

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

**REVISION NO. 375 OF 2018**

**BETWEEN**

**SADA DADI & 18 OTHERS.....APPLICANTS**

**VERSUS**

**NATIONAL PARKING SOLUTIONS.....RESPONDENT**

**RULING**

Date of Last Order: 04/08/2020

Date of Ruling: 23/10/2020

**Aboud, J.**

This is ruling is in respect of the preliminary objections raised by the respondent to the effect that:-

- i. That the application is bad in law for lacking leave to file representative suit.
- ii. That the application is bad in law for non-compliance with Rule 24 (3) of the Labour Court Rules, 2007 GN 106 of 2007 (herein the Labour Court Rules).
- iii. That the affidavit in support of the application is incurably defective for contravening provisions of section 7 of the

Notaries Public and Commissioner for Oaths Act [CAP 12 R.E 2002].

The matter was ordered to be argued by way of written submission. Unfortunately the applicant did not file any submission in compliance with the Court's order. On the other hand during hearing the respondent was represented by Ms. Loy Sehemba, Learned Counsel.

Arguing in support of the first preliminary objection Ms. Loy Sehemba submitted that, it is the rule of law that when there are numerous persons with common interest in a suit one of the said persons shall seek leave of the Court to sue or defend on behalf of others. It was submitted that the position is emanated from Rule 44 (2) of the Labour Court Rules. The Learned Counsel argued that, in the first paragraph of the affidavit Sada Dadi affirmed on behalf of others claiming to be the applicant's representative without leave/permission of the Court. To strengthen her submission she cited the case of **Bora Industries Ltd Vs. Mohamed Ally & 19 others**, Lab. Rev No. 279 of 2013 HC DSM and the case of **Nisakwisa & others Vs. General Manager G.T.V. Tanzania**



**Limited**, Lab. Rev. No. 08 of 2009 where it was held that:-

“The applicants must have been consulted of being represented and such an order can only be made by the Court.”

The Learned Counsel strongly submitted that, lacking leave to file representative suit is incurable.

As to the second preliminary objection it was submitted that, the affidavit at hand does not set out statement of legal issues which the applicants seek this Court to determine. The Learned Counsel added that the relevant affidavit does not have addresses of the parties and the reliefs sought as required in law.

Regarding the last preliminary objection Mr. Loy Sehamba submitted that, the affidavit in support of the application is incurably defective for violation of section 7 of the Notaries Public and Commissioner for Oaths. It was also stated that, the applicant's Advocate exercised her powers as Commissioner for Oath on the document she prepared and signed on behalf of the applicants. She therefore prayed for the application to be struck out.

Having gone through the respondent's submission, Court's records and relevant Labour laws it is my considered view that the issue for determination is whether the respondent's preliminary objections are meritorious.

In the first preliminary objection the respondent alleged that, the application is bad in law for lacking leave to file representative suit. Representative suit as correctly submitted by the learned counsel is instituted or brought when one or two persons represent another person in the suit where they have the same interest. In this Court representative suit is provided under rule 44 (2) of the Labour Court Rules which provides as follows:-

"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 and advertisement or otherwise, as the Court in each case may direct.”

[Emphasis is mine].

From the provision cited above it is crystal clear that the person/persons representing others must have obtained leave of the Court. The same position was emphasized in the case of **Nisakwisa & others** (supra) as rightly cited by the respondent. In the present application Ms. Sada Dadi represented others in filing the present application as reflected at paragraph 1 of the affidavit in support of the application. I have critically examined the record, there is no any document proving that Ms. Sada Dadi obtained permission/leave of the Court to file the present application. Therefore, it is crystal clear that the said representative assumed the position/status of representative without permission of the Court. Thus, it suffices to say the representative had no locus stand to represent others in the present application.

On the basis of the foregoing discussion it is my view that the present application is incompetent before the Court as the representative who signed documents to initiate the present application on behalf of others did not obtain leave of the Court as required by Rule 44 (2) of the Labour Court Rules cited above. The first preliminary objection raised by the respondent has merit.

Under the circumstances I find no need to be labour much on the remaining preliminary objections as the first preliminary objection has an effect of disposing the whole application.

In the result I find the present application is incompetent thence cannot be entertained by this Court. Application is struck out.

It is so ordered.



I.D. Aboud

**JUDGE**

23/10/2020