

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOROORO SUB-REGISTRY
[AT MOROORO]**

MISC. LABOUR APPLICATION NO. 3661 OF 2024
(Originating from Labour Execution No. 29 of 2022)

CRDB BANK PLC.....APPLICANT

VERSUS

HADSON JACKSON MUHILA & 2 OTHERS.....1ST RESPONDENT

PICCADILLY ENGINEERING & CONSTRUCTION LTD.....2ND RESPONDENT

PICCADILLY CONSTRUCTION LTD..... 3RD RESPONDENT

MIKOLA MANJALE LUSENGA t/a

SHADHNSHALE AUCTION MART AND

GENERAL TRADING COMPANY LIMITED 4TH RESPONDENT

RULING

13/03/2024 & 28/03/2024

KINYAKA, J.:

In the present application, the applicant moved the Court under the provisions of Order XXI Rule 57(1) (2); Rule 58 and 59 of the Civil Procedure Code Cap. 33 R.E. 2019; and Rule 25(1), 2(a), (b), (3); and Rule 55(1) and (2) of the Labour Court Rules, G.N. No. 106 of 2007 (hereinafter, the "Rules"), for the following orders:

1. That the Honourable Court be pleased to investigate the validity of the claim or objection regarding the attachment of movable properties, to wit, Motor Vehicle Registration No. T534 DSH, T183 DRS and T 599

DSH (hereinafter referred as the "subject properties"), in the Labour Execution No. 29 of 2022 in execution of a decretal sum of TZS 29,925,000 as delineated in the warrant or attachment, currently held by the 4th Respondent.

2. That this Honourable Court be pleased to declare that the Applicant holds legal interests in the attached movable properties, to wit, Motor Vehicle Registration No. T534 DSH, T183 DRS and T 599 DSH and grant the objection raised herein and issue an order for the full release of the subject properties from attachment.
3. Costs of the application.
4. Any other relief(s) as this Honourable Court may deem fit and just to grant.

On receipt of the application, both the 1st, 2nd and 4th respondents lodged their respective counter affidavits. The 3rd respondent did not appear despite service by publication effected on Mwananchi newspapers of 05/03/2024, 06/03/2024 and 07/03/2024 on pages 20, 20 and 21, respectively. The application proceeded *ex parte* against the 3rd respondent.

b

On 4th March 2024, the 1st respondent raised preliminary objection on points of law as follows:-

1. That the Court has no jurisdiction to entertain this matter for contravening Order 2 of the High Court (Morogoro Sub Registry Establishment) Order, 2021.
2. That the application is incompetent for contravening Rule 6(1) and (2) of the Labour Court Rules, G.N. No. 106 of 2007.
3. That the affidavit of the applicant is incurably defective for containing prayers.
4. That the affidavit of the applicant contain defective jurat of attestation.

On 13/03/2024 when the case was called on for necessary orders, parties agreed to argue the preliminary objection on points of law orally and on the same day. At the hearing, the applicant was represented by Mr. Felix Mutaki, learned advocate, the 1st respondents were represented by Mr. Boniface Edward Basesa, legal representative from DOSHITWU, and Mr. Mikola Manjale Lusenga and Mr. William Mirumbe, appeared for 4th respondent. The second and third respondents did not appear.

to

Mr. Basesa began by abandoning the fourth ground of objection. In support of the first ground of objection, he argued that this Court has no jurisdiction to entertain the matter as the application was lodged in the name of 'the High Court of the United Republic of Tanzania (Labour Division) at Morogoro' which is inexistent. He contended that it is the 'the High Court of Tanzania Morogoro Sub Registry at Morogoro' which is in existence. He argued that the present application contravened Order No. 2 of the High Court (Morogoro Sub Registry Establishment) Order, 2021 (hereinafter, the "Order") which provides that disputes should be brought in the appropriate name of the registry and not otherwise. He urged the court to sustain the objection and dismiss the application.

With regards to the second point of objection, Mr. Basesa contended that the application is incompetent for not attaching Form No. 1 and failure by the applicant to name the same in the index of the documents prepared and attached to the application, contrary to Rule 6(1) and 46(2) of the Rules. He prayed for dismissal of the application.

