

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

MISC. APPLICATION NO. 288 OF 2019

BETWEEN

JUMA H. MUSA & 11 OTHERS APPLICANTS

VERSUS

HABITATI BUILDING SERVICE LIMITED RESPONDENT

RULING

Date of Last Order 20/02/2020

Date of Ruling 20/03/2020

MWIPOPO, J:

When the application came for hearing on 20/02/2020 the Representative for the Respondent Advocate E. Kilufi raised Preliminary Objection (P.O) on two points of Law. The first one is that the application is bad in law for being filed out of time; and the second point of objection is that the application is incompetent for contravening Section 56(b) of the Labour Institution Act No. 7 of 2004 and Rule 43(10(a)(b) of the Labour Court Rules GN. No. 106 of 2007.

Mr. Kilufi submitted on the first point of the P.O. that the application was filed out of time provided under Section 91(1)(a) of the Employment and Labour Relations Act, No. 6 of 2004 (ELRA) and the order of Hon. Aboud,

J. dated 21/05/2019 in Misc. Application No. 11 of 2019. The applicant was granted leave by this Court to file proper application within two days from the date of the order of the Court after it struck out the application for representative suit for incompetence. He argued that more than 8 month have passed since the order of the Court when the applicant filed the application. Therefore the application is hopeless time barred and it has already been overtaken by the event.

On the second point of the Preliminary objection he submitted that the Notice of Representation filed by the applicant does not show the name of representative, the address or place of business or postal address, fax number, telephone number. It was requirement of Rule 43(1)(a)(b) of the GN. No. 106 of 2007. In support of his submission he cited the case of **Nyemo Kilamila and 20 others Vs. TPDF Golf Club**, Revision No. 82 of 2009, High Court, Labour Division at Dar es Salaam.

The applicant advocate further submitted that in the Notice of application and Chamber summons it was not mentioned the name of the person whom the applicants are applying for this Court to grant him leave to represent them. Therefore he prayed for application to be struck out.

Ms. Judith Rutajuna Personal Representative for the Applicant in reply to the submission by the Respondent submitted on each of the two points of Preliminary objection. On the first point she submitted that the application

was not time barred by Section 88 of ELRA, 2004. She averred that in Misc. Application No. 11 of 2019 before Hon. Aboud, J. which was application for extension of time this Court granted a leave for the applicant to refile a fresh application for extension of time within two days. The order of the Court was given on 21/05/2019 and the applicant filed this application on 22/05/2019. Therefore the application was filed on time.

On the second point of the Preliminary objection, she submitted that it is true that the chamber summons does not contain a prayer by applicants to appoint Ally H. Kibode to their representatives. She was of the view that despite of the failure to make the prayer, the applicants prayed in paragraph 3 of the Chamber Summons for the Court to grant any other order that the Court deems fit and just to grant. She prayed for the Court even in absence of the prayer to appoint Ally Kibode as applicants' representative.

In rejoinder, Mr. Kilufi reiterated his submission in chief and added that the leave which was granted by Hon. Aboud, J. in Misc. Application No. 11 of 2019 was in respect of extension of time to file application for revision and not application to file representative suit.

After hearing the submission of both parties in respect of the Preliminary objection the issue to be determined is whether the Preliminary objection raised have merits.

To start with the first point of the Preliminary objection that the application was filed out of time, the learned Counsel for the respondent submitted that after the award was served to the Applicant, the applicant was supposed to file the application within six weeks after the award was served to the Applicant. He cited Section 91(1)(a) of the ELRA, 2004 as the Law that provides for the limitation. He stated that the applicant was given a leave by Hon. Aboud, J. on 21/05/2019 to refile the proper application within two days. The respondent is of the view that from the date of the ruling to the present the applicant have not filed the application for extension of time to file Revision application but they filed a representative suit.

The applicant on their side submitted that this application is filed within time as it have been filed just a day after the order of the Court was delivered.

The CMA record show that the applicant filed Miscellaneous Labour Application No. 11 of 2019 where by the Affidavit in support of the application shows that Ally H. Kibode signed the application on behalf of 11 others without leave of the Court to represent them. As a result the Court did strike out the application of extension of time with a leave to file a proper application within two days the order which they complied. Following the order of the Court, the applicant have filed the present applicant for Representative suit. This application was filed on 22/05/2019 pursuant to

the order of the Court for the applicants to file a **proper application**. The reason for the application to be struck out is that there was no leave of the Court for Ally H. Kibode to represent 11 other Applicants. Therefore, it is my finding that the present application is properly before this Court as it was filled within time pursuant to the order of Hon. Aboud, J. dated 21/05/2019 in Misc. Application No. 11 of 2019 that granted the applicants leave to file a **proper application**. The proper application in that case was representative suit which was filed on time (22/05/2019). Therefore the first point of Preliminary objection is overruled.

In regard to the second point of the Preliminary objection, the Notice of Representation filed by the applicant does not show the name of the representative as required by the rule 43(1)(a) and (b) of the Labour Court Rules 2007. It is not known as to whom the power to represent the applicants in the Court was given.

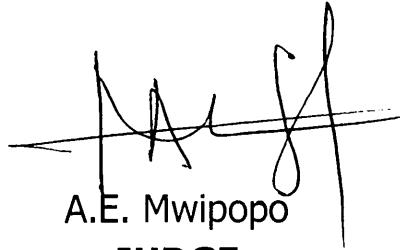
However, the Notice of Application provides in paragraph 6 that applicant service in this matter will be accepted by Judith Rutajuna who is applicant's representative. Despite the omission in the Notice of Representation, there is the name and the address of the personal Representative of the Applicant in paragraph 6 of the Notice of Application. Therefore the Applicant's representative is known and there is no injustice caused to the respondent.

In the argument that the person whom is appointed to represent other applicants in this case is not known as the Notice of Application and Chamber summons do not show the name of the person, the applicant admitted to the omission. The applicant stated that the affidavit in support of the application in paragraph 7 provides that applicants appoints Ally H. Kibode to be their representative. Thus the affidavit paragraph cures the omission.

The affidavit filed by the applicant in this application is in support of the prayers in the Application to wit Notice of Application and the chamber summons. The Labour Court Rules, 2007 provides in rule 24 (3) that application shall be supported by affidavit. It is my opinion that the prayer have to be made in the Application (Notice of application and Chamber summons) and the affidavit may support the prayers made. Therefore in absence of the name of the person whom other applicants have appointed to represent them in the Notice of Application or Chamber Summons, how does this Court appoint the unknown person to represent the applicants? The answer to this is that the application was supposed to be very clear as to whom the applicants pray for this Court to appoint as their representative. It is my finding that this application is defective for failure to name a person who have been appointed by applicants to represent them in the representative suit. As result the second point of Preliminary objection have merits.

Therefore, I hereby strike out this application with the leave to file a proper application within 7 days.

It is so ordered.

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

A.E. Mwipopo

JUDGE

20/03/2020