

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

REVISION APPLICATION NO. 58 OF 2021

(C/F Labour Dispute No.CMA/ARS/KRT/323/20/161/20 at the Commission for Mediation and Arbitration at Arusha)

EMMANUEL PETRO AND 39 OTHERS.....APPLICANTS

VERSUS

TANGANYIKA WILDERNESS CAMPS LTD.....RESPONDENT

RULING

Date of last Order:5-4-2022

Date of Ruling:31-5-2022

B.K.PHILLIP,J

The applicants herein lodged this application to challenge the decision of the Commission for Mediation and Arbitration at Arusha (Henceforth " the CMA"), in Labour dispute No. CMA/ARS/KRT/323/20/161/20. Upon being served with the application, the advocate for the respondent filed a notice of opposition together with the following points of preliminary objections.

- i) That the application is bad in law for it contravenes Rule 44(2) of the Labour Court Rules, G.N. No. 106 of 2007.*
- ii) That the application is incompetent for failure to file a mandatory notice of intention to seek revision (CMA F10)*

contrary to Regulation 34(1) of the Employment and Labour Relations (General) Regulation G.N. N. 47 of 2017.

- iii) That the affidavit in support of this application is incurably defective for contravening the provision of Rule 29 (3) (d) of the Labour Institutions (Mediation and Abitration) Rules, 2007 read together with Rule 24 (2) (c) of the Labour Court Rules , G.N. No 106 of 2007.*
- iv) That the application is defective and incompetent for not being supported by a valid and appropriate affidavit.*

This ruling is in respect of the above points of preliminary objections. The applicants were represented by their personal representative Ms. Elizabeth Alaisi whereas the respondent was represented by the learned Advocate Mwanili Mahimbali. I ordered the hearing of the points of preliminary objections to proceed ex-parte following the non-appearance of the applicants and their representative on the hearing date.

With regard to the 1st point of preliminary objection, Mr. Mahimbali submitted that it is a trite principle of law that where numerous people are 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 the case on behalf of the others. Mr. Mahimbali contended that in the instant application , Mr. Emmanuel Petro has filed this application on behalf of other 39 people and swore an affidavit to that effect without obtaining a leave of this Court Contrary to the provision of Rule 44 (2) of the Labour Court Rules G.N.No.106 of 2007, which requires leave of the Court to be sought and obtained before filing a representative suit or application. To

cement his arguments he cited the following cases; **Christopher Gasper and Richard Rukizangabo and 437 others Vs Tanzania Ports Authority, Misc Application No. 281/2013** (unreported) , **Samson Jeremia Magoti and Others Vs Bank of Tanzania, Misc Application No. 259 of 2020** (unreported) and **Ally Mgomba and 4 others Vs Tanzania Building Workers Ltd , Labour Division DSM(2015) LCCD 93**, in which the Court held as follows;

" As for the first ground , it is clear from the records that Ally Mgomba filed this application without this Court's leave in terms of Rule 44(2) of G.N.No. 106 of 2007 relying on the belief that he obtained such leave in the course of pursuing an application for revision hence there is no need to again to have such leave. My understanding of the requirement for leave for a party who acts on behalf of others is that of paramount importance in every case at every stage. The import of leave is to enable the Court to know whether all persons have the intention to pursue the matter on the appellate /review /revision stage .Such import is derived from the provision of Rule 44(2) of GN.No.106/2007.....From the wisdom of the above provision the Court now finds the issue of leave is not a mere technicality as held by Hon.Rweyemamu,J (as she then was)....."

Mr.Mahimbali implored this Court to sustain the 1st point of preliminary objection.

I have dispassionately analyzed the argument made by Mr. Mahimbali in his submission as well as read the provision of Rule 44 (2) of G.N.No.106 of 2007, I hasten to say that the point of preliminary objection has merit as will elaborate hereunder.

The first paragraph of the affidavit in support of this application reads as follows;

" I, Emmanuel Petro being adult , Male Christian and resident of Karatu do hereby solemnly swear and state as follows;

1. That , I am the representative of other thirty nine (39) fellow applicants in this application hence conversant with the facts I am here to depose herunder."

Thus ,there is no doubt that Emmanuel Petro filed this application as the representative of other 39 applicants without the leave of the Court as required under the provisions of Rule 44 (2) of G.N.No.106 of 2007 which provides as follows;

" where numerous persons are having the same interests 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 , a notice of institution of the suit to all such persons either by personal services 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 may direct"

From the foregoing I entirely associate myself with the findings of this Court made in the case of **Ally Mgomba** (Supra) that is, the leave of the Court stipulated in Rule 44 (2) of G.N.No 106 of 2007 is supposed to be sought and obtained at every stage before one initiates any legal proceedings on behalf of others. Therefore, the leave to open a representative suit at the CMA does not extend to the application for revision filed in appellate Court. The logic behind is simple , that is, the leave obtained at the CMA is specific for filing the matter at the CMA, it is

not for filing an application for Revision. Also, It is not automatic that upon the determination of the application at the CMA all parties who lost the case must file an application for revision. Some might not be interested in pursuing the application for revision at the High Court .

Having sustained this 1st point of preliminary objection, it is the finding of this Court that this application is incompetent. Under the circumstances I do not see any plausible reasons to continue with the determination of the remaining points of preliminary objections.

In the upshot, this application is struck out for being incompetent. This being a labour matter, I give no order as to costs.

Dated this 31st day of May 2022



A handwritten signature in black ink, appearing to read "B.K. Phillip", is written over a horizontal line.

B.K.PHILLIP

JUDGE.