

**IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LABOUR REVISION NO.11 OF 2018

(Arising from labor dispute No. CMA/SHY/61/2017)

PATRICK MAKALE MUSABILA.....APPLICANT

VERSUS

NATIONAL MICROFINANCE BANK PLC.....RESPONDENT

RULING

24/3& 23/4/2020

G. J. Mdemu, J.;

This labour revision came for hearing on 24/3/2020. Before hearing commenced, the court, *suo motto* raised two legal points. **One**, that, the notice of application was signed by the Personal representative of the Applicant instead of the Applicant thus violating the provisions of Rule 24(2) of the Labour Court Rules, 2007. **Two**, that, there are no legal issues and reliefs prayed for by the Applicant in the affidavit thus violating the provisions of Rule 24(3) (c) (d) of the Labour Court Rules, 2007.

The learned Advocate for the Applicant one Frank Obeid conceded. He however prayed for leave to amend the affidavit. Mr. Antipas Lakam, learned Advocate who represented the Respondent Company his was that, as the application is defective, the remedy is to strike it out. He cited the case of **Lucy Kessy vs. National Microfinance Bank PLC, Misc. Application No.133 of 2019** (unreported) to support his argument.

I have gone through the relevant provisions of the Rules and for clarity, each legal point will be resolved seriatim. With regard to the signing of the

Notice of Application by the personal representative of the Applicant, it is true that, the provisions of Rule 24(2) is couched in mandatory terms such that the notice of application must be signed by the party to the application. The Rule is reproduced as hereunder:

“24(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.”

Is the Personal Representative of the Applicant a party to this application? Rule 2 of the Labour Court Rules defines a party to mean:

“Means a party to court proceedings and include a person representing a party, in terms of section 56 of the Act and section 88 of the Employment and Labour Relations Act, 2004.”

Mr. Frank Obeid Kabula did not file a notice of representation as required in Rule 43(1) of the Labour Court Rules,2007 and the provisions of section 56 of the Labour Institutions Act, 2004.He was supposed to do so. Nonetheless, it was proper for him to sign the notice of application.

As to non compliance of the provisions of Rule 24(3) (c) & (d) of the Labour Court Rules, as stated above , it is mandatory that the affidavit of the applicant among other conditions, must have a paragraph deposing legal issues and reliefs which the Applicant is seeking as a redress .The Rule provides:

“24(3) The application shall be supported by an affidavit which shall clearly and concisely set out

(a)N/A

(b)N/A

(c)A statement of the legal issues that arise from the material facts

(d)The reliefs sought.”

The affidavit of the Applicant one Patrick Makale Musabila sworn on 9th of march 2018 did not comply with this mandatory requirement. There is no statement of legal issues and reliefs sought. Mr. Frank Obeid, learned Advocate prayed to be allowed to amend the affidavit. This view was resisted by Mr. Antipas Lakam who urged me to struck out the application.

I agree with the learned counsel for the Respondent and the authority cited that, the application be struck out, as I hereby do. In the interest of justice and as per the nature of this application and also bearing in mind that the legal irregularities got raised *suo motto* by the court, the Applicant is granted thirty (30) days from the date of this ruling within which to file another application. I do not make an order as to costs.

Order accordingly.



Gerson J. Mdemu

JUDGE

23/4/2020

DATED at SHINYANGA this 23rd day of April, 2020.




Gerson J. Mdemu

JUDGE

23/4/2020