

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

MISCELLANEOUS LABOUR APPLICATION NO. 63 OF 2020

BETWEEN

LWAWIRE ROBERT KATULA AND 37 OTHERS.....APPLICANTS

VERSUS

NATIONAL INSURANCE CORPORATION OF (T) LTD

ATTORNEY GENERAL &

TREASURY REGISTRAR.....1ST RESPONDENT

(Formerly CONSOLIDATED HOLDINGS

CORPORATION..... 2ND RESPONDENT

RULING

Date of last order: 10/06/2020

Date of ruling: 21/08/2020

Aboud, J.

This is an application for representative suit filed by 38 applicants asking this court to permit Mr. Lwawire Robert Katula to file counter affidavit, to accept services of summons, sign any documents and to appear on behalf of 37 others in Revision No. 236 of 2019 and in other proceedings which are related to this matter.

The matter was argued by way of written submissions. Mr. Barnaba Lugawa, Learned Counsel was for the applicants while the 1st respondent was represented by Mr. Arbogast Mseke, Learned Counsel. Unfortunately the 2nd respondent did not file his submission to support or object the present application.

Arguing in support of the application Mr. Barnaba Lugawa submitted that it is clear from the ruling and application of the applicants that the respondents in the said Revision application are 38 in number. He stated that the applicants convened a meeting and appointed Mr. Lwawire Robert Katula to file a representative notice of opposition and other pleadings for him and other respondents.

Mr. Barnaba Lugawa went on to submit that unfortunately one of the respondents named Mousa H. Hassan passed away and an effort to trace the administrator of his estate was in vain. Hence the list of the respondents who appointed the said representative remains 37. He therefore prayed for the application to be allowed.

Responding to the application Mr. Arbogast Mseke contested that the applicants were not properly represented at the Commission for Mediation and Arbitration (herein CMA). As to the present

application he argued that there is no list of names of employees sought to be represented with their signatures. He submitted that endorsement by all applicants seeking to be represented in the representative suit is mandatory and failure to comply with such requirement is fatal in law. To cement his submission he cited the case of **Director, Rajani Industries Ltd. Vs. Ally Kanuwa & 26 others**, Civ. Appl. No. 98 of 2009.

After considering the parties submissions and Court records I find the issues for determination is whether the application for representative suit should be granted.

The issue of representation is provided under Rules 44 of the Labour Court Rules, GN. 107 of 2007 which provides as hereunder quoted:-

“Rule 44 (1) The Court may join any number of persons, whether jointly, jointly and severally, separately, or in the alternative as parties in the proceedings. If the right to relief depends on the determination of substantially the same question of law or facts.

(2) Where there are numerous persons having the same interest.”

In the circumstance of this matter the court find no reason to deny the applicants their right to be represented in Revision No. 236 of 2019 according to the referred law herein above. The respondent objected the application on the ground that there is no list of employees sought to be represented with their signatures. I have examined the record at paragraph 6 of the applicant’s affidavit in support of the application the applicants clearly stated that they convened a meeting and appointed Mr. Lwawire Robert Katula to represent them. The applicants attached copies of the minutes of the said meeting (Annexure “B”). In the relevant document all applicants wrote their names and signatures thereto. Therefore the 1st respondent’s Counsel allegation that the represented applicants do not exist is baseless.

The 1st respondent’s counsel submission that, the applicants were not properly represented at the CMA is an objection which ought to have been raised at the CMA. The Learned Counsel also stated that the same point is one of the respondent’s grounds of Revision in application No. 236 of 2019. That being the case in my

view it was irrelevant to raise such point in the present application for representative suit.

Thus, this application is allowed and Mr. Lwawire Robert Katula is appointed formally to represent 37 others to file counter affidavit, to accept services of summons, sign any documents and to appear on behalf of 37 others in Revision No. 236 of 2019 and in other proceedings which are related to this matter.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written in a cursive style.

I.D. Aboud

JUDGE

21/08/2020