

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

MISC. LABOUR APPLICATION NO 39 OF 2019

(Based on the High Court of Tanzania Labour Division At Arusha, Misc App. No
32 of 2017)

NEEMA SIMON 1ST APPLICANT
APOLINARY STEVEN 2ND APPLICANT
NGEREZA KILALA.....3RD APPLICANT
MANCHESTER NURU4TH APPLICANT
CHRISTIAN PHILIPO5TH APPLICANT
JOYCE JEREMIAH6TH APPLICANT
MOSABI MRIMI7TH APPLICANT
AUGUSTINO KOMBE8TH APPLICANT
JOSEPH MOWO9TH APPLICANT
MATHA ALPHONCE10TH APPLICANT

VERSUS

NJAKE HOTEL AND LODGES LTD RESPONDENT

RULING

ROBERT, J:-

The Applicants herein brought this application under Rule 24 (1), 24
(2), (a), (b), (c), (d) and (e) and 44 (2) of the Labour Court Rules, GN No.

106 of 2007 seeking an order of this court permitting the 6th Applicant, Joyce Jeremiah and the 8th Applicant, Mr. Augustino Kombe, to file a representative suit on behalf of the ten Applicants herein in their intended application for revision. The application is supported by an affidavit sworn by all Applicants and opposed by a counter-affidavit sworn by Jenipher John, the learned counsel for the Respondent.

From the documents supporting this application, it appears that, all the Applicants herein were employees of the Respondent and they were all retrenched allegedly unlawfully. Aggrieved with the decision to retrench them, they referred their labour dispute to the Commission for Mediation and Arbitration of Arusha (CMA) which adjudged in favour of the Respondent. Still aggrieved, they preferred an application for revision against the said award vide Labour Revision No. 32 of 2017. On 7th November, 2018, this court, (Mwenempazi, J), struck out the application on technicalities and granted leave for the Applicants to file a fresh application which is complete and lawful.

Consequently, the Applicants filed another Revision styled Labour Revision No. 10 of 2019 which was also struck out for being incompetent as it was brought under the wrong citation of the law.

On 5th July, 2019, the Applicants filed this application praying to be granted leave to bring a representative suit against the Respondent and stated that they had unanimously agreed to appoint the 6th Applicant, Joyce Jeremiah and the 8th Applicant, Mr. Augustino Kombe, to file a representative suit on behalf of the ten Applicants herein.

When this application came up for hearing, the Applicants enjoyed the representation of Mr. E.F. Mbise, learned counsel whereas the Respondent was represented by Ms. Jenipher John, learned advocate. ~~Parties prayed successfully for the hearing to proceed by way of written~~ submissions.

Submitting in support of the application, Mr. Mbise stated that, the Applicants are 10 in total, they have decided to appoint two of them to represent them in the conduct of the matter in order to lessen the cost of coming to court with regards to the application for revision they intended to file subsequently. Both Applicants appended their signatures in their joint affidavit. The Applicants prayed for the court to grant their prayer and any other order this court deems fit to grant.

In reply, Ms. Jenipher, submitted that, the provisions of Rule 44 (2) of the Labour Court Rule, G.N No. 106 of 2006 can only be used to grant

the prayers for representative suit whereas in this application there is no suit intended to be instituted as the applicants in their chamber summons prayed to file a representative suit "in respect of this application" without indicating which application they are referring to. She argued that although there is a lacuna in labour laws on what is a suit, a proviso to section 2 of the Law of Limitation Act, Cap. 89 R.E. 2019 defines a "suit" as any proceeding of civil nature instituted in any court but does not include an appeal or application. She argued further that, an "application" is defined ~~under the proviso to rule 2(2) of the Labour Court Rules, 2007 to include~~ the interlocutory/any application directed by the court.

She maintained that, the provisions cited by the Applicants do not support the prayers sought and their prayers are ambiguous as they do not state the application they are seeking a representative suit for. Further to that, their sworn affidavit did not adduce any reasons as to why they want to file a representative suit, they only submit that they were advised by the court to lessen the cost of coming to court without any proof to that effect. She faulted the Applicants submissions for adducing reasons in support of this application which were not stated in their joint affidavit. To buttress her point, she referred the court to the case of **The Registered Trustees**

of the Archdiocese of Dar es Salaam vs. The Chairman Bunju Village Government and 4 others, civil Appeal No. 147 of 2006 (CA) (Unreported).

Lastly, she argued that the Applicants did not even append their signatures besides their names in this application to prove that they have consented. Annexure NS-D referred to in paragraph 11 of their joint affidavit as the document indicating that the Applicants unanimously agreed to appoint two of them to be their representative was not annexed to application. ~~For the reasons stated herein, she prayed for this application to be dismissed with cost.~~

Having considered the submissions of the learned counsel for both parties, I should pose here and make a determination on the merit of this application. This application is made under Rule 44 (2) of the **Labour Court Rules**, G.N No 106 of 2007 which provides that:-

"Where there are numerous persons having the same interest in a suit, one or more of such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the court shall in such case give at the complainant's expenses, notice of the

application showing the names of persons to be represented and their signature to prove that they have given their consent. In the case of **Abdalah Mohamed Msakandeo and Others vs. City Commission of Dar es salaam and Two others** [1998] T.L.R 439 it was held that:

"Necessarily, therefore those numerous persons must not only be identifiable, each one of them should append his signature against his name and the list of such persons should be annexure to the application. Failure to do so will offend the clear provisions of Order 1 Rule 8 of the Civil Procedure Code."

In our instant case, the persons intending to act as representatives ought to have been the ones seeking permission of this court to appear and be heard on behalf of or for the benefit of all persons so interested and attach an annexure to this application showing the numerous persons they want to represent in the intended matter and their signatures as required by the law. However, in this application the Applicants stated at para 11 of their joint affidavit that:

"11. That, the 10 APPLICANTS herein have unanimously agreed and fact to appoint MR. AUGUSTINO KOMBE and Ms. JOYCE JEREMIAH to be their representative in this suit. Copy of the

agreement dated on 18.10.2014 is herewith attached and marked as NS-D to form part of this joint affidavit”

Unfortunately, the document allegedly marked as NS-D was not attached in the present application to prove that consent was sought and obtained as required.

For that reason, I hold that Misc. Labour Application No. 39 of 2019 is not properly filed before this court. Accordingly, I struck it out.

It is so ordered.

