

**IN THE HIGH COURT OF TANZANIA
(HIGH COURT LABOUR DIVISION)**

MWANZA

MISC. LABOUR APPLICATION NO. 32 OF 2021

SAHARA MEDIA GROUP LTD----- APPLICANT

VERSUS

DINO DONALD MGUNDA----- RESPONDENT

RULING

Date of last Order: 25.08.2021

Date of Ruling: 27.08.2021

M. MNYUKWA, J.

This is an application brought under the Certificate of Urgency to lift and vacate the Garnishee Order Nisi of 23/3/2021 on Labour Execution No. 25 of 2020 that attached the bank account of the applicant. The application was made by way of chamber summons under section 2(3) of the Judicature and Application of the Laws Act, Cap 358 [R.E 2019], section 38(1), 95 and Order XXI Rule 24 (1) and (2) of the Civil Procedure Code, Cap 33 [RE. 2019] accompanied by an affidavit of Boniphace Sariro.



This Misc. Labour Application came for hearing on 25/08/2021. The advocate of the applicant addressed the court that the matter was coming for hearing and he prayed the hearing to be done by way of written submission to argue the point of preliminary objection raised by the respondent. He also pressed this court to grant an order to lift Garnishee Order Nisi because if the application will not be heard on that day the application will be redundant because that afternoon the Garnishee Order will be implemented by the Hon. Deputy Registrar.

The respondent's advocate objected the hearing to be done by way of written submission on the reason that they have served the applicant the reply to the counter affidavit together with the notice of a preliminary point of law on 23/08/2021. He argued that since the applicant was aware with the date of hearing, the application should be heard and because there was a preliminary point of law, the practice requires the hearing of the point of preliminary objection to be done before hearing the main application.

Before I resolved the above raised arguments, I requested the parties to address the court on Rule 43 of the Labour Court Rules, GN No. 106 of 2007 and to submit whether the Misc. Application No 32 of 2021 which is before the court is competent or not.



I thank both parties for being ready to address the court on that issue which is raised by the court *suo motto*.

The learned counsel for the applicant was the first to kick the ball rolling. He submitted that the matter before the court is to lift the Garnishee Order Nisi against the labour execution. He added that. Garnishee Order Nisi is the common law concept that's why this application was made under section 2(3) of Cap 258 R.E 2019, section 38(1), 95 and Order XXI Rule 24(1) (2) of Cap 33 R.E 2019. He went on to state that, the above provisions of law which brought the present application does not requires a Notice of Representation because the application was not made under the Labour Court Rules.

In responding, the respondent's counsel averred that, the applicant counsel did not move the court properly. He averred that the basis of the current application originated from the Labour Execution No 25 of 2021. For that reason, the Labour Court Rules, GN No. 106 of 2007 is applicable. He went on to state that Rule 43(1) of the Labour Court Rules, GN No 106 of 2007 provides for the mandatory condition for any person who represent another person to give notice of representation and that notice should be in writing providing the details such as the postal address, email and fax. He insisted that since the above requirement is



mandatory, the application before the court is incompetent and deserved to be dismissed with costs.

In rejoining, the applicant's counsel reiterated what he had submitted in chief and insisted that since there is lacuna in the Labour Court Rules, GN No 106 of 2007 the Civil Procedure Code, Cap 33 R.E 2019 is applicable.

I have anxiously considered the learned arguments of both learned counsel for the parties to this application. I would like to remind the parties that the application before me is Misc. Labour Application No 32 of 2021 which is filed in the High Court of Tanzania, Labour Division at Mwanza. Therefore, as a matter of law, all application should comply with the requirement of Labour Laws and its Rules.

In the case of Reli Assets Holding Company Ltd v Japhet Casmal & 1500 others, Lab Div TBR Revision No 10 of 2014, My learned brother Hon. Mipawa, J (as he then was) among others held that:

'The labour Court as a specialized Court and Division of the High Court has its labour laws and Rules enacted and passed by the legislature with the aim of guiding the Labor Court to achieve its end, purpose and specific objectives which is social justice, hence the labour legislation are enacted to achieve that goals of social



justice which is intended to achieve industrial harmony."

To understand whether the compliance with the requirement of Rule 43 of the Labour Court Rules, GN No 106 of 2007 is a mandatory or not, let me reproduce it for easy of reference:

"Rule 43(1) A representative who acts on behalf of any party in any proceedings shall, by a written notice advise the Registrar and all other parties of the following particulars;

- (a) The name of the representative*
- (b) The postal address and place of employment or business and any available fax number, email and telephone numbers.*

In the case of **Hamza Omary Abeid v Pro Mining Services**, Labour Revision No 54 of 2019, HCT Lab Div at Mwanza, it was held that:

"It can be observed from the above quoted Rule that the notice of representation is mandatory and that any person intending to represent a party must file a written notice, with the aim of advising the Registrar and the other party on his representation."

Again, in the case of **Kilimani Doto Richard v Geita Gold Mine Ltd**, Labour Revision No 99 of 2018, HCT Lab Div at Mwanza, the court held that:



"In my settled opinion, by the use of the word shall above the drafter meant that it is a mandatory requirement for a representative to advise the Registrar and other parties on his representation. The Rules gives another requirement that the notice has to be in writing."

Guided by the above provision and decided cases, one may not hesitate to presupposes that failure to issue a notice of representation in any proceedings before the Labour Court is like there was no representation on that matter. In other words, it is a mandatory condition in the Labour Court for any party who chooses to be represented, the representative of that party is duty bound to comply with the requirement of the above provision.

It suffices to state that the argument of the learned counsel of the applicant does not have a leg to stand since even if the application is brought under other provisions of law, so long as it is filed in the High Court Labour Division, the mandatory condition in the Labour Court Rules should be complied with. Thus, since the counsel appeared on behalf of the applicant, he was in fact required by the law to file a notice of representation regardless of whether the application is brought under the Labour Court Rules or not. His failure to do so render his presence before the court to be improper and its application incompetent.



In the upshot, I hereby declare that the Misc. Labour Application No. 32 of 2021 is incompetent before me for contravening the requirement of Rule 43(1) of the Labour Court Rules. GN No. 106 of 2007. I proceed to struck out with leave to refile a proper application within seven days if the applicant is still desired to pursue the matter. Since this is a labour matter there is no order as to costs. It is so ordered.



M. MNYUKWA
JUDGE
27/08/2021

Ruling delivered on 27/08/2021 via audio teleconference whereby all parties were remotely present.

M. MNYUKWA
JUDGE
27/08/2021