

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

LABOUR REFERENCE NO. 01 OF 2022

(Originating from Labour Execution No. 17 of 2022)

KATAVI AND KAPUFI LTD.....APPLICANT

VERSUS

SHUKURU JACKSON MASHIMBA.....RESPONDENT

RULING

12th July & 12th September, 2022

DYANSOBERA, J.:

The applicant Katavi and Kapufi Ltd has, by way of a chamber summons accompanied by a notice of application and the supporting affidavit affirmed by Twalib Mohamed Seif, the applicant's Principal Officer, moved this court under sections 93 (2)(b) (c)(4)(a)(b) and section 94(1) (a) and (f) of the Employment and Labour Relations Act [Cap. 366 RE.2019] and rules 24(1)(2)(a)(b)(c)(d)(e)(f) (11)(b) and 28 (1)(c)(d) and (e) of the Labour Court Rules, G.N. No.106 of 2007 for the following orders: -

1. Kwamba Mahakama Tukufu inaombwa kufanya marejeo ya kimamlaka, kuita jalada Pamoja na kutathmini kumbukumbu za mwenendo juu ya Amri ya utekelezaji Na.17 of 2022 iliyotolewa na Mhe Mmbando, Naibu Msajili Mahakama Kuu Mwanza mnamo

tarehe 16.06.2022 ili kujiridhisha yenyewe juu ya usahihi wa kisheria au nafuu stahiki.

2. Nafuu zinginezo zozote ambazo Mahakama Tukufu itapendezwa na itaonekana inafaa kutolewa.

The application has been opposed by the respondent by way of a notice of preliminary objection on the following grounds:

1. *The applicant's affidavit is incurably defective for contravening the mandatory provision of Rule 24 (3) (c) of the Labour Court Rules, 2007 (GN No. 106 of 2007).*
2. *That the application is in contravention of rule 24 (3) (e) the Labour Court Rules, 2007*
3. *That the application is an abuse of the court process.*

Submissions were made in support and in opposition of the preliminary objections. As to the citing of non-existent provision of law that is GN No. 106 of 2007, I agree to the argument of Counsel for the respondents that it was a mere typographical error which did not adversely affect the merits of the preliminary objections and is curable under the oxygen principle. Currently, a court is enjoined to determine the merits of the application for the interest of justice on the principle of overriding objectives of civil litigation brought about by the Written Laws (Mis. Amendments) (No. 3) Act No. 8 of 2018. A case in point is **Hemed**

S. Mpingo and six others versus the Registered Trustees of the Pentecostal Churches Association in Tanzania, Misc. Land Application No. 21 of 18, Mtwara High Court (unreported).

The affidavit in Labour Court is governed by rule 24(3) of the Labour Court Rules, 2007, GN No. 106 of 2007. The rule enacts as follows;

'24(3) The application shall be supported by an affidavit, which shall clearly and concisely set out-

- (a) the names, description and addresses of the parties;
- (b) a statement of the material facts in a chronological order, on which the application is based;
- (c) a statement of the legal issues that arise from the material facts; and
- (d) the reliefs sought'.

From above rule, the affidavit must state a clear and concise statement of material facts in a chronological order on which the applicant relies. Further the statement must contain sufficient particulars to enable the respondent to respond thereto. Under paragraph (c) of sub-rule (3) of rule 24 of the rules, the statement of the claim must also include the legal issues that arise from the material facts so that the respondent is enabled to reply to the allegations contained therein. The other mandatory

requirement of the affidavit is that it shall clearly and concisely set out the relief sought.

As the impugned affidavit clearly shows, the statement of the claim did not neither include the legal issues that arise from the material facts so that the respondent is enable to reply to the allegations contained therein nor clearly and concisely set out the relief sought.

On the basis of what I have discussed above, I find these preliminary objections with legal merit and uphold them. The application is thus, struck out. No order as to costs is made.

Order accordingly.



W. P. Dyansobera

Judge

12.9.2022

This ruling is delivered under my hand and the seal of this Court on this 12th day of September, 2022 in the presence of Mathias Mwilwa for the applicant and Mr. Mushongi, learned Advocate for the respondent.



W. P. Dyansobera

Judge