

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 141 OF 2017

- 1. PATRICK BUNDALA MLINGWA..... 1st APPLICANT**
- 2. ROSE CYPRIAN MGALIKA 2nd APPLICANT**
- 3. WOLFRAM SAMWEL ZINGI3rd APPLICANT**
- 4. LINUS TOBIAS BOIMANDA..... 4th APPLICANT**
- 5. YAHAYA KHAMIS KIKOBO.....5th APPLICANT**

VERSUS

RIKI HILL HOTEL.....RESPONDENT

RULING

Date of Last Order: 04/04/2018

Date of Ruling: 04/05/2018

L.L.Mashaka, J

The applicants have filed the application before this Court praying for this Court to grant them leave to apply to this Court for a decision to set aside the CMA award issued on the 17/03/2017 on behalf of Patrick Bundala Mlingwa and 19 others mentioned in labour dispute No.CMA/DSM/ILA/R.727/14/655. The application is brought by Notice of Application and Chamber Summons under Rules, 24(1)(2)(a)(b)(c) (d)(e) and (f), 3(a)(b)(c) and (d) ,11(b), 28(1) (a)(b)(c)(d), 44(1)(2) and 55(1)(2) of the Labour Court Rules, GN 106/2007, Section 91(1)(a)2(a)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 as

amended by Act No 17 of 2010 and Act No 8 of 2006, and supporting joint affidavit deponed by the applicants.

The hearing of application was orally conducted before the Court, where Mr. Gaudine Mrugaruga, Personal Representative appeared for the applicants and Mr. Gaspar Tluway, Advocate appeared for the respondent.

Mr. Mrugaruga submitted to the Court that, the 5 applicants are among the 20 employees who filed dispute at the CMA on the 22/08/2014 against the respondent and being aggrieved by the decision delivered by the CMA on the 17/03/2017 by Hon. M. Mgendwa, have been endorsed to bring an application for revision against the CMA award, on behalf on the others. That the joint affidavit in support of this application deponed on 20/04/2017 that the 20 employees have the same interest in the case against the respondent, basing on the same question of law on the same facts.

He submitted that the 5 applicants pray to the Hon. Court to grant them leave to file an application for revision on behalf of themselves and the others whose list is attached and marked as Annexure H. He later withdrew the submission as to whether it was "marked", that the same was not marked. That the document is a list of complainants in CMA/DSM/ILA/R.727/14/655, which shows the name of the complainants, date when first employed and their position.

Mr. Mrugaruga further argued that all the 20 complainants are existing persons, on behalf of the 5 applicants prayed for leave to file an application for revision against the CMA award issued on 17/03/2017.

In reply Learned Counsel for the respondent prayed to adopt counter affidavit by one Joachim Gabriel Lyimo to support his submission.

He submitted that there is no dispute all 5 applicants were in the dispute CMA/DSM/ILA/R.727/14/655 and they had no dispute if the applicants had acquired legal mandate from the other 15 applicants who wish to apply for the revision but questioned the contents at paragraph 3 of the joint affidavit which provide that they have been authorized by their fellow complainants to apply for revision and set aside the CMA award on their behalf. That throughout this joint affidavit there is no any proof of the same, the said authorization, apart from the document mentioned as list of complainants after Annexure H. That the document only mention their names and the position they were holding. He insisted that it was not true that the applicants have been authorized by the other complainants to apply before this Court on their behalf.

He prayed that this application to be dismissed as it lack legal legs to stand in this Hon. Court.

In rejoining, Mr. Mrugaruga for the applicants argued that there was a notice of preliminary objection raised by the respondent and was withdrawn. That they could not get the signatures of each and every complainant because they were out of Dar es Salaam and within the short time they had to file this application. That the list of complainants includes the 5 applicants who have signed the joint affidavit. He contended that all the complainants as earlier submitted do exist and the 5 applicants can legally file an application for revision on behalf of the 15 other applicants.

He prayed that the application be granted by this Hon. Court.

Having heard submissions by both parties and gone through Court record, the issue for determination is whether the applicants have fulfilled the requirements for leave to represent others in the intended application for revision.

The legal basis for one employee to appear on behalf of others is provided under Rule 44 (2) of the Labour Court Rules, Government Notice No 106/2007 which stipulates that:-

R.44(2) "where there are numerous person having the same interest in the suit, one or more of such person may, with leave 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 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.."

The rationale behind seeking leave to represent others is underscored by the Court of Appeal of Tanzania, in the case of **Hamis Kaka and 78 Others Vs. Tanzania Railways Corporation and Kunduchi Leisure and Farming Co. Ltd**, Civil Application No. 68/2008, CAT at Dar es Salaam [unreported] Bwana, JA, (as he then was) held that:-

"...a party whom leave is not sought and obtain may refuse to be bound by a decree passed by the Court against him..."

In the case at hand, there is a great discrepancy as to the rest of the 15 interested employees giving consent to the 5 applicants to represent them. Representative for the applicants submitted that it was difficult to get signature/consent of all the other 15 employees to authorize the 5 applicants to lodge this present application on their behalf. Representative for the applicants also contended that there are 15 other applicants, while this application has only 5 applicants.

The Court of Appeal of Tanzania in the case of **K.J Motors Ltd & 3 Others Vs. Richard Kishamba & Others**, Civil Appeal No. 74 of 1999 at Dar Es Salaam [unreported] at page 4, His Lordship Kisanga, JA (as he then was) emphasized on the importance of proper legal representation in court proceedings and stated "*the rationale for this view is fairly apparent. Where, for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non-existent or other fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorized him to do so. If this is not checked it can lead to undesirable consequences. The court can exclude such possibilities only by granting leave to the representative to sue on behalf of persons whom he must satisfy the court they do exist and that they have duly mandate him to sue on their behalf*"

The binding holding of the Court of Appeal is applicable to the case at hand; there is no proper authorization from the rest of the 15 employees to be represented by the 5 applicants as contended to by Mr. Mrugaruga Representative for the applicants, they did not get their signatures thereto. There is no proof the 15 employees who were complainants in labour

dispute No. CMA/DSM/ILA/R.727/14/655 had duly mandated the 5 applicants in this application to sue on their behalf. There is a list with no mark, with the heading List of Complainants in CMA/DSM/ILA /R.727/14/655, which is a list of 'names', in a serial form, with a column 'with effective from' and 'occupation'. There is no signature of the same to authorize the 5 applicants to sue on their behalf. Also there is no proof that they do exist. The Court takes note that if leave has not been sought and obtained from the 15 other employees they may refuse to be bound by a decree passed by the Court against them.

The submission by Learned Counsel for the respondent that the 5 applicants have not been authorized by the other 15 employees to warrant this Court grant leave to file an application for revision in a representative capacity is rightly submitted thereto.

This Court cannot grant leave to the 5 applicants to represent 15 other employees whose consent have not been sought and obtained. The 15 other employees have not given mandate to the 5 applicants to sue on their behalf.

In the circumstances, this application for representative suit is hereby dismissed for the reasons explained above.

It is so ordered.



L.L.Mashaka

JUDGE

04/05/2018