

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
(SONGEA DISTRICT REGISTRY)
AT SONGEA
REVISION NO 3 OF 2021

(Originating from Labour Dispute No. CMA /RUV/ SON/05/2019)

SUNDAY DAUDI.....1ST APPLICANT
PAULO MBANO.....2ND APPLICANT
PETER MGAYA.....3RD APPLICANT
PAUL NKWERA.....4TH APPLICANT
JOB MBAWALA.....5TH APPLICANT
ABBAS GINGO.....6TH APPLICANT

VERSUS

NAM ENTERPRISES LTD.....RESPONDENT

RULING.

10.08.2021 & 21.09.2021

U. E. Madeha, J.

The applicants call upon this court to revise the awards of the Commission for Mediation and Arbitration (herein CMA) issued on 30.1.2020. Revision is sought on a number of grounds contained in the supporting affidavit sworn by the second applicant, Paulo Mbano, on behalf of other applicants. The respondent, through his personal representative,

representative, opposed the application by filing a counter affidavit which was accompanied by a notice of preliminary objection. In the view of the preliminary objection raised, the issue here is whether the second applicant obtained consent to represent five fellow applicants.

At the hearing of the application, the applicants were represented by D. P Ndunguru, the learned advocate and the respondent were represented by M. Dolnard Philip, personal representative. By the order of the court, the preliminary objection was argued by way of written submission.

The respondent representative, Mr. Dolnald Philip, submitted that the first application had been struck out on 29.9.2020 in Revision No. 2 of 2020 by this Court, which involves the same party. The applicants were supposed to show that they were willing to be represented by Paulo Mbano. Since there is a lack of the applicant's consent, this application is not valid in court. The respondent prays this application to be dismissed with cost.

Mr. D.P Ndunguru, learned advocate for the applicants, conceded with the respondent representative by arguing that the application had been made without representative suit or leave of the Court for Sunday Daudi and

Paulo Mbano to represent them as provided under rule 44 (2) of GN NO 106 of 2007.

In rejoinder, Mr. Dornad Philip, submitted that the counsel for the applicants did not show the leave of the court for the second applicant to swear on behalf of others. The respondent's personal representative, insisted on his argument by saying that the person who filed this application has no locus standi. To support his argument, the respondent personal representative cited the cases of **Dar-es-Salaam Water and Sewage Authority Versus Dar-es-Salaam Water and Sewage Corporation**, Lab. Revision No. 122 of 2051, 19/10/15 (2015) LCCD 51, which states that the requirements of the law must be fulfilled before one can be allowed to lodge a representative suit. He also cited with approval **section 43 (1) (a) (b) of GN No.106 of 2007.**

After examining both parties' submissions, I have come to the conclusion that this application is incompetent because it lacks a list of the alleged numerous people who have given the second applicant the authority to litigate on their behalf. The names of the alleged numerous people are listed on the list linked to the affidavit, but they are not signed. The affidavit cannot be used as evidence because it was not signed by all

of the stated intending applicants. The applicant must include a list of the purported six people to depone on the affidavit as part of the procedure. Therefore, it is, to put it mildly, an afterthought. This is related to the reasons that the proper list of the person who authorized the applicant was expected to be annexed to the applicant's affidavit from the beginning. If this isn't done, the application will be deemed unsuccessful. I have gone through the notice of application, notice of representation, and affidavit, but there is no authorization for the applicant representative to be allowed to represent all six applicants.

As a result, they needed to be granted leave by all six applicants to represent the applicants, as the court had decided in a number of cases, including the case of **Christopher Gasper, Richard Rukiza Ngabo and 437 Others Versus Tanzania Ports Authority**. Misc Labour Application No. 281 of 2013. High Court of Tanzania (Labour Division) at Dar es Salaam (Unreported), **Said Msangule and Others Versus Sokoine University of Agriculture (SUA)** Labour, Div. DSM Misc. Application No. 211 of 2013. **Abdulswamadu Mohamed and Others Versus Dar es Salaam Water and Sewage Corporation**, Labour Div. DSM Revision

No. 122 of 2015. **Century Textile Ltd. Versus Octavian Undole & Others**, Labour, Div. MRG. Revision No. 10 of 2012, it was observed that:

"Representative suit where not all the employers signed the document authorizing the representation, whether the dispute was properly filed It was held that the award was improperly procured. "

Likewise, Rule 44 (2) (4) of The Labour Court Rules, G.N. No. 106 of 2007, provides for representative suits where numerous people have a common interest in the labour matter.

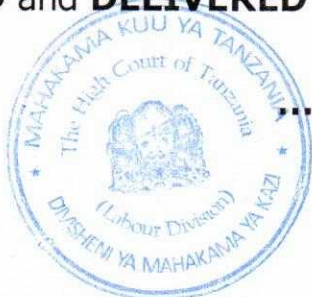
"44 (2) where there are numerous persons having the same interest in a suit, one or more such persons may, with the permission of the Court appear and be heard or defend in such dispute, on behalf of or for the benefit of all persons so interested, except that the Court shall in such case give the complainant's expenses, notice of the institution of the suit to all such persons either by personal service or where it is from the number of persons or any other service

reasonably practicable, by public advertisement or otherwise, as the Court in each case may direct.

4. Any person entitled to be joined as a party in any proceedings may, on notice to all parties, at any stage of the proceedings, apply for leave to intervene as a party and the Court may make an order or give such further directions in the proceedings as it deems fit."

Therefore, the applicant who signed the Notice of Representation, Chamber Summons, and Affidavit failed to establish that he was filing this application on behalf of numerous people who had the same interest, and for the benefit of all of them. This application is incompetent for lack of proper representation. The application is struck out for lack of merit. I give no order to the costs. Order accordingly.

DATED and DELIVERED at SONGEA, on 21st day of SEPTEMBER 2021.



U. E. MADEHA
Judge
21/9/2021