

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 16 OF 2020**

**BETWEEN**

**JOYCE MAPUNDA.....1<sup>ST</sup> APPLICANT**

**FRANK VENANCE.....2<sup>ND</sup> APPLICANT**

**RESPIUS KAMUGISHA.....3<sup>RD</sup> APPLICANT**

**RAJAB IBRAHIM.....4<sup>TH</sup> APPLICANT**

**MARRY GEORGE.....5<sup>TH</sup> APPLICANT**

**FATUMA MOHAMED.....6<sup>TH</sup> APPLICANT**

**ZUBEDA NASSOR.....7<sup>TH</sup> APPLICANT**

**MARIAM SHABANI KUNDO.....8<sup>TH</sup> APPLICANT**

**VERSUS**

**KIOO LTD.....RESPONDENT**

**RULING**

Date of Last Order: 04/05/2020 & 11/06/2020

Date of Ruling: 17/07/2020

**A. E. MWIPOPO, J**

This is application for extension of time to file in this Court Application for Revision out of time prescribed by the law. The applicants namely **JOYCE MAPUNDA, FRANK VENANCE, RESPIUS KAMUGISHA, RAJABU IBRAHIM, MARY GEORGE, FATUMA MOHAMED, ZUBEDA NASSOR** and **MARIAM SHABANI KUNDO** jointly and together apply for the Court Orders in the following terms:

1. The Court be pleased to grant the Applicants extension of time within which to apply for application for revision of the award of the CMA in Labour Dispute No. CMA/DSM/TEM/178/2016 delivered by Hon. Matalis, R. Arbitrator.
2. Any other relief that this Court may deem fit and just to grant.

Brief history of the application is that the applicants alleged that they were employed by the respondent namely Kioo Limited on 05/02/2004 in different positions and were terminated on 01/04/2016. Aggrieved by their termination, the applicant referred the dispute to the Commission for Mediation and Arbitration Dar Es Salaam where it was registered as Labour Dispute No. CMA/DSM/TEM/178/2016. The CMA did find that the applicants were not employed by the respondent and it dismissed the complaint. The applicant was aggrieved by the decision of the Commission and decided to file Miscellaneous Application No. 486 of 2018 applying for leave to file representative suit which was granted. Thereafter the Applicants filed the current Application praying for extension of time to file the Revision Application out of time.

The application was supported by affidavit of one Peter Mnyanyi who alleged that he is a legal representatives of the applicants. The respondent opposed the application through counter affidavit sworn by Nerei Massawe

Principal Officer of the respondent. The Court ordered on 04/05/2020 that the hearing of the application to proceed by way of written submissions. Both parties filed their submission within time. In his submission, the respondent raised Preliminary Objection (P.O.) to the effect that the personal representative for the applicants, Mr. Peter Mnyanyi have no locus to represent the applicants. I'm of the opinion that the raised preliminary objection may dispose of the present application hence it has to be determined before the main application.

The respondent submitted on the P.O. that Mr. Peter Mnyanyi who states that he is a personal representative of the applicants and who have sworn the affidavit supporting this application for extension of time to file revision has no power to do so. The reason for respondent submission is that Mr. Peter Mnyanyi did not file Notice of Representation as required by rule 56(b) and 43(1) (a) (b) of the Labour Court Rule, G.N. No. 106 of 2007. Therefore he prays for the Court not to consider the affidavit in support of the application. The applicant replied to the preliminary objection in his rejoinder where he stated that the preliminary objection was raised at the time of arguing hence he was taken by surprise. For that reason he prayed for the Court not to pay attention of the P.O.

I do not agree with the applicants that the preliminary objection on the point of law are supposed to be disregarded when they are raised at the time of arguing or hearing of the suit. The preliminary objection on point of law may be raised by parties at any stage and time especially if they have effect of disposed of the matter. In **mukisa Biscuit Manufacturing Co. Ltd v. West End Distributers Ltd (1969) EA 696** the Court held that “a preliminary objection consists of point of law which has been pleaded or which arise from clear implication in the pleadings, and which if argued as a preliminary point may dispose of the suit”. The effects of disregarding the Preliminary Objection on the point of law is possibility of the Court to proceed with hearing of the application without jurisdiction.

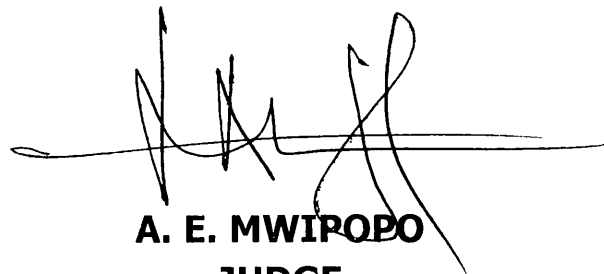
In the present application the respondent have submitted that Mr. Peter Mnyanyi did not file Notice of Representation as required by law and as result he prays for the Court not to consider the affidavit in support of the application. I have read the pleadings and find that as it was submitted by the respondent Mr. Peter Mnyanyi did not file a Notice of Representation. According to Rule 43(1) of Labour Court Rules, 2007, it is mandatory for representatives of the parties to file Notice to the Registrar and all other parties. Failure to file the Notice of Representation means that Mr. Peter Mnyanyi have no locus to represent the applicants. Unfortunately, Mr. Peter Mnyanyi is the one who swear an affidavit in support of application on behalf

of the applicants. **In Lalago Cotton Ginnery and Oil Mills Co. Ltd v. The Loans and Advances Realization Trust (LART), Civil Application No. 80 of 2002**, the Court of Appeal held that;

***"An Advocate can swear and file an affidavit in proceedings in which he appears for his client, but on matters which are in advocate's personal knowledge. For example, he can swear an affidavit to state that he appeared earlier in the proceedings for his client and that he personally knew what transpired during those proceedings."***

Taking the spirit of the Court of Appeal in the above cited case, I'm of the view that a Personal Representative may swear and file an affidavit in proceedings in which he appears for his client, but for matter's which are in 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 swear an affidavit in support of the application.

From above, it is my finding that there is no Notice of Representation to appoint Mr. Peter Mnyanyi as applicant's personal representative hence he is not duly appointed. Consequently, Mr. Peter Mnyanyi 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 application is incompetent for want of affidavit in its support and I hereby strike it out. No order as to cost.

A handwritten signature in black ink, appearing to be 'A. E. Mwiropo', written over a horizontal line.

**A. E. MWIROPO**

**JUDGE**

**17/07/2020**