

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA IN THE SUB-REGISTRY OF MTWARA AT MTWARA LABOUR REVISION NO. 15474 OF 2024 (Arising from the decision of the Commission for Mediation and Arbitration for Mtwara at Mtwara in Labour Dispute No. CMA/MTW/20/2023) MASASI MTWARA COOPERATIVE UNION LTD.....APPLICANT VERSUS POTENCY DOMICIAN RWIZA & 2 OTHERS.....RESPONDENTS

RULING

3rd September & 13d: October, 2024 DING'OHI, J. This ruling is in respect of the preliminary objection raised by the Counsel for Respondents on the following points;

- (i) That the Application is incurably defective for contravening Rule 24 (2) of the Labour Court Rules, GN No. 106 of 2007 having been signed by Biadia Matipa. (ii) That the application contravenes Rule 24 (3) (a) of the Labour Court Rules, GN No. 106 of 2007. Page 1 of 8 (iii) That the verification clause is incurably defective having contained unverified paragraphs. (iv) That application is incompetent for failure to cite the names of the parties in the proceedings at the Commission for Mediation and Arbitration. The Respondents have prayed for an order that this application be struck out with costs. In this matter the Respondents were advocated for by Mr. Steven Lekey, learned advocate while the Applicant was represented by Mr. Ahyadu Nannyohe, learned advocate. Mr. Nannyohe, for the applicant, principally conceded to the preliminary objections raised by the Respondents. He agreed with the counsel for the Respondents that the proper remedy is to strike out the application. However, after striking out the application, the Applicant will be out of time to lodge a fresh application, he prayed that the same be struck out with an order allowing the applicant to refile. Mr. Nannyohe referred this court to the case of Tanzania Shipping Agencies Corporation vs Lucas Machimu and 31 Others (Revision Application 6 of 2023) [20231 TZHC 1262 (2 May 2023) and another case of Achelis (Tanganyika) Ltd vs Benedict M. Sembo (Rev. Appl. No. 253 of 2020) [20211 TZHCLD 461 (12 Page ! of 8 November 2021) where the court held that this court has the power to strike out the matter with leave to refile. Based on the above-cited authority, the learned counsel for the Applicant blessed the prayer that the application be struck out but for the interest of justice the Applicant be allowed to refile after affecting necessary corrections to cure the defects. Mr. Lekey strongly objected to the prayer for the refiling of the application and he submitted that the first limb of

preliminary objections goes to the root of the application. According to him, Miss Biadia Matipa who is not the applicant signed the application and the signing of the pleading is very vital to the case. He referred this court to the Court of Appeal of Tanzania case of Andrew Mseul and 5 Others vs National Ranching Company Ltd and Another (Civil Appeal No. 205 of 2016) [20171 TZCA 145 (5 December 2017) where the Court refused to grant an order for amendment of the pleading as by so doing shall mean to preempt the PO. The learned counsel therefore asked this court to be guided by the stance in the authority of the case he has cited, and refuse to allow the amendment. Mr. Lekey argues that the proper procedure is to apply for an extension of time to file a revision application. In a brief rejoinder, Mr. Nannyohe contended that the case of Andrew Mseul and 5 Others (supra) is distinguishable from the case at hand. He Page 3 of 8 reiterated what he submitted in chief adding that the applicant's prayer is not for the amendment of the application. It is for leave to refile the application in case this application suffers from an order of striking out. I have carefully gone through the impugned application together with the rival arguments from both sides on the raised preliminary objections. As the counsel for the Applicant has at the first outset conceded to the preliminary obligation, I will be very brief and quick to dispose of them together, touching at least two areas. The law is very clear that a labour application like the present one is to be attached with the Notice of application and the affidavit to be made per form No. 4. It is to be signed by the Applicant. For the avoidance of doubts and ease of reference Rule 24

- (2) and (3) of the Labour Court Rules, G.N No. 106 of 2007 provides that: '(2) The notice of application shall substantially comply with Form No.4 in the Schedule to these Rules, signed by the party bringing the application and filed and shall contain the following information —.....
- (3) The application shall be supported by an affidavit, which shall clearly and concisely set out - Page 4 of 8
- (a) the names, description, and addresses of the parties;' [Emphasis Added] As quoted above the notice of application is required to be signed by the party bringing and filing the application in the court. In this matter that was not done. Since the Applicant has conceded to the PO as aforesaid; the same is hereby sustained. The following issue is what is the proper order under the circumstances. The applicant has prayed that the application is to be struck out with leave to refile. On the other hand, the respondent is of the view that the proper order is to strike out the application with no order to refile. According to the learned counsel for the Respondent, which I may later agree, if the Applicant is still interested may apply for an extension of time to revise the CMA award out of time. I have considered the submissions and the precedents cited by both parties. The issue is whether after striking out the application for revision in labour dispute, this court may grant leave for the same to be refiled. I think it may depend on the circumstances of each particular case. Under the circumstances of this case, I don't think that will suit the situation. It has been asseverated many times in various decisions that labour procedural law has unique and peculiar legal

features which are sharply Page 5 of 8 different from conventional procedural laws under the Civil Procedure Code. See; Yakbbbo John Masanja vs Mic Tanzania Limited (Revision Application No. 385 of 2022) [2023] TZHCLD 1130, and Cats Tanzania Limited vs. Savio Fernandes (Revision Application No. 78 of 2023) [2023] TZHCLD 1518. I am aware that the learned advocate for the applicant has prayed that if the application is struck out the applicant be granted leave to refile the application. I have considered that also. But, following the nature of the CMA award sought to be revised, I don't think the order for refiling will be appropriate at this moment. I say so because the said award has named only one person as respondent and the rest are referred to as others. The others are not named or listed. I think that kind of award will find challenges in execution processes in the future. I am of the strong view therefore that the execution of the CMA award will turn into a futile exercise if the prayer for refiling is attempted before the said award is rectified. In the case of Hsu Chin & Others vs Republic (Criminal Appeal 345 of 2009) [2010] TZCA 60, the Court of Appeal when faced with a similar situation, had the following to say; 'It is only one appellant HSV CHIN who has been identified by name. The rest are referred to as Page 6 of 8 "OTHERS" but who are they? How do we know that the "36 others" were desirous of appealing to this court?..... The names of ail appellants should have been mentioned.....' IWst), in the case of Justus Masengo & 41 Others vs Tanzania Portland Cement Ltd (Revision Application No. 338 of 2022) [2023] TZHCLD 1143; this court had the following to say on the notice of application which is part of the application of this nature* 'The notice of application that initiated this application as explained hereinabove, have only the name of Justus Masengo as the 1* applicant, who, I can confidently say, signed the said notice as the 1st applicant The rest 41 signatures on the said notice of applicant is not known the owners thereof. Counsel for the applicant conceded that in absences of the names of the applicants in the notice of application, it cannot be ascertained who are the applicants. I sustain this preliminary objection.' In fine, the preliminary objections raised by the Respondent in this application are meritorious and are hereby sustained. The application is Page 7 of 8 hereby struck out for being incompetent. The prayer by the applicant for an order of refiling is, for the reason given above, not considered. This being the labour dispute matter, I will award no costs. DATED at MTWARA this 15th day of October 2024. ING'OHI JUDGE 15.10.2024 Court: The Ruling delivered on 15th day of October, 2024 in the presence of Mr. Ahyadu Nannyihe, the learned advocate for the applicant and Ms. Janifer Kivuyo, the learned advocate for the respondents. ING'OHI JUDGE 15.10.2024 Page 8 of 8

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