Mr. Basesa submitted in respect of the third point of objection that the affidavit of the applicant is incurably defective for containing prayers in paragraph 27 of the affidavit. He contended that the deponent is required to

state matters of fact within his or her knowledge. He argued that there is no any law that allow an affidavit to contain prayers and prayed for dismissal of the application with costs to the 1st respondents.

Mr. Lusenga who appeared for the 4th respondent joined hands with the 1st respondents' submissions on all points of objections. He prayed for the objections to be sustained. He further prayed for costs under Rule 28(2) of the Court Broker and Process Server (Appointment, Remuneration and Disciplinary) Rules, G.N. No. 363 of 2017 (hereinafter, the Court Broker Rules"). He argued that the executing officer is defined under section 2 of the Rules to include court brokers.

Mr. Mutaki, learned counsel for the applicant opposed all points of objection for being devoid of merit. Opposing the first ground, he contended that Order No. 2 of 2021 established the High Court Sub Registry of Morogoro for the purpose of conducting speedy and effective civil and criminal trials. He submitted that although the document indicate the Labour Division of this Court, the application was filed and admitted by High Court Sub Registry at Morogoro through the online case management system in compliance with Rule 9 of the Judicature and Application of Laws Act (Electronic Filing) Rules G.N. No. 148 of 2018.

He submitted that under Article 108 of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time (hereinafter, the "Constitution") which creates the High Court of the United Republic of Tanzania, this Court has unlimited jurisdiction and judges of the High Court are mandated to exercise all or any part of the powers conferred upon it. He stated that the application was filed in the right sub registry and this court has the jurisdiction to entertain the application referring to the case of **National Bank of Commerce Limited Vs National Chicks Corporation Limited and 4 Others**, Civil Appeal No 129 of 2015, where the Court of Appeal from page 12 to page 24 exemplified that the High Court is a creature of the Constitution, and the registries and divisions of it are creatures of Rules which cannot override the provisions of the Constitution.

He viewed the defect minor which constitute slip of a pen. He argued in the alternative that if the Court finds the defect is a discrepancy, he prayed for the same to be treated trivial and curable and which cannot not oust the jurisdiction of the Court. He urged the Court to order the applicant to amend the defect through handwriting by striking out the word 'Labour Division' and insert the words 'Morogoro Sub Registry'. He referred the Court to the case of the **Registered Trustees Archdiocese of Dar es Salam Vs**

Adelmarsi Kamali Mosha, Misc. Land Application No 32 of 2019, on page 8, His Lordship Mlyambina, J., when faced with a similar matter that the address of the court was wrongly cited as 'in the High Court of Tanzania', he ordered the amendment of the missing words in the title. He urged the Court not to dismiss or strike out the application but invoke Article 107A (2) (b) and (c) of the Constitution and the oxygen principle entrenched under section 3A (1) and (2) and 3B (1) of the Civil Procedure Code, Cap. 33 R.E. 2019 (hereinafter, the "CPC").

On the second point of objection, Mr. Mutaki submitted that Rule 6 (1) of the Rules addresses reference or initiation of referral proceedings to the labour court by filing a statement of complaint which is the prescribed Form No. 1. He contended that Rule 24(1) to (11) provides for how a party intending to initiate an application in the labour court should file his case. Rule 48(3) of the Rules provides for the application of the provisions of Order XII of the CPC while the instant application was preferred under Rule 57(1) and (2), 58 and 59 of the CPC which provides for objection proceedings. He argued that application did not contravene Rule 6(1) and (2) of the Rules and prayed for the objection to be overruled.



Against the third point of objection, Mr. Mutaki submitted that it is Order XIX Rule 3(1) of the CPC which provides that an affidavit should state facts or declaration of a deponent. He contended that the courts have expounded what a valid affidavit should contain, including in the case of **Director of Public Prosecution Vs Dodoli Kapufi & Another**, Criminal Application No 11 of 2008, the Court of Appeal of Tanzania at Dar es Salam from page 2 to 5, where the Court elucidated the ingredients of a valid affidavit which are statements of declaration of facts, verification clause, jurat, and signatures of the deponent who is authorized by law to administer oath or accept the affirmation.

