

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

REVISION APPLICATION NO. 921/2024

(Arising from an Award issued on 29/12/2023 by Hon. Mikidadi, A, Arbitrator, in Labour dispute No. CMA/DSM/TMK/327/2021/17/2022 at Temeke)

ALLAN DANIEL MHINA APPLICANT

VERSUS

HOZZA TRADING CO. LIMITED RESPONDENT

RULING

Date of last Order & Ruling: 15/2/2024

B. E. K. Mganga, J.

When this application was called for orders, Mr. Fredrick Kiwtika, advocate for the respondent, raised a preliminary objection that the affidavit of the applicant in support of the application is defective because it was attested by Nyamuko Abdallah Mattaka, Advocate, who has not renewed his practicing certificate and that, up to now, the said advocate cannot practice. In short, Counsel for the respondent submitted that, the affidavit in support of the application was attested in violation of the provisions of sections 40 and 41 both of the Advocate

Act, Cap 341 R.E 2019. He concluded that the application is incompetent for want of the affidavit and prayed this application be struck out.

On the other hand, Nehemia Munga, the personal representative of the applicant conceded that the affidavit is defective for the reasons stated by counsel for the respondent. Mr. Munga prayed that the application be struck out with leave to refile. He added that, it was not the fault of the applicant, rather, it was of the advocate who did not disclose to the applicant that, at the time of attesting, he has not renewed his practicing certificate. He went on that, he has noted today while in court and after being shown by counsel for the respondent, that from 1st January 2024, Nyamuko Abdallah Mattaka was barred from practicing for failure to renew his practicing certificate. He went on that, the said advocate attested the affidavit of the applicant on 17th January 2024 while applicant had no knowledge of practicing status of the said advocate.

In rejoinder, Mr. Katwika, advocate for the respondent did not object the prayer of striking out this application with leave to refile.

I have considered submissions of the parties, and, in my view, this is one of the cases where, both money and time of the parties and the court are wasted due to dishonesty of those who, their calling as legal

professionals, require them to be honest. Mr. Nyamuko Abdallah Mattack, advocate was supposed, in my view, after being approached by the applicant, while knowing that he has not renewed his practicing certificate and knowing the effect of attesting the affidavit without a valid practicing certificate, honestly, was supposed to advise the applicant to look for another advocate to attest. The said advocate was supposed to do even without disclosing that he has not renewed his practicing certificate. In my view, what was done by the said advocate was a breach of honest and trust to the public. I once again, as a reminder, invite those who are practicing legal profession, always to be guided by what was held by the Supreme Court of South Africa in the case of ***Vassen v. Law Society of the Cape of Good Hope***, 1998 (4) SA 532 SCA at 538 that:-

"..In this regard, it must be born in mind that the profession of an attorney as of any other officer of the court, is an honourable one and as such demands complete honesty, reliability and integrity from its members... A client who entrusts his affairs to an attorney must be able to rest assured that that attorney is an honourable man who can be trusted to manage his affairs meticulously and honestly... Here once again the respondent Society has been created to ensure that the reputation of his honourable profession is upheld by all its members so that all members of the public may continue to have every confidence and trust in the profession as a whole."

A similar reminder to advocates to be honest was given by the Supreme Court of South Africa in the case of ***Kekana v. Society of Advocates of South Africa***, 1998 (4) SA 649 (SCA) 551-656 where it held:-

"...that an advocate, whose calling is one which is praiseworthy and necessary to human life, should always cling to the famous principle that the true jurist is an honest man. These qualities of honesty and integrity must continue to be displayed throughout a legal practitioner's career..."

It is my view that, applicant had no means of knowing that the said advocate has renewed his practicing certificate or not. Unfortunately, none-disclosure by the said advocate that he has not renewed his practicing certificate, has led applicant into this mess. In short, the said none-disclosure has caused injustice and wastage of time of the parties and the court too because this matter cannot be decided to its finality now as it is defective.

Considering what was submitted by the parties that the affidavit in support of this application is defective making the whole application incompetent, I hereby strike it out. Since counsel for the respondent did not object the prayer to refile, understandably, knowing the real cause of the problem, I hereby grant applicant seven (7) days leave within

which to file a proper application. For avoidance of doubt, applicant shall file a proper application by 23rd February 2024.

Dated at Dar es salaam this 15th February 2024



B. E. K. Mganga
JUDGE

Ruling delivered on 15th February 2024 in chambers in the presence of Nehemia Munga, Personal Representative of the Applicant and Fredrick Kitwika, Advocate for the Respondent.



B. E. K. Mganga
JUDGE