

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

REVISION NO. 81 OF 2014

BETWEEN

TANZANIA REVENUE AUTHORITY **APPLICANT**

VERSUS

EDSON MWAMTOBE **RESPONDENT**

(ORIGINAL/CMA/DSM/ILA/525/12/389)

RULING

15/04/2015 & 24/04/2015

Mipawa, J.

The Applicant in Revision No. 74 of 2014 Edson Mwamtobe filed the instant revision by way of the notice of application, as against the Respondent Tanzania Revenue Authority, the notice of application is made under Rule 24 (1) (3) and Rule 28 (1) (d) of GN No. 106 published on 18/05/2007¹. The revision is also accompanied by a chamber summons made under Section 91 (1) (b) of the Employment and Labour Institution Act², together with any other enabling provisions of the law. The application is supported by an affidavit of one William Fussi.

¹The Labour Court Rules Government Notice No. 106 of 2007

²There is no Act known as the Employment and Labour Institution Act in Labour Legislation. There is Labour Institution Act No. 7 of 2004 and Employment and Labour Relations Act No. 6 of 2004

The revision application was met by a fierce preliminary objection on point of law raised by the Respondent to the effect that:-

... On the first day of hearing the Respondent herein will raise the following preliminary objections on point of law:-

- a) *For non citation of relevant provision of the law.*
- b) *Wrong citation of the law.*
- c) *For having an incurably defective affidavit³...*

There is another revision filed ***intandem*** (together) with Revision No. 74 of 2014 that is the Tanzania Revenue Authority (Applicant) in Revision No. 81 of 2014 filed the revision as against Edson Mwamtobe (Respondent). The revision was initiated by a notice of application made under Rule 24 (1) (2) of the Labour Court Rules GN. No. 106 of 2007⁴ and the chamber summons made under Section 91 (a), (2) (b) and 94 (1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004⁵, and Rules 24 (1) and (3), 28 (1) (c) and (e) of the Labour Rules⁶. However the application for revision was challenged by the Respondent before hearing with a preliminary objection on point of law as follows⁷:-

1. *That this application for revision is res-subjudice to the Application for Revision No. 74*

³Notice of preliminary objections on point of law raised by respondent in Revision No. 74 of 2014 between Edson Mwamtobe (Applicant) and Tanzania Revenue Authority (Respondent)

⁴op. cit. note 1

⁵Cap. 366 RE. 2009 ELRA

⁶op. cit. Note 4

⁷Notice of preliminary objection on point of law raised by Respondent in Revision No. 81 of 2014 between Tanzania Revenue Authority Vs. Edson Mwamtobe

*of 2014 pending determination before this Hon.
Court.*

2. *That the Applicant's Affidavit is incurably defective for containing ground at appeal and conclusion such as an appeal (sic) thus offending Rule 24 (3) (b) and (c) of GN. 106.*

In view of the fact that the two Revisions crop from the same source and involve the same parties, I have opted to consolidate them so as to "kill two birds by one stone" **c'est-a-dire** that is to say once Ruling will involve all raised preliminary objections in Revision No. 74 of 2014 and Revision No. 81 of 2014.

Submitting by way of written submission in support of the preliminary objection in Revision No. 74 of 2014 the Respondent on whether the Application is based on non-citation of the relevant provision of the law, argued that; [first limb of his preliminary objection] the application for revision is made under Section 94 (1) (b) (i) of the Employment and Labour Institution Act, the provision which is unknown and never exists in Tanzania Laws.

Even if it exists is irrelevant to the current application, that it is a well established precedent and the court practice in our jurisdiction that unknown and irrelevant provision of the law could not stand to support any application before the court he cited the case of **Marcky Mhango (on behalf of 684 Others) Vs. Tanzania Shoe Co. Ltd and Tanzania**

Leather Associated Industries⁸, in which the Court of Appeal ruled that:-

... This court has consistently taken the view that wrong citation of a section of the law or rule.

... Renders the application incompetent in **National Bank of Commerce Vs. Sadrudin**

Meghji, Civil Application No. 20 of 1997 the application for revisionwas made under Section 4 (2) of the Appellate jurisdiction Act, 1979 instead of Section 4 (3) striking the application the court...stated that the application has been filed... under an inapplicable law...

The Respondent in support of his arguments on wrong citation cited the Court of Appeal decisions in **China Henan International Co-operation Vs. Salvanda K.A. Rwegasira**⁹. In which the Court of Appeal sustained the preliminary objection that the application for reference was brought under the wrong citation of the law and held the application to be incompetent.

It was the views of the Respondent that the Applicant ought to have cited Section 91 (1) (a) (2) (b) and 94 (1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004¹⁰, and Rule 24 (1) and (3), 28 (1) (c)

⁸Civil Application No. 37 of 2003 per Lubuva J. A. as he then was at page 4

⁹Civil reference No. 22 of 2005

¹⁰op. cit note 5

quoted paragraph 5 and 6 of the Applicant's affidavit:-

(5) *That the commission erred in law and fact in awarding the Respondent compensation of 3 months salaries while the termination was fair.*

(6) *That the Honourable Arbitrator made the order without taking into account the facts that the Respondent termination was fair ...¹⁵*

He concluded that the said arguments and ground of Appeal in the affidavit is fatal and renders the affidavit defective and on the strength of the above submission the court has to dismiss the Application¹⁶.

Replying to the preliminary objection by Respondent in Revision No. 81 of 2014, the Applicant submitted that Section 94 (1) of the Employment and Labour Relations Act No. 6 of 2004 provides jurisdiction to this court over revision of Arbitrator's award while Section 91 (c) of the same Act gives right to any party to an application to apply to the Labour Court for a decision to set aside an application arbitration award.

