

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. LABOUR APPLICATION No. 55 OF 2020

*(Arising from Execution No. 38 of 2020, originated from
CMA/MZ/NYAM/835 and High Court Labour Revision No. 94/2019)*

JUNIOUR CONSTRUCTION CO LTD APPLICANT

VERSUS

PAULINA MINZA RESPONDENT

RULING

24/04/2021 & 13/05/2021

W.R. MASHAURI, J;

This is a ruling in respect of the preliminary objection raised by the respondent against this application for extension of time filed by the applicant. The gist of the said objection is to the effect that;

- i. That this Court has no jurisdiction to entertain the matter
- ii. That the application is incurably defective for non-citation of the proper provisions of the law
- iii. That the application is bad in law for contravening mandatory provisions of Rule 24 (1), (2) (a), (b), (c), (d), (e) and (f) of GN. 106 of 2007

- iv. That the application is incurably defective for contravening the mandatory provisions of Rule 24 (3) (a), (c), (d) of GN 106 of 2007
- v. That the application is defective for contravening Section 56 (a), (b) and (c) of the Labour Institution Act 2004 and Rule 43(1) of the Labour Court Rules, 2007.

When this matter was placed before me for hearing of the preliminary objection, the learned counsel, Mr. Mashauri for the applicant whereas the respondent enjoyed the service of Mr. Alhaji Majogoro, learned counsel.

Arguing in support of the first ground of preliminary objection, Mr. Mashauri submitted that, this court has no jurisdiction to entertain the matter as to fact that applicant has filed this matter at High Court of Tanzania at Mwanza District Registry which has no power to hear and determine Labour Matters. The district registry of the high court has been established under the Judicature and Application of Laws Act Cap 358 R.E. 2019 while the Labour Court is established by section 50 of the Labour Institution Act No. 7 of 2004. Under these laws, the Labour court is vested with jurisdiction over all labour matters while the normal High Court is not vested jurisdiction to hear and determine the Labour matters.

On the second ground of objection, he claimed that the application is incurably defective for non-citation of the proper provision of the Rule 24 (1) and (2) and (3) of GN 106 of 2007 which are proper provision which give guidance on how to file any application before the Labour Court.

As to third point of objection, the provision above gives the format on how any application should be drafted. Rule 24 (1), (2) afore stated provides for the application to be brought by notice of application but the appellant has not filed the said notice of application hence application is incompetent. On fourth point of preliminary objection, the application is incurably defective for contravening the mandatory provision of rule 24 (3) (a) (c), (d) of the GN 106 of 2007 which require any application to be supported by an affidavit which state legal issue that arises from the material facts and the relief sought. Affidavit filed by applicant does not contain statement of legal issues and relief sought. He cited the case of **Patrick Makale Musabila Vs National Microfinance Bank PLC**, Labour Revision No. 11 of 2018.

The last point of objection is that, this application is incompetent for contravening Section 56 (a) (b) and (c) of Labour Institution Act 2004 and Rule 43 (1) of the Labour Court Rules, 2007. In essence it provides for the notice of representation so as to get audience before the court. The applicant in this case has not filed the notice of representation and

therefore lacks audience before this court. For authority in this effect he cited the case of **Hamza Omary Abeid Vs Pro Mining Service**, Labour Revision No. 54 of 2019.

In replying to the submission by counsel for the Applicant, Mr. Mashauri submitted that, on first point, he said the applicant is intended to be dealt with by the High Court of Tanzania Labour Division (special registry), applicant arrived at such conclusion after gone through Labour Rules and missed guidance for applying extension of time to set aside an exparte order on labour execution. Nevertheless, after being satisfied that the court in different occasion discourage application entailing labour issue to be dealt with by ordinary courts, he was compelled to concede on the first preliminary objection. He further submitted that, he found no good reason to argue for the 2nd, 3rd, 4th and 5th of the preliminary objection.

After considering the rival submission from counsel for both parties, I find it important to look at what rule 51 of the Labour Institution Act, it provides that;

*"Subject to the constitution and the labour Laws, **the Labour Court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws"***

From the above cited provision, its requirement is that, any labour matter must be filed in labour court and not otherwise.

As to record, the application is a labour issue, arose originally from CMA/MZ/NYAM/835 applicant was dissatisfied with decision of CMA and entered in High Court Labour Revision with Labour Revision No. 94 of 2019 and decision was in her favour, this application for extension of time emanated from the decisions of these labour institutions which make this application to be pure labour matter and under S. 51 (supra) its mandatory requirement is to be lodged in Labour Court and not the contrary.

As far as, in his submission applicant concede on the 1st ground of preliminary objection and he find nothing to argue in the rest of the grounds (2nd, 3rd, 4th, and 5th) is the same this court has nothing to discuss further on that rather, I join hand with Mr. Alhaji Mojogoro's (advocate) submissions and in view of the bolded expression of Rule 51 (supra) this court has no jurisdiction to entertain this matter. It is established in the case of **Mwananchi Communication Limited & 2 Others Vs Joshua K. Kajula & 2 Others**, Civil Appeal No. 126/01 of 2016 CAT Unreported that:

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"Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests"

Date: 13/05/2021

Coram: Hon. W. R. Mashauri, J

Applicant:

Respondent:

B/c: Elizabeth Kayamba

Court: Ruling delivered in presence of the respondents learned counsel

Mr. Majogoro and in absence of the applicant this 13/05/2021.



W.R. Mashauri
W.R. MASHAURI
JUDGE
13/05/2021