

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE SUB-REGISTRY OF MWANZA)**

**AT MWANZA**

**REVISION NO. 38 OF 2022**

**(Arising from MA/MZ/NYAM/33/2021011/2021)**

**VALENTINE SHIPULA.....APPLICANT**

**VERSUS**

**OXFAM GB.....RESPONDENT**

**RULING**

**22<sup>nd</sup> Aug. & 14<sup>th</sup> Sept. 2022**

**W. P. DYANSOBERA, J.:**

The applicant herein, armed with a chamber summons and a notice of application filed on 3<sup>rd</sup> day of October, 2018 made under section 91 (1) (a) and (2) (b) and section 94 (1) (b) (i) of Employment and Labour Relations Act [Cap 366 R.E. 2019] and rule 24 (1), (2), (a), (b), (c), (d), (e), (f) and (3) (a), (b), (c) and (d) and Rule 28 (1) (c) and (e) of the Labour Court Rules, GN. No. 106 of 2007, craves for the following orders:-

- a) That this Honourable Court be pleased to call for, examine and revise the record of Commission for Mediation and Arbitration

On 19<sup>th</sup> July, 2022 when this application came for hearing on the preliminary objection, the applicant was represented by Ms. Neema Josephat who held brief for Advocate Silas John. Mr. Juventus Katikiro stood for the respondent and argued in writing in support of the preliminary objection while Mr. Silas John argued in opposition.

Submitting in support of the preliminary objection, Counsel for the respondent contended that the notice of application in support of the applicant's application for revision is incompetent and bad in law for being signed by the advocate who is representing the applicant without proper authority to do so contrary to the requirement of mandatory provisions of rule 24 (2) of the Labour Court Rules, GN No. 106 of 2007. He called in aid the case of **University of Dar es Salaam v. Khaiyoth Ali**, Miscellaneous Application No. 198 of 2017 on the authority that the notice of application in support of an application for revision must be signed by a party bringing the application before the court.

The other case relied on by Counsel for the respondent was **Herry Julius Nyera v. Sauda Mtunguja Rajab**, Land Appeal No. 108 of 2018 on the authority that no one can sue on behalf of another

without authority to do so either through power of attorney or next friend in case of minor.

According to learned Counsel for the respondent, since the Counsel for the applicant has signed the notice of application in support of the application for revision without any proper authority from the applicant authorising him to sign it as per requirement of rule 24 (2) of the Labour Court Rules, 2007. He ended his submission by urging this court to strike out the application for being incompetent.

Submitting in reply to the respondent's preliminary objection, Counsel for the applicant contended that the objection lacks merit. He reasoned that this court in **Abuhusein Jumanne Mvungi v. Equity Bank Tanzania Limited**, Consolidated Labour Revision No. 49 of 2021) [2022] TZHC 10716 (13 July, 2022) declared that an advocate is a party to a labour revision competent to sign the notice of application; hence a notice of application signed by a party's representative or his advocate is competent in law.

Further, admitting that the High Court is not bound by its decision, Counsel for the applicant invited this court to find the cited

case more authoritative than that cited by Counsel for the respondent on account that the case he (Counsel for the applicant) cited came later and it should, therefore, reign. He supported his argument by citing the Court of Appeal case of **Zahara Kitindi and another v. Juma Swalehe and others**, Civil Application No. 4 of 2017 [2017] TZCA 198 at p. 12.

I have considered the respondent's preliminary objection and the rival arguments of learned counsel of both sides. The issue calling for determination is whether counsel for the applicant signed the notice of application in support of the application for revision without any proper authority from the applicant.

The law on this aspect is clear and unambiguous. Rule 24 (2) of the Labour Court Rules, GN. No. 106 of 2007 upon which the respondent's preliminary objection is pegged, provides that the notice of application shall substantially comply with Form No. 4 in the Schedule, signed by the party bringing the application.

As the law succinctly enacts, nowhere in the said rule is provided that notice of application should be signed by the applicant. The law says that such notice of application shall be signed by the

party bringing the application. But who brought the application for revision?

According to the record on hand, the application was brought by the advocate for the applicant, Mr. Silas John, who is representing him. He is the one who prepared and signed the notice of application and the Chamber Summons. Besides, it is the applicant's advocate who swore and filed the supporting affidavit.

In his submission, Counsel for the respondent argued that Counsel for the applicant had signed the notice of application in support of the application for revision without any proper authority from the applicant authorising him to sign it as per requirement of rule 24 (2) of the Labour Court Rules, 2007.

With due respect, I am unable to buy that argument. The reasons for my finding are not far-fetched and are these.

One, the applicant duly authorized Mr. Silas John, his advocate, to represent him in this matter. According to the Notice of Representation made under rule 43 (1) of the Labour Court Rules, the applicant in clear terms stated:-

*‘NAKUARIFU KWAMBA, Mimi Valentine Shipula, Mwombaji katika Marejeo haya, nimeamteua Wakili Silas John mwenye Namba ya Usajili 5593 na simu Namba 0787775846 kuniwakilisha katika shauri hili’*

That notice of representation signed by the applicant was, in my view, a sufficient authority authorising the Advocate not only to represent him in the application for revision but also to sign some legal documents, the Notice of Application inclusive, on his behalf.

Two, the record shows that the Notice of Application was brought by *Wakili wa Mwombaji* (Applicant’s Advocate) and he is the one who signed the notice. To me, that was in compliance with the law that the notice of application shall substantially comply with Form No.4 as the Advocate adhered to the format provided for under the law. The prescribed format under the Labour Court Rules, GN No. 106 of 2007, named LCF:4 (FORM NO. 4), made under rule 24 (2) stipulates that the signature should be of the Applicant’s Representative.

Three, even if the law meant otherwise, still the definition of what a party is in law is comprehensible. According to rule 2 (2) of the Labour

Court Rules, a party to court includes a person representing a party in terms of section 56 of the Labour Institutions Act. For clarity and ease of reference, I reproduce the above provisions as hereunder.

Section 56 of the Act which is on representation in Labour Court provides as follows: -

'In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by

- a) An official of a registered trade union or employer's organization.
- b) A personal representative of the party's own choice
- c) An advocate'.

It is my humble but considered view that that under section 56 (c) of the Act, an advocate has the legal capacity to act as a party in court proceedings.

It is also my finding that the party bringing the application envisaged under rule 24 (2) of the Labour Court Rules is a party in law as defined under rule 2 (2) of the Rules and not a party in fact as some people might take it. This means that the party bringing the application can also be an advocate representing that party and this explains why the prescribed

format under the Labour Court Rules, GN No. 106 of 2007, named LCF:4 (Form No. 4), made under rule 24 (2) lays down that the signature should be of the Applicant's Representative. After all, the respondent is a legal entity and not an individual. In that respect, she was entitled to engage an advocate as her representative.

In the end result and for the reasons I have adumbrated, I find this preliminary objection legally misconceived and, in consequence, I order that it be overruled.

The application for revision shall be heard on merits.

Order accordingly.

  
**W.P. Dyansobera**

**Judge**

**14.9.2022**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 14<sup>th</sup> day of September, 2022 in the presence of Mr. Silas John, Counsel for the applicant and Mr. Juventus Katikiro, learned Advocate for the respondent.



  
**W.P. Dyansobera**

**Judge**