

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

LABOUR DIVISION

AT ARUSHA

LABOUR REVISION NO. 104 OF 2020

(Originating from CMA/KRT/35/78/19)

FLORA W. KYARA.....1ST APPLICANT

CHRISTINA N. BASSO.....2ND APPLICANT

ADELINA M. SHAURI.....3RD APPLICANT

SARAH E. MALLYA.....4TH APPLICANT

REHEMA J. YUDA.....5TH APPLICANT

VERSUS

HIS HEALING HANDS AFRICA.....RESPONDENT

RULING

14th July & 11th August, 2022

TIGANGA, J.

This ruling is in respect of the preliminary objection on point of law raised by the respondent against the application for Revision filed by the applicants listed herein above.

The objection is as contained in the Notice filed by the respondent on 02/06/2022 goes that,

- (a) The application is bad in law for it contravenes Rule 44(2) of the Labour Court Rules GN.106 of 2007.



The application which has been objected by the respondent was filed by the applicant on 02/12/2020 via a Notice of applicant and chamber summons, and it was calling upon this court to call for the record and revise the decision on in CMA/ARS/KRT/35/78/19. It also sought for this court to grant any other relief that this court may be pleased to grant.

The application was also filed with the affidavit and Notice of representation which was introducing one Lawrence M. Molel from CHODAWU – KARATU as their representative.

Upon service and thorough the service of Mr. Emmanuel Noel Shio, Advocate, the respondent opposed the application by filing the Notice of opposition and the counter affidavit sworn and filed by Mr. Emmanuel Noel Shio, learned counsel. Together with these documents the counsel filed a Notice of preliminary objection above referred.


With leave of the court the preliminary objection was heard and argued by written submissions. In the submission in chief, the counsel for the respondent submitted that the Flora Kyara the 1st applicant has no locus stand to file revision application on behalf of other four applicants as she had not sought and obtained leave of the court to file representative, suit, therefore the current revision application is prematurely filed.

He submitted further that Rule 44(2) of the Labour court Rule GN 106/2007 requires a person who wants to sue or file a motion on behalf of others, to seek and obtain leave to do so.

He supported the argument by a number of decided case authorities some of them being **Kiteria Menezes and 33 others vs. Area Engineering Work Ltd and the Attorney General (1998)** TLR 434, and **Mussa Hamis shah and Two others vs. Dar es Salaam City Council** [1996] TLR 201 which both held to that effect.

He also cited the decision of this court Hon. Philip, J. in the case of **Emmanuel Petro and 39 others vs. Tanganyika Wilderness Comps Ltd.** HC. Labour Application No. 58/2021 – Arusha in which the case of **Ally Mgomba and Four others vs. Tanzania Building workers, Labour Division.** DSM (2015) LCCD 93, in both cases according to him, this court insisted on the importance of seeking leave before filing the representative suit. He asked the application to be struck out.

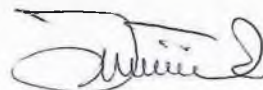
In the reply submission filed by Mr. cyprian Herbert Mwaimu, learned counsel submitted that, the matter before the court is Revision application, having originated from the original Labour Dispute filed and determined before the CMA in which Flora W. Kyara stood representing



her fellow applicant before the CMA. Due to that position, he said, it was his view that it was not necessary for the applicant to beseech the other leave to represent the person he has already obtained leave to do so before the CMA. However, he conceded the fact that she did not obtain leave to file representative suit before this court.

The counsel however called the attention of this court to dispense justice without being tied by technicalities as directed by both, the constitution of the United Republic of Tanzania, Article 107A (2)(E) and Section 3A (1) (2) of the Civil Procedure Code [Cap 33 R.E. 2019]. That in his view, the overriding objective principle in both the Constitution and the law is to require the court to do justice without being tied by the technicalities of Procedure.

He cited a number of cases some of which are **Alliance one Tobacco Tanzania Ltd and Another vs. Mwajuma Hamis (As Administratrix of the Estate of the late Philemon Kitenyi) and Heritage Insurance Company Limited**, Misc. Civil Application No. 803 of 2018 – HC – DSM. **General Market Co. Ltd vs. A. A. Shariff** (1980) TLR 61, **Kassim Mangwele Vs. the Republic**, Criminal Application No. 29 of 1990 HC Tanzania all of which have insisted that substantive justice should not be allowed to sway by technicalities.



He at the end, asked the court to grant the applicant herein an order to seek for the leave of the court to pave the way for the matter to be determined on merit for the sake of dispensing justice.

In the rejoinder submission, the counsel for the respondent raised another objection sort of. This time relying under rule 43(1) of the Labour Court Rule, He was objecting the submissions which was prepared and field by Mr. Mwaimu, Advocate who had never been introduced by a Notice of Representation.

Having so said, he asked the court to struck out the application for being unprocedurally filed.

I have passed through the submissions made by the parties, the one made by the applicant being a concession that real they have not complied with the procedure of first seeking leave before filing the representative proceedings. On that base, I find the application for revision filed by one party on behalf of her fellow without leave to represent them to be unprocedural.

I also agree with the counsel for the respondent that, for a person to represent or act for the other in labour cases, the person so represented must as a matter of law, file a Notice of representation introducing the

person who will be representing him to the court other party as provided under section 43(1) of the Rules.

In this case Mr. Mwaimu, prepared and actually filed the submission without being introduced by the Notice of representation thus going against the provision of rule 43(1) of the Rules cited herein above.

That said, I find the application to be a misconception, and the raised points of objection, has not been responded to. In consequence therefore the application at hand is struck out, for the shortcoming pointed out herein above. The applicants are advised to follow procedure as required by law They are given 14 days to file application for revision after they have obtained leave to file representative suit.

It is accordingly so ordered.

DATED at ARUSHA, this 11th August, 2022



A handwritten signature in blue ink, appearing to read "J. C. Tiganga", is written over a horizontal line.

J. C. TIGANGA

JUDGE