

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

REVISION NO. 272 OF 2019

BETWEEN

**ISSA B. MHANDO 1ST APPLICANT
SHABANI MWINYIMVUA 2ND APPLICANT
MOHAMED MKOKO 3RD APPLICANT
HASSAN KOMBO 4TH APPLICANT
JOSEPH AUGASTINO 5TH APPLICANT
MBUSIRO CHACHA SIRA 6TH APPLICANT
DUNGA LUDOVIC THADEI 7TH APPLICANT**

VERSUS

TANCAN MINING COMPANY LIMITED RESPONDENT

RULING

Date of Last Order: 17/07/2020

Date of Ruling: 24/07/2020

S.A.N. Wambura, J.

This ruling is in respect of a preliminary objection filed by the respondent **TANCAN MINING COMPANY LIMITED** when filing their counter affidavit in response to the application filed by the applicants **ISSA B.**

MHANDO & 6 OTHERS who are seeking to revise the ruling of the Deputy Registrar in Execution No. 408/2018. It is to the effect that:-

(i) The Court is not properly moved to determine the application which was however abandoned.

(ii) The Court has no jurisdiction to determine the application.

With leave of the Court the preliminary objection was disposed of by way of written submissions. I thank both parties for adhering to the scheduled and for their submissions.

While filing their submissions the respondent raised two other grounds of the preliminary objection being:-

(i) The notice of application was not properly signed as required under the law

(ii) The matter is res judicata

Having read all submissions herein filed, I will begin with the 3rd ground herein raised, that the notice of application was not properly signed as required by the law.

There is no dispute that the notice of application unlike the notice of representation and affidavit in support of the application was signed by the

1st applicant only as the applicants representative. However he has not been granted leave to represent the other six (6) applicants. That is why they all signed the notice of representation and the joint affidavit.

It was submitted by the respondents Counsel that the other applicants did not have to sign the same citing the case of **Security Group (T) Ltd. Vs. Samson Yakobo & 10 Others**, Civil Appeal No. 76 of 2016 (CAT) to that effect.

That according to the principle of overriding objectives as adopted in the cases of **Gasper Peter Vs. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017 (CAT) and **Yakobo Magoiga Kichere Vs. Peninah Yusuph**, Civil Appeal No. 55 of 2017, (CAT) failure of the applicants to sign the notice of application has not occasioned failure of justice on the respondent.

They even distinguished the cases cited by the respondent of being that of **Martha B. Mwanchemba Vs. Wanyama Hotel** LCCD 84 of 2014 and **Barclays Bank (T) Ltd Vs. Kombo Ally Singano**, Misc. Appl. No. 14 of 2011 from the matter at hand stating these positions have been overtaken by events.

With due respect, it is my view that in the case of **Security Group** (supra) the Court was dealing with the provisions of Rule 5(2) of GN No. 64 of 2007 on signing of documents at the Commission for Mediation and Arbitration (CMA). However, according to Rule 44(2) of the Labour Court Rules, 2007 one who wants to represent their colleagues has to file an application seeking leave to do so. One can only do so after being granted such leave. Since the 1st applicant did not do so, it is why all the applicants signed the affidavit and notice of representation. It is with the same spirit that they ought to have signed the notice of application which in actual fact initiates the proceedings at this Court and not leave the 1st applicant to do so as a representative of the others while he has not been so appointed.

In the case of **Mondorosi Village Council & 2 Others Vs. Tanzania Breweries Ltd**, Civil Appeal No. 46 of 2017 (CAT) the Court held that the amendments in Act No. 8 of 2018 clearly spell out that the same are not designed to blindly disregard the rules of procedure that are couched in mandatory terms.

Since the provision of Rule 24(3) of the Labour Court Rules, 2007 are couched in mandatory terms I thus accordingly the 3rd ground of the

preliminary objection herein raised. Having so found I believe I need not labour much on the other grounds.

Application is accordingly struck out with leave to file a proper application within fourteen (14) days from the date of this Order if the applicants still intend to pursue the matter.

S.A.N. Wambura
JUDGE
24/07/2020

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VERSUS

TANCAN MINING COMPANY LIMITED RESPONDENT

Date: 24/07/2020

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicants: Present 1st applicant

For Applicants:

Respondent: } Absent
For Respondent: }

CC: Lwiza

COURT: Ruling delivered today in presence of 1st applicant in person
and absence of the Respondent.


F.A. Mtarania

DEPUTY REGISTRAR

24/07/2020