

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**REVISION NO. 422 OF 2016**  
**MBONIPA KASASE.....APPLICANT**  
**VERSUS**  
**TANZANIA REVENUE AUTHORITY.....RESPONDENT**  
**RULING**

*Date of Last Order: 22/03/2018*

*Date of Ruling: 06/04/2018*

**L.L.Mashaka, J**

This is a ruling in respect of preliminary objection filed by the respondent Tanzania Revenue Authority on the 21<sup>st</sup> November 2017 that the application for revision filed by the applicant Mbonipa Kasase contravenes Rule 24 (3) (c) and (d) of the Labour Court Rules, GN No. 106 of 2007.

The hearing of the preliminary objection was by way of written submissions and it is noted that the respondent's submission was drawn and filed by Mr. Raphael Rwezaura, Advocate from Apex Attorneys Advocates who represented the respondent and those by the applicant drawn and filed *in person*.

The point of the preliminary objection is that the affidavit in support of the application deposed by the applicant himself does not disclose legal issues that arise from the material facts and reliefs sought as per Rule 24(3)(c) and (d) of the Labour Court Rules, GN 106 of 2007. That the

affidavit in support of the application does not meet the requirements of the law above whereas the requirements must be complied with by the applicant but the same has not been adhered to hence the same is incurably defective. That the said provision of Rule 24 (3) amongst others requires the affidavit in support of the application to contain legal issues and reliefs pertaining to the application at hand and the affidavit in support of the application is defective and the application is incompetent before the Court fit for being struck out.

In response applicant submitted that the reliefs in the affidavit are sought in the chamber summons and therefore are the prayers made in the application and went on to submit on the merits of the application on the finding of Hon.Arbitrator which is the gist of the application at hand and has not been heard yet.

He finally argued that the preliminary objection thereto has failed to show the defectiveness of the affidavit hence the same lacks merit. He referred the Court to the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd** (1969) E.A.C.A 696 on the preliminary objection that:-

*"so far as I am aware, a preliminary objection is in the nature of what used to be a demurrer. It raises pure point of law which when is argued on the assumption that all facts pleaded by other aside are correct. It cannot be raised if any fact has to be ascertained or if what is sought is exercise of judicial discretion."*

That the said preliminary objection does not meet the requirements of being a preliminary objection hence the same be dismissed with costs as it has no legal basis.

In rejoinder, Learned Counsel for the respondent argued that the prayers sought in the chamber summons cannot be the same. That since there is mandatory provisions of the law which requires the contents of a document to be adhered and a party cannot ignore it thus the affidavit is defective. The respondent reiterated his submission in chief on the preliminary objection.

On the cited case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) E.A.C.A 696**, Learned Counsel submitted that the applicant wrongly interpreted the holding of the case law since the same is on what amounts to a preliminary objection to be a point of law which is properly raised by the respondent on the defects of the applicant's supporting affidavit which is contrary to Rule 24(3) of the Labour Court Rules 2007, Government Notice No. 106 of 2007, the applicant has failed to comply with.

Learned Counsel for the respondent therefore prayed for the preliminary objection to be sustained and the application be dismissed with costs.

Having gone through written submissions by both parties and Court records at hand, the key issue for determination in the raised preliminary objection is whether or not the applicant's affidavit has comply with the requirements of Rule 24(3)(c) and (d) of the Labour Court Rules, Government Notice 106 of 2007. Rule 24(3) provides that:-

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

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

*[ Emphasis is mine].*

The contention by the applicant is that the raised preliminary objection does not confirm to what is a preliminary objection thus lacking the key elements thereto, quoting the holding from **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Ltd (1969) E.A.C.A 696** and that the prayers are contained in the chamber summons, without a flicker of doubt this Court holds the preliminary objection raised qualifies to be so as defined in the said case. The applicant's affidavit in support of the application does not meet the requirements of Rule 24(3)(c) &(d) of the Labour Court Rules, Government Notice No. 106 of 2007 as rightly argued by Learned Counsel for the respondent. The raised point of objection is on a pure point of law as per requirement of the law above as well as case laws, particularly **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Ltd**, (1969) E.A.C.A 696, and the case of **Karata Ernest and Others Vs. The Attorney General**, Civil Revision No. 10 of 2010, Court of Appeal of Tanzania at Dar Es salaam, [unreported]

at pages 7 and 8, His Lordship Rutakangwa,JA [as he then was], in that case the Court of Appeal expounded in depth what is a preliminary objection.

The affidavit deponed by the applicant in support of this application does not show the statements of the legal issues therein arising from the material facts, and does not have reliefs sought by the applicant contrary to Rule 24(3)(c) and (d) of the Labour Court Rules GN No. 106 of 2007.

In the circumstance, the preliminary objection raised by the respondent is merited for the application for revision is supported by a defective affidavit which renders the application incompetent. It ought to be struck out.

For the interest of justice, I grant the applicant leave to file a competent application for revision within 14 days from today.

This application for revision is accordingly struck out with no orders as to costs.

So ordered



L.L. Mashaka

**JUDGE**

06/04/2018