

TANZANIA / JUDGMENT

dit saccos limited vs daud godluck sollo 2022 tzhcld 87 18 february 2022

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18 February 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR ES
SALAAM REVISION NO. 126 OF 2021 BETWEEN DIT SACCOS
LIMITED..... APPLICANT VERSUS DAUD GODLUCK
SOLLO.....RESPONDENT

RULING

S- M. MAGHIMBI, J This ruling is in respect of the preliminary objections raised by the respondents Counsel to the effect that:

- i. The application for revision filed by the applicant is incompetent for it does not meet the requirement of Section 91 (1) (a) (b) of the Employment and Labour Relations Act [CAP 366 RE 2019] CELRA'). ii. The application is supported by defective affidavit for failure to comply with the mandatory provisions of Rule 24 (3) (a) and 24
- (3) (d) of the Labour Court Rules, 2007 of GN No. 106 of 2007 CLCR'). i iii. That the application is brought without complying to the requirement of CMA F.10 which is made under Regulation 34 (1) of the Employment and Labour Relations (General) Regulations, 2017 GN 47 of 2007. The preliminary objections were argued by way of written submissions. Mr. Armando Swenya, learned Counsel appeared for the applicant whereas Mr. Isaack Zake, learned Counsel was for the respondent. Arguing in support of the first preliminary objection Mr. Zake submitted that Section 91 (1) (a) (b) of the ELRA requires an aggrieved party to arbitration award made under section 88 (10) to apply to the Labour Court for a decision to be set aside. That contrary to the cited provision, the applicant has never been a party to arbitration award originating from Labour dispute No. CMA/DSM/ILA/145/2020/154/20 dated 26th February, 2021. That the parties to the contested award were Daudi Godluck Sollo v. DSM Institute of Technology- Saccos Ltd. Mr. Zake argued that once the identification of the names is well cited on any case, there is no any party who can amend such name without following proper procedures set out by the law and if change of names is blindly allowed, it might bring confusions or make any decision reached thereto unenforceable. He submitted further that the applicant's 2 name cited in this case envisage apathy, negligence and sloppiness which intend to delay justice because the parties' names are clearly indicated in

the impugned award. To support his submission, Mr. Zake cited the case of Mauiidi Shabani v. Temeke Municipal Executive Director and Farida Mohamed Said (as Administratrix of the estate of Jabar Said), High Court of Tanzania (Land Division) at Dar es salaam, Land Application No. 1030 of 2007. Mr. Zake further submitted that it is not the duty of the respondent to properly cite and make clear or identify the proper names of the parties so involved in the case. He argued that when the party is wrongly referred such case cannot stand as it lacks the authenticity pursuant to section 91 (1) (a) (b) of the ELRA. Regarding the second preliminary objection, Mr. Zake submitted that Rule 24 (3) (a) of the Labour Court Rules, G.N No. 106/2007 (LCR) requires the affidavit in support of the application to clearly and concisely set out names, discription and address of the parties. He pointed out that this requirement was not complied by the applicant. He argued that the cited provision is mandatory and has to be adhered to. He added that the applicant did not comply also with Rule 24 (3) (d) of the LCR which require the affidavit to have legal issues. To support his submission, he cited the case of Hamza Omary Abeid v. Pro Mining 3 Services, Revision No. 54 of 2019 High Court Labour Division at Mwanza. On the basis of the above arguments Mr. Zake urged the court to struck out the application with cost. Responding to the preliminary objections Mr. Swenya submitted that since Mr. Zake has not submitted on the third preliminary objection he urged the court to struck out the same. He also did not respond to the first preliminary objection and instead, he conceded that the application is defective for failure to comply with the mandatory provision of Rule 24 (3) (a) (d) of GN 106 of 2007. He also conceded to the prayer of striking out the application. He however prayed for leave to refile the application within fourteen days (14). Having considered the parties' submissions, I need not be detained much by the objections. Since Mr. Swenya conceded to the second point of objection that the application is defective for contravening mandatory provisions of Rule 24, the application is hereby struck out for being incompetent. As prayed, the applicant is granted leave to the refile proper application within 14 days from the date of this ruling. Dated at Dar-es-Salaam this 18th day of February, 2022

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Prepared on 14 October 2026 · Esheria