IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 685 OF 2019

BETWEEN

DONATIAN DAMIAN SENTOZI.....1ST APPLICANT

LUCY DOMILIKUS KIYEYEU.....2ND APPLICANT

YUSSUPH MUSSA MSANGI.....3RD APPLICANT

HUSSEIN ATHUMAN GAO.....4TH APPLICANT

VERSUS

NATIONAL FOOD RESERVE AGENCY (NFRA).....RESPONDENT

RULING

Date of Last Order: 02/12/2020

Date of Ruling: 18/12/2020

Aboud, J.

This ruling is in respect of the preliminary objection raised by respondent against application for leave to file representative suit in opposing Labour Dispute No. CMA/DSM/TEM/263/19 of the Commission for Mediation and Arbitration (herein CMA). The preliminary objection is to the effect that:-

i. The application is defective and incompetent for not being supported by valid and appropriate affidavit.

At the hearing the applicant was represented by Mr. Benson Mphatso Kassim, Learned Counsel where as Ms. Angela K. Lushagara, Principal State Attorney appeared for the respondent. The preliminary objection was argued by way of written submissions.

Arguing in support of the Preliminary objection Ms. Lushagara submitted that the affidavit in support of this application is sworn and filed by the DONATIAN DAMIAN SENTOZI on behalf of three others without leave of the Court. She argued that the said affidavit is defective and not fit to support the application. To support her argument she referred the Court to the case of **Abdul Swamadu Mohamed and others v. Dar es Salaam and Sewerage and Another,** HC, Lab. Div. Revision No. 122/2015.

It was further argued that, since the said DONATIAN DAMIAN SENTOZI made an affidavit to accompany this application seeking leave of the Court to prosecute and defend on behalf of three others before leave is granted by the Court then the affidavit in question is invalid and inappropriate as per the case of **Abdul Swamadu Mohamed** (Supra).

She therefore urged the Court to employ the principles elaborated in the case of **Abdul Swamadu Mohamed** (Supra) and struck out the application.

Before responding to the preliminary objection Mr. Benson Mphatso submitted that the respondent counter affidavit has defect as it was not dated in verification clause as the same entails the reply of such counter affidavit is defective as if there is no counter affidavit at all.

Responding to the preliminary objection Mr. Benson Mphatso submitted that it is the rule of law and practices that where there are numerous persons with common interest in a suit as per Rule 44 (2) of Labour Court Rules, GN 106 of 2007 (herein the Labour Court Rules) with the leave of the Court one can sue or defend the suit on behalf of others. He stated that the applicant's affidavit which was signed by the 1st applicant can be differentiated on the aspect of Rule 44 (2) of the Labour Court Rules in the sense that this application was also attached with names of the other applicants who also dully put their signatures to meet the requirement of the law. The Learned Counsel was of the view that on such circumstance if the leave is

granted it cannot prejudice parties' rights. He thus prayed for the leave to be granted.

In rejoinder the respondent's Counsel reiterated her submission chief.

Having gone through the rival submissions by the parties, Court's records as well as relevant labour laws, it is my considered view that the issue for determination is whether the Preliminary objection has merit.

The respondent's Counsel argued that the first applicant swore the affidavit on behalf of others without leave of the Court. The Learned Counsel was of the view that the first applicant acted as representative without leave of the Court. The applicant's Counsel on his party argued that though it is only the first applicant who has signed in the affidavit the list of other applicants and their signatures is also attached to this application thus the defect is not fatal at all.

In this Court representative suit is governed by Rule 44 of the Labour Court Rules which is to the effect that:-

> *'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 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 personal service or where it is from the number of persons or any other service reasonably practicable, by public advertisement or otherwise, as the Court in each case may direct'.*

[Emphasis is mine].

From the provision above a person can only act as a representative and initiate proceedings on behalf of others after he/she has obtained leave of the Court. I had a glance on the affidavit in question and as rightly submitted by both parties it is only signed by the first applicant, DONATIAN DAMIAN SENTOZI. In my view the omission by other applicants to sign the relevant document

is a serious error which renders the whole application incompetent. With due respect to the Learned Counsel for the applicants submission, the fact that the applicants have attached a document of their list and signatures does not automatically empower or give legal status to the first applicant to act on others behalf as well as signed the pleadings in question without leave of the Court. All applicants were supposed to swear or affirm in the affidavit as they did in the notice of application. Therefore, I have no hesitation to say that the first applicant contravened Rule 44 (2) of the Labour Court Rules and by representing other applicants without permission of the Court. In other words the first applicant had no locus stand to depone and signed the affidavit on behalf of others.

In the result I find the preliminary objection raised by the respondent has merit and is hereby sustained. Therefore the present application is struck out from the Court's registry for being defective. For the interest of justice leave is granted to the applicants to file proper application on or before on or before 04/01/2021.

It is so ordered.

I.D. Aboud
JUDGE
18/12/2020