the Applicant's affidavit would have been better sealed before the Consular Officer and authenticated by the said Officer. He went on to submit that the issue as to whether an affidavit attested abroad can be used in a foreign country has been discussed at length by the Court of Appeal in Seychelles in the matter between **Nasim Onezime v. The Attorney General & Government of Sychelles** (SCA CL03/2021) [2022] SCCA 2 (Arising in CP 01/2021) (29 April 2022).

Also, Mr. Hassan referred the Court to the Tanzania case of **Millicom (Tanzania) N. V v. James Alan Russell Bell & 2 Others**, Civil Application No. 44 of 2016, Court of Appeal of Tanzania at Dar es Salaam (unreported). It was Mr. Hassan's firm view that the cited case applies to the scenario at hand. He therefore urged the Court to uphold the preliminary objection and struck out the application.

In response, Mr. Charles strongly disputed the objection in question and stated that it has no legs to stand. He stated that the Respondent can not conclude that the affidavit is defective by the mere fact that it was attested before an Indian Advocate. He maintained that there is no provision prohibiting an Indian Advocate to attest document where the Applicant resides thereto.

Mr. Charles argued that it is logic and requirement that every notarization before the Advocate, the party signing must be before him and not otherwise. The Applicant being in India, his affidavit was properly attested thereto. It was the reply submission of Mr. Charles that the affidavit could not be verified in Tanzania as it will be contrary to *Section 8 of Cap 12 R. E. 2019*.

Mr. Charles was of the strong view that the affidavit at hand dully complied with the requirement of the law. In support of his submission,

He referred the Court to the case of **HB Worldwide Limited v. Godrej Consumer Products Limited**, Misc. Commercial Application No. 101 of 2019, High Court Commercial Division (unreported). He conceded with Mr. Hassan's submission that indeed *Section 3(1)(a), (b) (supra)* to whom their qualification entitles them to attest document such as an affidavit. However, he argued that the matter at hand is on jurat of attestation. Therefore, who practice as a Notary Public and Commissioner for Oath in Tanzania mainland is not the gist of the matter in question. He cited *inter alia* the case of **Director of Public Prosecution v. Dodoli Kapufi and Another**, Criminal Application No. 11 of 2008, Court of Appeal of Tanzania (unreported) which displayed the guiding principles of jurat of attestation and what the Commissioner for Oath has to certify.

In rejoinder Mr. Mussa maintained that the Advocate in question has never been registered or issued with a certificate to practice in Tanzania. Thus, he contravened *Section 3 (supra)*. He distinguished the cases cited by Mr. Charles and further reiterated his submission in chief.

After considering the rival submissions of the parties, there is no dispute that the affidavit was attested by Mr. Prahlad Sharma, an Indian Advocate. Mr. Charles was of the argument that since the Applicant

resides in India and the affidavit was affirmed in India then it was properly attested before the named Advocate of India.

As rightly submitted by Mr. Hassan, *Section 3(1)(a)(b) of Cap 12 R.E. 2019* provides for category of persons who are entitled to practice as notaries public and commissioners for oath in Tanzania Mainland. *Section 3(2) (supra)* provides for category of persons who are not authorized to practice as notaries public and commissioner for oath in Tanzania. *Section 3(2) (supra)* is to the effect that:

- (2) The following persons shall not be entitled to practise as notaries public or commissioners for oaths-
 - (a) any Advocate who is suspended from practice until the period of suspension ends;
 - (b) any person whose name is removed from the roll of Advocates otherwise than at his own request, until his name is restored to the roll of Advocates;
 - (c) any person whose name is removed from the roll of notaries public and commissioners for oaths or who is suspended from practice as a notary public or commissioners for oaths in any reciprocating Commonwealth country for professional misconduct, until his name is restored to the roll.

On ex-facie reading of the referred *Section 3(2) (supra)*, it is crystal clear that the Advocate in question is not one among the

mentioned person who can practice in Tanzania. Therefore, the affidavit in question becomes defective because it is filed in Tanzanian Court while it was attested before the person who is not authorized to practice in Tanzania.

