

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

MISCELLANEOUS APPL. NO. 172 OF 2019

BETWEEN

GRACE LOBULU AND OTHERS.....APPLICANTS

VERSUS

NATIONAL HEALTH INSURANCE FUND (NHIF)

AND ANOTHER.....RESPONDENTS

RULING

Date of hearing: 09/03/2020

Date of Ruling: 24/04/2020

A. E. MWIPOPO, J

The applicants in this case namely Grace Lobulu, Dr. Frank Lakey, Beatus Chijumba, Michael Mhando, Jackson Buhulula, Constantine Makala have filed this Application under Rule 24(1),(2)(a)(b)(c)(d)(e), Rule 24(3) (a)(b)(c)(d), Rule 24(ii) (a)(b) and Rule 44(1)(2)(3) of the Labour Court Rules GN. No. 106 of 2007. The applicants are praying for an order that the Court be pleased to grant leave to the applicant Grace Lobulu to lodge a representative suit {Revision Application} to execute all necessary court's documents, to appear and to be heard on behalf or for the benefits of the following other applicants namely Dr. Frank Lekey, Beatus Chijumba,

Michaele Mhando, Jackson Buhulula and Constantine Makala. They also pray for any other relief this court deems fit to grant.

Historical background of this case in brief is that the Applicants were respondent employees who were employed on various dates and position. They were terminated by respondent on 15/07/2016. Aggrieved by the decision of the respondent they lodged a Labour dispute in the Commission for Mediation and Arbitration {CMA}. The dispute was heard by the Commission which delivered its Award on 25/02/2019. Being aggrieved by the CMA Award, the applicants have filed this application for Representative Suit on 04/04/2019 so that they can file a Revision application before this Court.

Both parties were represented, the applicant was represented by Learned Counsel George Shayo and the Respondent was represented by Ms. Grace Lupondo State Attorney assisted by Erigh Rumisha State Attorney.

The hearing of the application proceeded orally and the Learned Counsel for the Applicant prayed for the Court to grant leave for the applicants to be allowed to lodge a Revision Application against the CMA award dated 25/02/2019. The Applicants are not allowed according to

practices to file revision application until they apply for leave to file Representative Suit. The application in the CMA was heard jointly therefore they want their Revision application to be heard jointly. Thus they are praying for the leave to be granted and the time to file Revision to start to run if the application is granted.

In reply, the Counsel for Respondent Ms. Grace Lupondo, prayed the Counter Affidavit to be adopted and form part of her submission. She was of the view that the application was brought before this Court legally. She submitted that Rule 44 of the Labour Court Rules, GN. No. 106 of 2007 provides for three condition for representative suit to be instituted. The condition includes that there have to be several applicants, the applicants must have the same interest and they have to get permission of the court to appear and be heard.

She submitted that the two first conditions have been met. On the third condition, she was of the opinion that the CMA Award which was delivered on 25/02/2019 was supposed to be instituted within 6 weeks from the date the Award was served to the applicant. According to Section 91(1)(a) of the Employment and Labour Relations Act, 2004 {ELRA, 2004} the time limit within which an application for revision may be brought is six weeks. Considering that the applicant have prayed for exclusion of the time

for the period this application is before the Court for determination, counting from 25/02/2019 the 6 weeks lapsed on 08/04/2019. By that time there was no application filed by the Applicants before this Court. For that reason, the prayer by the Applicants that the time to file the Revision Application to start running from the date when the court will grant the leave to file representative suit is misplaced in Law.

In support of her submission she cited the case of **Yussuf Vuai Zyuma Vs. Mkuu wa Jeshi la Ulinzi – TPDF and two others, Civil Application No. 15 of 2009, Court of Appeal of Tanzania, at Zanzibar, {Unreported}**, where the Court was of the opinion that the question of time limit should take preference over the issue of jurisdiction. The court held that “The applicant did not institute the suit within the prescribed time of six months. By instituting the suit beyond the time allowed by law, the applicant was time barred. The court bellow ought not to have entertained the matter. The Labour Court proceedings were nullity”. She submitted that the circumstances in Yussuf Vuai Zyuma’s Case are similar to the present case. She was of the opinion that in absence of Revision application before this court it will be absurd to allow the applicant to bring in this court the Revision application which is time barred and prayed for the application to be dismissed for lack of merits.

In rejoinder, Advocated Shayo was of the view that the conditions for instituting an application for Representative suit under rule 44 of GN. No. 106 of 2007 were met. He submitted that the present application was filed on 04/04/2019 thus the application was within 6 weeks from the date of award as it is provided by law.

