

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT ARUSHA**

REVISION APPLICATION NO.86 OF 2019

(Arising from Labour dispute No. CMA/ ARS/ARB/23/2019)

RAMADHAN MGAZA MSANA.....APPLICANT

VS

OLOTU TRADERSRESPONDENT

RULING

Date of Last Order: 31/08/2021

Date of Ruling: 9/11/2021

B.K.PHILLIP,J

This ruling is in respect of the points of preliminary objections raised by the respondent's personal representative, Mr Herode Bilyamtwe, to wit;

- (i) That the applicant's representative has not filed a notice of representation to represent the applicant contrary to the law*
- (ii) That the applicant's representative has no locus stand.*

When the matter was called for hearing the applicant's representative did not enter appearance despite the fact that he was notified of the hearing date. Consequently, this court granted the respondent's prayer for proceeding with the hearing of the points of preliminary objections ex-parte.

This application was lodged in court by Mr Frank Lawrence Maganga. He filed the notice of application, the Chamber summons and swore an affidavit in support of the application indicating that he is the personal representative of the applicant. This application intends to move this Court to revise the decision of the Commission for Mediation and Arbitration at Arusha in Dispute No. CMA/ ARS/ ARB/23/2019.

Submitting in support of the points of preliminary objections, Mr Bilyamtwe argued that Mr Frank Lawrence Maganga who signed the documents in respect of this application has no powers to sign the same as he has not filed a notice of representation as required by rule 43 (1) of the Labour Court Rules, GN. No. 106/2007. Thus, he has no powers to represent the applicant in this application. To cement his arguments he cited the case of **Joyce Mapunda and others Vs Kioo Ltd , Misc Application No. 16 of 2020** (unreported) , in which this court dismissed the application for lack of notice of representation by the personal representative who signed the application and swore an affidavit in support of the same. Mr Bilyamtwe invited this Court to dismiss this application.

As correctly submitted by Mr Bilyamtwe, the law requires a personal representative to lodge in court a notice of representation which in

essence is the one that gives powers and *locus stand* to the personal representative to appear in Court on behalf of the applicant, as well as to sign the document for the application. For ease of understanding and reference the provision of rule 43 (1) of GN.No. 106/2007, is reproduced hereunder;

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 , e-mail and telephone number"*

Looking at the provision of the law quoted herein above, it is obvious that the requirement to file a notice of representation is mandatory as the word used is "shall". In the case of **Jovce Mapunda (supra)** cited by Mr. Bilyamtwe the court was confronted with an issue similar to the one at hand. It said the following;

".....Taking the spirit of the Court of Appeal in the above cited case, I am of the view that a personal representative may swear and file affidavit in proceedings of his client, but for matters which are in the representative's own knowledge. However, in the present case there is no notice of representation to show that Mr Mnyanyi was appointed by the applicant to represent him in this application. This means that the person who is not a representative of the

applicant or the party to the application have sworn a affidavit in support of the application.

From the above, it is my finding that there is no notice of representation to appoint Mr. Peter Manyani as applicant's personal representative hence he is not duly appointed. Consequently , Mr Peter Manyani is not a proper person to swear an affidavit in support of the application , thus there is no proper affidavit to support the application. Therefore the applicaiotn is incompetent for want of affidavit in its support and I hereby strike it out"

Upon perusing the pleadings in this matter, I noted that that there is no any notice of representation in respect of Mr Frank Lawrence Maganga. It is the finding of this Court that this application was filed by a person who is neither a party to this case nor a personal representative of the applicant. Therefore, the application is incompetent. Under the circumstances and on the strength of the holding of this court in the case of **Joyce Mapunda** (Supra), I hereby sustain both points of preliminary objections. This application is hereby struck out for being incompetent. No order as to costs.

Dated this 9th day of November 2021.




B.K.PHILLIP
JUDGE