I have noted Mr. Charles submission that the affidavit was dully attested in India since the Applicant resides thereto. However, as stated above, what makes the affidavit in question defective it is due to the fact that it was attested before a person who is not authorized to practice in Tanzania.

Even if such person was authorized to practice in Tanzania, he has not acquired automatic right to practice. He has to apply before the Registrar of the High Court and upon signing the Roll of Advocate and payment of the requisite fees. This is the Court's position in the case of **Millicom (Tanzania)** (*supra*) where it was held that:

Reading from the provisions of *section 4 of Cap. 12 the Tanzanian laws*, much as Mr. Robert Scott Kerss is qualified to practice in England as Notary Public and Commissioner for Oath, he has no reciprocal rights to practice automatically in that capacity in Tanzania. He has to comply first with the provisions of *Section 4(1) of Cap. 12* by seeking a practicing certificate from the Registrar of the High Court and upon signing the Roll of Advocate and

payment of the requisite fees. It is only after complying with that requirement of the law that Mr. Robert Scott Kerss will have the status to practice as Notary Public and Commissioner for Oaths under the Tanzania laws. Since such a compliance has not been met, the affidavit of Martin Frechette is defective for not being attested by a Commissioner for Oaths recognized under the Tanzania Laws.

In the instant matter, the above referred provision was not complied with. Thus, disqualifies Mr. Prahlad Sharma, an Indian Advocate to attest a document which will be used in Tanzania mainland automatically.

Furthermore, it is nowhere established that there is a diplomatic arrangement whereby the Minister of Foreign Affairs has empowered a Diplomatic or Consular Officer to exercise powers of notaries. even if there is such empowerment, *Section 10(2) of Cap 12 R.E. 2019* provide category of persons who qualifies to administer oath. The Advocate in question is not one among them. Then, he cannot have the right to practice in Tanzania automatically.

The Tanzanian position is also similar in other countries such as India whereby *Section 3 of the Notaries Act, 1952* requires the Central

Government and every State Government to maintain in a prescribed form, a Register of the notaries appointed by that Government who are entitled to practice. Thus, the provision proves that there is a certain category of people who are authorised to practice in that State.

Again, in Seychelles as cited in the case of **Nasim Onezime** (*supra*), it was held that:

An affidavit sworn before a Notary Public in Sri Lanka, to be used abroad, has to be authenticated by the Registrar of the supreme Court of Sri Lanka and certified by the Ministry of Foreign Affairs of Sri Lanka.

The position in Kenya, however, is different. Under *Section 88 of the Evidence Act of Kenya*, an affidavit like the one at hand is presumed genuine and it is admissible for the same purpose as it would be admissible in the Commonwealth country in which it was attested. Also, see the case of **Panchal Trading (K) Limited v. N.F. Metals Corporation**, HCCC No. 35 of 2020, High Court of Kenya Commercial Division at Mombasa [2021] eKLR.

I do understand that if there are no limitations, the clientele can have enough choice of competent Advocates who can bring legal competition resulting into better legal opportunities. However, if any person named as an Advocate is allowed to practice in another country unconditionally,

the law will open the pandora box for unqualified persons to practice as Advocates. That is also done to govern the conducts of Advocates through their registered addresses as appeared in the roll of Advocates. The same applies to the foreign documents including affidavit attested abroad by foreign commissioner for oaths. There must be acceptable mechanisms of verifying authenticity of such documents especially affidavits worth to be used in Courts of law.

It is my firm position that an affidavit sworn before a Notary Public in India or any other Commonwealth Countries, to be used in Tanzania Mainland, has to be authenticated by the Registrar of the Supreme Court or the High Court or the Court of Appeal, as the case may be.

The foregoing analysis leads to irresistible conclusion that the first objection has merits. Consequently, the application is hereby struck out for being accompanied by defective affidavit. Given the fact that the first objection has disposed the matter, I find no relevance to labour on the remaining objection.

It is so ordered.



Y.J. MLYAMBINA

JUDGE

28/11/2023

Ruling delivered and dated 28th November, 2023 in the presence of Counsel Dimeshi Mawji and Issa Cleophas the Applicant and Counsel Dimeshi Mawji holding brief of Hassan Mussa for the Respondent.



Y.J. MLYAMBINA

JUDGE

28/11/2023