As regard to the issue of res-subjudice the applicant argued that the same does not apply in the present case due to the fact that, when the Applicant filed the application before this Court, had no knowledge that there is another application filed by the Respondent. Thence as the application for Revision was filed without knowledge of any existing Application before this Court and in fact there was no suit pending in this or any other court. The Respondent's act of citing an application for

¹⁵ Respondent quoting the fifth and sixth paragraphs of the applicant's affidavit in Rev. No. 81 of 2014
¹⁶ op. cit note 14

revision before this Honourable Court cannot prevent the applicant to file his Application which is the right of any party who is aggrieved by the decision of Arbitrator¹⁷.

On the second limb of the preliminary objection that the Applicant's affidavit is incurably defective for containing grounds of appeal and conclusion thus offending Rule 24 (3) (b) and (c) of GN. 106 of 2007¹⁸. The applicant submitted that the affidavit in support of the present application is in conformity with Rule 24 (3) of the Labour Court Rules 2007 which provides the way through by requiring the applicant to state material facts, statement of legal issues arising from the material facts and the relief sought by the Applicant. Therefore what is contained in Applicant's affidavit is not conclusions and ground of appeal as submitted by the Respondent but material facts statement of legal issues arising from the material facts and relief sought by the Applicant which is in conformity with the provision of the law governing affidavit supporting application in the Labour Court already cited above¹⁹.

The Applicant in Revision No. 74 of 2014 replies to the preliminary objection was that, the citation of Section 94 (1) (b) (i) of the Employment and Labour Institution Act and particular word "*institution*" was a slip of the pen and that it is supposed to read Section 94 (1) (b) (i) of the Employment and Labour Relations Act. The words "*relations*" was omitted and instead placed the word "*institution*" and the omission does not cause any injustice to the Respondent he argued.

¹⁷The Applicant's reply to the preliminary objection in Rev. No. 81/2014

¹⁸The Labour Court Rules op-cit note 1

¹⁹op. cit note 17

On the cited case by the Respondent the case of **Marcky Mhango (on behalf of 684 Others) Vs. Tanzania Shoe Co. Ltd and Tanzania Leather Associated Industries**²⁰. Court of Appeal of Tanzania the Applicant moved this court to disregard the cited case because the judgment does not bear the honourable judge's signature²¹. The Applicant further stated that there was no non-citation but rather a slip of the pen and he also called upon this court to disregard the cited authority by the Respondent to wit; **China Henan International Co-operation Group Vs. Salvanda K.A. Rwegasira**²², the Court of Appeal of Tanzania. Simply because the Respondent cited the case which does not bear the signature of the Honourable Judge as well.

On the issue of defective affidavit the Applicant argued that, the respondent had not indicated the purported offended provisions of the law. He cited [the Applicant] the case of **Tanzania Cigarette Company and Burundi Tobacco Co. Ltd**²³ when revisiting the famous decision in **Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd**²⁴ which made an emphasis by providing conditions to be met before an objection can be raised the Applicant submitted that in that case the honourable Madam Judge Kimaro ruled that:-

*They [there?] must be pure points of law which do not require close examination or scrutiny of documents
[Applicant's quotation from the decision]*

²⁰ op. cit note 8

²¹ Applicant's reply to the preliminary objection raised by the Respondent in Revision No.74 of 2014

²² op. cit note 9

²³ Misc. Civil Case No. 2 of 2004 as quoted by the Applicant in his submission

²⁴ [1969] EA as quoted by the Applicant

I have carefully gone through the record and in my view the affidavit of the Applicant is contrary to the format in the jurat as that which is prescribed in the Oath and Statutory declaration Act Cap. 34 RE. 2002. In the schedule is the Act the format on how the jurat of attestation should be is clearly indicated. The applicant unfortunately has formulated his own format and adopted it, this is not proper. Par example [for example] the applicant's jurat states like this:-

... *Sworn and delivered by the said William D. Fussi who is known to me personally ...*

As it can be noted the Applicant format as above shown is not acceptable we do not deliver affidavit as the applicant above states 'sworn and delivered ...' the words properly shown in the schedule to the Act, are missing.

All in all I think rightly that on the foregone discussion all Application for Revisions consolidated are by and large incompetent, that is to say:-

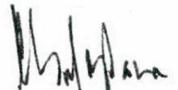
(1) Revision Application No. 74/2014 Edson Mwamtobe
(Applicant) Vs. Tanzania Revenue Authority
(Respondent)

AND

(2) Revision Application No. 81/2014 Tanzania Revenue Authority (Applicant) Vs. Edson Mwamtobe
(Respondent)

As a final result I struck out the above mentioned revision Application for being incompetent before the court. This court cannot grant an automatic leave for the parties to re-file proper applications for Revision

lest the law ***could be turned*** an ass and a scare crow of the law, and the Labour Court as a casino whereby a person tries now and then despite the loss of his money.

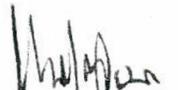

I.S. Mipawa
JUDGE
24/04/2015



Appearance: -

1. Applicant: M/S Samia Nyakunga Advocate - for TRA
2. Respondent: Present Edson Mwamtobe in person.

Court: Ruling has been read today in the presence of the Applicant's Advocate Samia Nyakunga for Tanzania Revenue Authority and the Respondent Mr. Edson Mwamtobe is present in person in Revision No. 81/2014 and Mr. Edson Mwamtobe the Applicant in Revision No. 74 of 2014 and M/S Samia Nyakunga for Respondent in Revision No. 74/2014.


I.S. Mipawa
JUDGE
24/04/2015



