

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

MISCELLANEOUS LABOUR APPLICATION NO. 456 OF 2019

BETWEEN

MWANAIDI RASHID ATHUMANI & 8 OTHERS.....APPLICANTS

VERSUS

OCEAN VIEW APARTMENTS LTD. & 4 OTHERS....ESPONDENTS

Date: 17/06/2020

Coram: Hon. I.D. Aboud, Judge

Applicant: Absent

For Applicant: Mr. Hemed Omari, Personal Representative

Respondent: Absent

For Respondent: Mrs. Mboransia John, Advocate

CC: Edith Kanju.

Mrs. Mboransia John: I would pray the court to note that applicants were granted leave to re-file this application after the court sustained our preliminary objection that, the previous application contravened Rule 24 (3) of the Labour Court Rules. So they are

coming again with a defective affidavit as is indicated in our preliminary objection.

In the affidavit in support of this application applicant Mwanaidi is the only person who sworn the affidavit and not all applicants.

Being an application for representative suit there is nowhere indicating that other applicants were sworn in the supporting affidavit in question. That is contrary to Rule 44 (5) of the Court Rules, GN. 106 of 2007.

On the 2nd point of objection we say that Mwanaidi has no locus to represent other applicant as she did. That is contrary to Rule 44 (3) of the relevant Rules. We pray that the application be struck out because this is the second time they are coming to this court with the same incompetent application.

Mr. Hemed Omary: We concede to the preliminary objection and we pray for the last chance to be given to the applicants to file their application for interest of justice.

Mrs. Mboransia John: I do reiterate my submission in chief.

RULING

This is an application for representative suit by the applicants, who are eight (8) in number. The application is support by an affidavit as required under Rule 24 (3) of the Labour Court Rules, GN. 106 of 2007.

During hearing respondents raised two points of preliminary objections that the application is incompetent and bad in law for lack of identities of the parties or unknown applicants. And on the second limb of preliminary objection is to the effect that this application is incompetent and bad in law for lack of locus stand by the deponent who decided to swear affidavit on behalf of others.

In her brief submission Mrs. Mboransia John, Learned Counsel for the respondent notified the court that this is the second time applicants filed an application which is incompetent before the court as is supported by defective affidavits. She contended that in the first application they contravened Rule 24 (3) of the Labour Court Rules, and with the present application which they filed after had secured leave to re-file this application, they came again with an incurable defective affidavit. She stated that the affidavit contravenes Rule 44 (3) as well as 44 (5) of the relevant Court Rules.

Learned Counsel further submitted that the 1st applicant, Mwanaidi Rashid Athumani wrongly deponed the affidavit as the sole applicant in an application which is for eight applicants. She concluded by a prayer that the application be struck out.

In response to the preliminary objection and the submission made by the respondent's counsel, Mr. Hemed Omari, Personal Representative conceded to the preliminary objection and prayed for the last opportunity to the applicants to be granted leave to re-file the application. He acknowledged that this is the second time to bring incompetent application of the applicants. He submitted that for the interest of justice he prays the application be struck out with leave to re-file.

In rejoinder, Learned Counsel for the respondent reiterated her submission in chief.

Having considered submission by both parties the court record and relevant laws regarding the matter at hand, I fully agree with the respondent's side that the preliminary objection raised have merit. Applicants failed to comply with rules governing representative suit in labour matters before the court, to wit Rule 44 (2), 44 (3) and 44 (5)

as correctly advanced by the respondent counsel. The supporting affidavit contravened those rules as the only person who has sworn the affidavit in question is the first applicant. The first applicant is purported to be the one who was identified and appointed by those other applicants to be legally appointed as their representative in the intended revision application.

It is an established principle that those who are willing to appoint one of them to be their representative has to be appointed legally by a formal application like this, which is supported by a joint affidavit of all the concerned applicants. The affidavit in support of the application has to comply with the legal requirements of the affidavit. That they have to verify the affidavit and properly swear it as required in law.

The fact that the current affidavit on record contravened the above relevant law it is an incurably affidavit and renders this application incompetent before the court.

In the result the entire application has no legs to stand in court and is struck out accordingly.

As regard to the prayer to re-file the application, the court considered the applicants position that this is the second time to knock this court's doors and being represented by a personal representative, there is need to be granted the last opportunity to file their proper application. I find it prudent the matter be determined in merit for interest of just.

Thus, the leave is granted to the applicants to file proper application for representative suit on or before 30/06/2020. However, applicants have to take note that every case need to come to an end, so this is the last opportunity given to them to come to the court with the proper application.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', with a stylized, cursive script.

I.D. Aboud

JUDGE

17/06/2020