

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

**MISCELLANEOUS APPLICATION NO. 564 OF 2019**

**BETWEEN**

**MORRIS D. NG'ONDO AND 31 OTHERS..... APPLICANT**

**VERSUS**

**DAIKIN TANZANIA LIMITED.....RESPONDENT**

**RULING**

*Date of Last Order: 13/07/2020*

*Date of Ruling: 03/08/2020*

**Z. G. Muruke, J.**

Morris D. Ng'ondo filed present application to represent his fellow 26 named in list dated 03/11/2019 attached to the affidavit in support application of the reasons are stated in the affidavit in support of the application particularly paragraph 5,6 and 7. Respondent opposed the application through sworn affidavit of Salastieri J. Muganyizi Principal Officer.

Hearing was by way of written submission. Applicant were represented by Mr. Twaha Taslima, Learned advocate, while respondent were represented by Mr. Adam Moshi, Human Resource Manager. Applicant counsel submitted along lines affidavit in support of the application. In essence he insisted right of few representing others in terms of Rule 44(2) of the Labour Court Rules GN 106/2007 as applicant and 26 others have the same interest in the dispute intended to be filed.

Respondent objected and submitted that, applicant have not shown common interest and there was no any meeting conducted to discuss issue of representation. According to the affidavit in support of the application applicant and 31 others were litigating with respondent in dispute with reference number CMA/SMD/KIN/R.463/18/153. They were aggrieved with the decision of CMA. They want to challenge the same, however, only 27 are interested, thus need of obtaining leave. Issue raised by respondent counsel that there was no any meeting conducted by applicants, is without any proof. What applicant is asking is right to be heard by way of representative capacity.

The application at hand is for the applicant to obtain leave of the court to represent others. The law prescribes a procedure before, the court can grant leave for one or more to appear and be heard in a dispute under representative capacity. Rule 44 of the Labour Court Rules provides and I quote:-

**"44(1) the court may join any number of persons whether jointly, jointly and severally, separated or in the alternative, as parties in the proceedings, if the right to relief depends on the determination of substantially the same questions of law or facts".**

**(2) where there are numerous person having the same interest in a suit, one or more of such persons may, with the permission 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's expenses, notice of the institution of the suit to**

**all such persons either by person service or where it is from the number of persons or any other service reasonably practicable, by public and advertisement or otherwise, as the court in each case may direct.**

The position of the law above is clearly stressed by this court in the case of **Mhoja Magombe & 16 Others Vs. Akida General Labour Revision No. 8 of 2010 (unreported)** where Rweyemamu, J held that;

"the issue of an employee or party requiring court permit before appearing in a representative suit is not a mere technicality; a party who leave is not sought and obtained may rightly refuse to be bound by the decree which he was not properly part of .....my understanding of the law is that, even if an employee had acted in such capacity in the CMA, he could only proceed to represent them in this court by making an application and obtained leave of the court."

The rationale behind holding that a party should obtain leave to act as representative was stressed in the case of **Hamis Kaka and 78 others Vs. Tanzania Railways Corporation and Kunduchi Leisure and Farming Co. Ltd Civil Appeal No. 68 of 2008 Court of Appeal at Dar es Salaam (unreported)** Bwana J.A, held that;

"The party whom leave is not sought and obtained may refuse to be bound by the decree passed by the court against him."

According to affidavit in support of the application sworn by Morris D Ng'ando, there exist sufficient and common interest for the appointed applicant to represent others. In totality Rule 4(2) of Labour Court Rules GN 106/2007 has been complied with. Thus, application is granted. Morris

D. Ng'ondo has been granted leave to represent his fellow named in annexure TLC-2 attached to the affidavit. Applicant to take relevant step within 21 days from today. It is so ordered.

  
Z. G. Muruke

**JUDGE**

03/08/2020

Ruling delivered in the presence of Twaha Taslima, Advocate for the applicant and respondent Human Resource Manager, Mr. Adam Moshi.

  
Z. G. Muruke

**JUDGE**

03/08/2020