

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

MISCELLANEOUS APPLICATION NO. 457 OF 2019

BETWEEN

**SULTAN OMARY KITAMBULIO 1ST APPLICANT
ATHUMAN JUMA GILIWA 2ND APPLICANT
MICHAEL MAYUNGA MASOGA 3RD APPLICANT
JONAS WILLIAM CHANGALA 4TH APPLICANT
ASHA MBELWA SHAHA 5TH APPLICANT
CHRISPIN JAMES NGENDABANKA 6TH APPLICANT
GODFREY ELIAPENDA MEENA 7TH APPLICANT
PUDENSIANA BAZIL ASSEY & 277 OTHERS 8TH APPLICANTS**

VERSUS

**DAR ES SALAAM WATER & SEWERAGE CORPORATION
(DAWASCO) UNDER SECESSION OF DAWASA ... 1ST RESPONDENT

DAR ES SALAAM WATER & SEWERAGE
AUTHORITY (DAWASA) 2ND RESPONDENT**

RULING

Date of last order: 17/03/2020

Date of Ruling: 27/03/2020

S.A.N. Wambura, J.

This ruling is in respect of the point of preliminary objection raised by the second respondent herein which is to the effect that:-

"The entire application is bad in law for being signed by persons who claim to be legal representatives of the deceased employees without proof of the same."

When the matter came for hearing Ms. Janeth Bisando, learned Advocate held brief for Mr. Musa Kiobya Advocate for the applicant where as the respondent was represented by Mr. Mohamed Majura, learned Advocate.

In support of the preliminary objection Mr. Majura submitted that the entire application is defective for being signed by persons who claim to be legal representatives of the deceased employees without proof of the same as there are no letters of administration of the deceased estates. He referred to the case of **Mohamed Hassan Vs. Mayasa Mzee and Mwanahawa Mzee** [1994] TLR 225 where it was held that it is upon the grant of letters of administration that is when the administrator can proceed to claim the deceased rights. Since the said letters of administration have not been attached then the applicants had no locus.

The learned Advocate also referred to the case of **Mariam Samburo Vs. Masoud Joshi & Others**, (CA) Civil Appeal No. 109 of 2016 where it was held that failure of the applicants to file the letters of administration

made the application defective. He therefore prayed for the application to be dismissed.

In reply Ms. Busanda had nothing to submit against or in support of the preliminary objection.

Having gone through the respondent's submission and court records, I have noted that the applicant's joint affidavit attached in support of the application were signed by the alleged administrator on behalf of some of the deceased employees. However, there is no document attached by the said administrators to prove that they had been so appointed. Even the applicant's affidavit in support of this application at paragraph 5 stated that the meeting to appoint representatives was convened by all complainants where as 277 complainant's attended in person while the remaining complainants were represented by their administrators.

The Court has found it prudent to revisit the meaning of an administrator. The term has been defined under Section 2 of **The Probate and Administration of Estates Act** [CAP 352 R.E. 2002] which is to the effect that:-

"Section 2 Administrator means a person appointed by the court to administer the estate of a deceased person

when there is no executor or no executor is able and willing to act, and includes, when Part VIII applies and subject to the provisions thereof, a person appointed an administrator under that Part.”

From the above definition it means that an administrator can only be appointed by the Court.

In the matter at hand since the administrators have not attached their letters of appointment there is no proof therefore that they have been so appointed.

In his submission the respondent referred the case of **Mariam Samburo** (supra). Having gone through the cited case, I found it is irrelevant. The main issue in that case was that it was presided over by three different judges and there were no reasons assigned by the successor judges for the said changes. Those facts are different from the ones in the present application.

The facts in this application as stated above are the legality of the affidavit which was signed by administrators who did not attach letters of administration. In our laws an affidavit is one of the pleadings which has to be signed by a party, his advocate or a duly authorized person. This is in

accordance with Order VI Rule 14 of **The Civil Procedure Code** [CAP 33 R.E 2019] which is to the effect that:-

"Every pleading shall be signed by the party and his advocate (if any); provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf".

In the matter at hand since the administrators who signed the affidavit have failed to prove their authorization, I find the same to have been improperly signed by them. This renders the whole application defective.

Therefore I hereby uphold the preliminary objection raised by the second respondent.

The court has considered the overriding principle which cannot be applied blindly against the mandatory provisions of the procedural law as it goes to the very foundation of the matter as it was held in the case of **Mondorosi Village Council and Two others Vs. Tanzania Breweries Limited and Four Others**, Civil appeal No. 66 of 2017 (unreported).

Since the defect in this application goes to the root of the matter it cannot be rectified by amendments. Hence the matter is hereby struck out from the Court's registry. It is so ordered.

S.A.N. Wambura
JUDGE
27/03/2020