The Learned Counsel for Applicant distinguished Zyuma's case by stating that Labour matter are governed by their own laws and procedures. The procedures before Labour Court and normal Court are different. The Court of Appeal case is not applicable in the matter as the application was instituted within 6 weeks and is not out of time. He prayed for the application to be allowed.

After hearing the submission from both parties and reading the record, there are three issues to be determined by this Court. The issues are as follows:-

- (i) Whether the application was filed within time.
- (ii) Whether the Court can grant leave to file representative suit.
- (iii) If the leave to file representative suit is granted, whether the Court can exclude the time to file the Revision application to start running from the day the leave is granted.

In regard to the first issue that whether the application was filed within time, the respondent submitted that the application was filed out of time. The respondent relied on Section 91(1) (a) of the ELRA, 2004 that provides for revision applications to be filed within six weeks from the date the award was served to the applicant. As the CMA Award was delivered on 25/02/2019, the six weeks lapsed on 08/04/2019. And by that time there was no application which was filed by applicant in this court.

The applicant in rejoinder submitted that the present application was filed on 04/04/2019 which is before the expiry of 6 weeks provided by the law. As the application for representative suit is mandatory when there are numerous persons having the same interest in a suit, then they are praying for the time to file the revision application to start running from the date when the court will grant leave to file representative suit.

The evidence available in the file shows that this application for representative suit was filed on 04/04/2019 which is before the lapse of the time limit for filing Revision application against CMA Award which was delivered on 25/02/2019. Therefore, the present application was filed within time prescribed by the law. The first issue is answered in positive.

In regards to the second issue whether the court can grant leave to file representative suit, both parties agrees that the application have met conditions for leave to be granted. The respondent contention was the prayer by the applicant for the time to file the Revision application to start to count after the leave is granted.

I agree with the submissions from both parties that the application have met conditions provided by rule 44(2) of the Labour Court Rules, 2007. The Rule read as follows:-

“44(2) Where there are numerous persons having the same interest in a suit, one or more of such persons may, with permission of the court appear and be heard or defend in such dispute your behalf of or for the benefit of all persons 88 interested, except that the court shall in such case give at the complainants expenses, notice of the institution of the suits 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”

From above provision, in applications for representative suit the applicants have to prove that they are having the same interest in the suit and that they have appointed one or more persons to appear and be heard or defend in such dispute on behalf of or for the benefit of all interested persons. The evidence available shows that the applicants jointly instituted a labour dispute before the CMA and they want their revision application to be heard jointly. In their joint Affidavit the applicants have appointed Grace Lobulu to be their representative and each of the applicant signed the Affidavit. From the above, I find that the applicants have fulfilled all conditions to be granted leave to file representative suit. The answer to the second issue is positive.

The last issue is if the leave to file the representative suit is granted whether the court can exclude the time to file the revision application to start running from the day the leave is granted. As I have find that the applicants have fulfilled the conditions to be granted leave to file representative suit obvious the leave will be granted. The remaining question for this issues is if the court will exclude the time to file the Revision application to start running from the day the leave is granted. In

regards to this issue the applicant prayed that if the court is going to grant leave to institute representative suit, then the court may exclude the time to file the Revision application to start running from the day the leave is granted. On the other hand the respondent submitted that the applicant did not file any application to the court within time prescribed by the law (before 08/04/2019) thus the prayer for exclusion of time should not be considered.

The evidence available in this application shows that the present application was filed 4 days before the expiry of six weeks period provided by the law. The application was filed on 04/04/2019 before the lapse of time which was on 08/04/2020. Therefore, it is my opinion that this court can exclude the time the present suit was in this court which means that the applicants have remained with just four days to file their Revision application in the court. Therefore, it is my finding that the applicant remained with four days before expiry of the time prescribed by the law for filing of their Revision application after exclusion of the time the present application was before this court.

From the above, I hereby allow the application. The applicants are granted leave to file representative suit and Grace Lobulu is hereby appointed to represent other applicants in their Revision application. The

applicants have to file the revision application within four (4) working days from the date of this Ruling.



A. E. Mwipopo

JUDGE

24/04/2020

Date: 24/04/2020

Coram: Hon. A. E. Mwipopo, J

Applicant: Absent

For Applicant:

Respondent:

For Respondent: Mr. Erigh Rumisha, State Attorney appearing for the respondents

CC: Neema

Court: The Ruling was delivered in the presence of Mr. Erigh Rumisha, State Attorney who appeared on behalf of the respondents. The applicants were absent.



A. E. Mwipopo

JUDGE

24/04/2020