

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

LABOUR REVISION NO. 35 OF 2018

(Arising from labor dispute No. CMA/SHY/25/2018)

JUMA DAUDI MWAKALONGE.....APPLICANT

VERSUS

BULYANHULU GOLD MINE LTD.....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 reliefs prayed for by the Applicant in the affidavit thus violating the provisions of Rule 24(3) (d) of the Labour Court Rules, 2007.

The Personal Representative of the Applicant conceded .He however prayed to withdraw the application with leave to refile within 14 days. Mr. Malongo, his was that, the application be withdrawn but the court should not grant leave to refile for a reason that, leave to refile cannot be granted in a defective application. He urged that, the Applicant if so wishes, may file another application. Mr. Benjamin rejoined briefly that, there are certain

consequences that if the application is struck out, the Applicant will be required to file application for extending time to file this revision.

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, 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 a 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.”

As Mr. Benjamin Daudi Dotto filed a notice of representation under the provisions of section 56 of the Labour Institutions Act, 2004, it was therefore proper for him to sign the notice of application.

As to non compliance of the provisions of Rule 24(3) (d) of the Labour Court Rules, as stated above , it is mandatory that the affidavit of the applicant among other requirement, must have a paragraph deposing 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

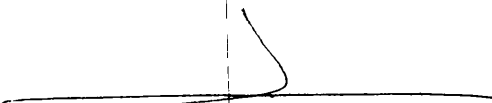
(c)N/A

(d)The reliefs sought.

The affidavit of the Applicant one Juma Daudi Mwakalonge sworn on 19th of April 2018 did not comply with this mandatory requirement. Mr. Malongo, learned Advocate urged me to struck out the application. I have considered this observation along with prayers of the Personal Representative of the Applicant to be granted leave to refile this application.

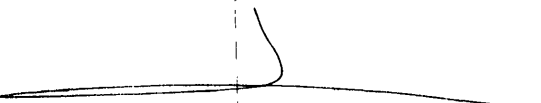
In that stance, this application is hereby struck out. In the interest of justice and according the nature of this application and also bearing in mind that the said legal irregularities got raised *suo motto* by the court, the Applicant is granted 14 days from the date of this ruling within which to 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