He argued that in labour matters, the affidavits are *sui generis*, one of their kind, where, as per Rule 24(3) (d) of the Rules, an application should be supported by an affidavit which shall clearly and concisely set out the reliefs sought. The foundation of Mr. Mutaki's contention was that all affidavits brought under Rule 24(3) of the Rules, must be in conformity with sub rule 3. He contended that the affidavit in support of the application is in conformity with Rule 24(3) (a) to (d) of the Rules. He relied on the case of **Abel Nyenye & Gilbert Mwambalila Vs CocaCola Kwanza Consolidated Revision No 53 and 54 of 2013**, HC Labour Revision at

Mbeya, which from page 3 to page 5, supported his contention. He prayed for the dismissal of the third ground of objection.

Regarding the 4th respondent's submissions and prayers under Regulation 28 of G.N. No. 367 of 2019 as amended by G.N. NO. 106 of 2019, Mr. Mutaki opposed the submissions and prayers for being misplaced. He argued that the 4th respondent's entitlement to costs is only when the sale has been stopped, and that the executing court is a court that executes the decree which is the one sitting in Labour Execution No. 29 of 2022. He contended that it is that court which can award him costs. He opposed the 4th respondent's submissions in support of the points of objection as he did not raise any point of objection.

In his rejoinder, Mr. Basesa submitted that the applicant's responses are contradictory. He argued that the circumstance in the cited cases is different from the present application as the applicants in those cases conceded to the defects but the applicant has consistently maintained that the application is not defective. He contended that applicant ought to have prayed for withdrawal of the application with leave to refile. He argued that online filing of a document does not mean that the application is correct, in that there are several cases with defect which were duly filed in the online filing system.

On the second ground, he argued that their objection did not relate to Rule 24 of the Rules but failure by the applicant to adhere to Rule 6(1) and (2) by his failure to attach Form No. 1.

On the third objection, he submitted that Rule 24(3) (a) to (d) of the Rules does not state that the affidavit should contain prayers or reliefs but the matters to be included in the application. He argued that Article 107A (2) (b) (c) of the Constitution which relate to victims was cited out of context. He reiterated his prayer for dismissal of the application.

Mr. Lusenga submitted that a preliminary objection can be raised at any stage of the proceedings as long as it qualifies the principles stated in the case of **Mukisa Biscuits Manufacturing Co. Limited v. West End Distributors Limited (1969) EA**. He argued that lack of a jurisdiction of a court qualifies an objection as jurisdiction is a creature of statute and cannot be assumed.

He submitted that Rule No. 28(2) of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017 provides that where an order for sale has been made, and the sale has been stopped or postponed or where execution is stayed by court order, the executing officer,

on application, should be entitled to receive all the expenses and charges which he reasonably incurred. He added that Rule 27(5) provides that charges and allowances of the executing officer in case of successful objection proceedings arising from the attached property shall be paid by the decree holder or any other person who pointed out the property, in this case, the applicant. He contended that the amendment of 2019 did not amend Rule 27. He prayed for the application to be dismissed.

Upon conclusion of the parties' rival submissions, I now turn to determine each of the point of objection in the manner the parties addressed them.

In the first point of objection, the 1st respondents prayed for dismissal of the present application for lack of jurisdiction. The prayer arose from the applicant's indication of the "Labour Division" instead of "Sub-Registry" in the title of this Court in the present application. The applicant conceded that it was an error but which does not oust the jurisdiction of the Court. I agree with Mr. Mutaki, learned Counsel for the applicant that the error is a slip of the pen that cannot oust the jurisdiction of the Court.

