

TANZANIA / JUDGMENT

mariam khairuddin vs glenrich transportation co ltd 2020 tzhcld 3814 18 december 2020

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18 December 2020

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION NO. 825
OF 2019 BETWEEN MARIAM KHAIRUDDIN..... APPLICANT VERSUS
GLENRICH TRANSPORTATION CO. LTD.....RESPONDENT

RULING

Date of Last Order: 11/12/2020 Date of Ruling: 18/12/2020 Aboud, J, This ruling is in respect of the preliminary objection raised by respondent, GLENRICH TRANSPORTATION CO. LTD. against application for revision of the award in Labour Dispute No. CMA/DSM/ILA/438/2019 of the Commission for Mediation and Arbitration (herein CMA). The preliminary objection is to the effect that:-

- i. The applicant's affidavit in support of the application for revision is incurably defective for contravening mandatory provisions of Rule 24 (3) (c) and (d) of the Labour Court Rules GN. No. 106 of 2007. i ii. The applicant's affidavit supporting the application for revision is incurably defective for having improper jurat of attestation. iii. The applicant's affidavit in support of application for revision is incurably defective for having improper verification clause. At the hearing the applicant was represented by Mr. Hashimu Mziray, Learned Counsel while Mr. Mwambene Adam, Learned Counsel was for the respondent. The preliminary objections were argued by way of written submissions as scheduled by the Court. I commend both parties for complying with scheduling order. Arguing in support of the first preliminary objection Mr. Adam Mwambene submitted that, the applicant's affidavit is incurably defective for lacking statement of legal issue and the reliefs sought contrary to Rule 24 (3) (c) (d) of the Labour Court Rules, G.N No. 106 of 2007 (herein the Labour Court Rules). To robust his argument he referred the court to number of cases, one of them being the case of Ezekiel Andrew v. Africanlife Tanzania, Revision No. 346 of 2009. 2 On second ground of preliminary objection Mr. Adam Mwambene submitted that, the applicant's affidavit has serious defect because it had been sworn by a person who is different from the one appears in the jurat of attestation. It was further submitted that such serious defect on the jurat of attestation renders the affidavit incurably defective. Supporting his argument he

cited the cases of Joseph Kapela v. Pangea Mineral Limited, Revision No. 64 of 2015/2005; Daniel Malambo v. Pangea Minerals Limited, Revision No. 65/2005, Consolidated Revision No. 65/2005 [2015] LCCD 1. On third point of objection it was submitted that, the applicant's affidavit is defective for having improper verification clause because the applicant has not stated in which capacity she has made the verification clause and the purported verification failed to differentiate as to which among the verified paragraphs are true according to the deponent's knowledge and which ones he was advised and believed to be true. He thus, prayed for the application to be struck out. Opposing the first preliminary objection Mr. Mziray, Learned Counsel for the applicant submitted that, the respondent's submission 3 is opaque as it has no paragraph or contents to show how the applicant offended Rule 24 (3) (c) (d) of the Labour Court Rules. On the second preliminary objection the applicant's Counsel argued that, the inclusion of the name of Nadia Mohamed Said in the attestation was a mere typographical error which does not invalidate the affidavit. It was further argued that, such an error is a fact which need to be proved because the applicant signed the jurat of attestation before the Commissioner for Oaths. Lastly, Mr. Hashim Mziray submitted that, the respondent failed to show which provision of the law has been offended by the applicant. The fact that the applicant has knowledge of legal issues is of less assistant to the respondent to back up his position as per common law presumption that everyone has to know the law. He therefore prayed for the preliminary objections to be overruled. In rejoinder the respondent's Counsel reiterated his submission in chief and further urged that improper jurat of attestation and verification clause are purely points of law and not matters of facts as contended by the applicant. 4 Having carefully considered both submissions, court records, as well as relevant laws and practice, I find worth to start in answering the second ground of preliminary objection as has the effect of disposing the matter if is upheld. On second point of preliminary objection, the respondent counsel argued that, the person who has sworn the affidavit as the deponent is not the same person who appears in the jurat of attestation. He submitted that such serious defect on the jurat of attestation renders the affidavit incurably defective. On other side the applicant contend that, what contained in applicant's affidavit by including the name of Nadia Mohamed Said in the attestation is just a mere typographical error, therefore cannot invalidate the affidavit. The question before this Court is whether the defect of verification clause in question goes to the root of this application. The relevant provision in answering this issue is Section 8 of the Notaries Public and Commissioner for Oath Act, Cap 12 RE. 2019, which provides that:- ' Every notary public and commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall insert his 5 name and state truly in the jurat of attestation at what place and on what date the oath or affidavit is taken or made'. Also in the case of D.P.P vs. Dodoli Kapufi and Patson Tusalele, Criminal Application No. 11 of 2008, CAT at Dar es Salaam (unreported) it was held that:- 'The Notary Public and Commissioner for Oaths is required to certify in the jurat that the person signing the documents did so in his presence, that the signer appeared before on the date and at place indicated thereon; and that he administered the oath or affirmation to the signor, who swore to or affirmed the contents of the affidavit'. It is an established principle that what stated in jurat of attestation is supposed to be certain true

and not otherwise. However, things are different in this application as the name of a person who affirmed (Nadia Mohamed Said) differs with the name of the applicant (Deponent) who is Mariam Khairuddin. Thus, it is clear an affidavit in support to the application is affirmed by another person who is not a deponent (applicant) and, I am of the view that such defect goes to the root of the application. 6 Therefore, applicant's allegation that it was just a typographical error cannot be entertain. In my view such an error in the affidavit is incurable. Under the circumstances, I find that the preliminary objection has merit and disposes off this matter. Thus, I find no need to continue in deciding the remaining grounds of preliminary objection. The application is struck out accordingly. In the interest of doing justice to both parties leave is granted to applicant to file proper application on or before 04/01/2021. It is so ordered. I.D. Aboud JUDGE 18/12/2020 7

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