

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

**REVISION APPLICATION NO. 3347 OF 2024**

*(Arising from an award issued on 19/1/2024 by Hon. Johnson Faraja, L, Arbitrator, in Labour complaint No. CMA/DSM/ILA/173/21/117/2022 at Ilala)*

**AVIT KWAREH ..... APPLICANT**

**VERSUS**

**ABSA BANK TANZANIA LIMITED ..... RESPONDENT**

**RULING**

*Date of last order & Ruling: 24/4/2024*

**B. E. K. Mganga, J.**

Brief facts of this application are that, Avit Kwareh, was an employee of Absa Bank Tanzania Limited. It happened that Absa Bank Tanzania limited terminated employment of Avit Kwareh as a result, the later filed the complaint before the Commission for Mediation and Arbitration (CMA). On 19<sup>th</sup> January 2024, Hon. Johnson Faraja, L, Arbitrator, having heard evidence of the parties issued an award that termination was unfair and ordered Absa bank Tanzania Limited to

reinstate Avit Kwareh and pay him Three Hundred Million Tanzanian Shillings (TZS 300,000,000/= as general damages.

Avit Kwareh was satisfied with the said award. On the other hand, Absa Bank Tanzania Limited was unhappy with the said award. On 21<sup>st</sup> February 2024, Absa Bank Tanzania Limited filed this application seeking the court to revise the said award. Both in Notice of Application and the Affidavit in support of the Notice of Application, Absa Bank Tanzania Limited indicated that she is the respondent and that Avit Kwareh is the applicant.

On 27<sup>th</sup> March 2024, Robert Kadaso Mageni, advocate on behalf of Avit Kwareh filed the Notice of Opposition and the counter affidavit opposing the application. He further filed the Notice of preliminary objection inter-alia that (i) the application is incompetent for failure to cite properly the names of the parties and (ii) that, both the Notice of Application and the affidavit in support thereof are defective.

When the application was called on for hearing, Sabas Shayo, advocate, for Absa Bank Tanzania Limited readily conceded to the preliminary objections raised on behalf of Avit Kwareh and prayed to withdraw this application with leave to refile. On the other hand, Robert

Mageni, advocate of Avit Kwareh, had no objection for the application to be withdrawn but he added that the court should award costs.

It is undisputed by the parties that the application is defective as conceded by counsel for Absa Bank Tanzania Limited who was supposed to be titled as the applicant in this application and Avit Kwareh as the respondent. It is my view that an incompetent application cannot be withdrawn with leave to refile rather, it is liable to be struck out. In my view, a party can only pray to withdraw a competent application or matter with leave to refile. With that in mind, I reject the pray to withdraw this application instead, I hereby strike it out.

It was prayed by counsel for Avit Kwareh that costs should be granted in his favour on ground that presence of this application has hindered him to enjoy the fruits of the award. With due respect, normally costs are not awardable in labour cases. Costs can only be awarded if proven that the application is frivolous and vexatious. The application at hand does not fall in that category. I therefore reject the prayer for costs.

Dated in Dar es Salaam on this 24<sup>th</sup> April 2024.



B. E. K. Mganga  
**JUDGE**

Ruling delivered on this 24<sup>th</sup> April 2024 in chambers in the presence of Sabas Shayo, Advocate for Absa Bank Tanzania Limited and Robert Mageni, Advocate for Avit Kwareh.



A handwritten signature in black ink, appearing to be "B. E. K. Mganga".

B. E. K. Mganga  
**JUDGE**