The reasons for holding as above are not farfetched. The first being that Order 2 of the Order established the High Court Sub-Registry of Morogoro

for the purpose of speedy and effective trials of civil and criminal cases. While I agree with Mr. Basesa that there is no separate division of the labour cases in Morogoro, this Sub-Registry has mandate to hear and determine labour matters. In effect the present matter is before a court with requisite jurisdiction to entertain the same. It would have been proper if the 1st respondents would apply for striking out of the application for incompetence. However, if I strike out the application for such a minor defect which neither prejudice the respondents nor oust the jurisdiction of the court, the applicant will refile the same application before this court. In doing so, the principle of overriding objection enshrined under section 3A(1) and 3B(1) (c) of the CPC that require facilitation of the just, expeditious, proportionate and affordable resolution of civil disputes, as well as timely disposal of the proceedings at a cost affordable by the respective parties, will not be achieved. I follow the course taken by the High Court in the case of **Registered Trustees Archidiocese of Dar es Salaam v. Adelmarsi Kamili Mosha** (supra), where it was held that:

"In view of the foregoing, the Court is of considered view that Article 108(1) of the Constitution of the United Republic of Tanzania and Section 4 of the Interpretation of Laws R.E. 2019 depicts the correct citation of the law. However, the title of the



Court in which the matter is filed has to be traced from the High Court Registry Rules, 2005 (G.N. No. 96 of 2005) whose Rule 8(2) provides:

When any cause or matter, whether original or appellate, has been entered in the district registry, it shall be titled "IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY AT..

***It follows, therefore, that it was not proper for the Applicant to title "IN THE HIGH COURT OF TANZANIA". However, this is a matter of form which has nothing to do with the substance of the matter. In that regard, the remedy is neither to struck out nor to dismiss the application. The proper remedy is to allow amendment by inserting the missing words"*[Emphasis added]**

I also take the same view of allowing an amendment by allowing the striking of the title of the Court, the words "LABOUR DIVISION" and replace the same with the word "SUB-REGISTRY" in the present application.

In the second ground of objection, the 1st respondents challenged the competence of the application for not attaching Form No. 1 which he alleged to be in contravention of Rule 6(1) and (2) of the Rules. I should state at onset that Rule 6(2) of the Rules has been cited out of context. The sub rule



relates to referral proceedings initiated by the Director of the Commission. It does not apply to the applicant herein.

In essence, Rule 6(1) and (2) of the Rules require a party initiating referral proceedings to this Court to file a statement of complaint as prescribed in Form No. 1 of the Schedule the Rules. The present proceedings are not referral proceedings but an application for objection proceedings duly preferred under Rule 24 in terms of applications in labour matters, Rule 25 being an application under certificate of urgency, 55(1) being an objections proceedings for which the Rules do not provide and Order XXI Rule 57(1) (2); Rule 58 and 59 of the CPC, being objection proceedings. It follows that a statement of complaint was not a mandatory document in the present application. I find the objection a misconception and the same is overruled.

The third ground of objection that the affidavit of the applicant is incurably defective for containing prayers in paragraph 27 should not detain me much. I agree with Mr. Mutaki, learned advocate for the applicant that the Rules are *sui generis*. The Rules are unique and one of its kind, specifically designed to carter in labour matters. Contrary to normal principles governing affidavits under Order XIX Rule 3(1) of the CPC, Rule 24(3) (d) of the Rules allow affidavit in support of application before the labour court to include

reliefs sought by the applicant. It means that paragraph 27 of the affidavit in support of the present application was made in compliance of Rule 24(3) of the Rules. It follows that the third point of objection has no merit and is also overruled.

Based on the above analysis, I find the application to be competent before the Court. I order the hearing of the application to proceed on merit upon striking of the words "LABOUR DIVISION" and replacing it with the word "SUB-REGISTRY" on the title of the application. Since I partly sustained the first ground of objection, and overruled the second and the third grounds of objection, I order each party to bear its own costs.

It is so ordered.

DATED at **MOROGORO** this 28th day of March 2024.



H. A. KINYAKA

JUDGE

28/03/2024



Court:

Ruling delivered in this 28th day of March, 2024 in the presence of the Mr. Erick Mtaki Learned Counsel for the Applicant, Mr. Boniface Basesa for the 1st Respondent, and in the presence of the 2nd and 3rd Respondents who appeared in person and unrepresented.


F.Y. Mbelwa

DEPUTY REGISTRAR

28/03/2024



Court:

Right of the parties to appeal to the Court of Appeal of Tanzania fully explained.


F.Y. Mbelwa

DEPUTY REGISTRAR

28/03/2024

