

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

MISCELLANEOUS APPL. NO. 179 OF 2019

BETWEEN

SARAH HAONGA.....1ST APPLICANT

PENDO NYEMBEKE.....2ND APPLICANT

RAPHAEL GEORGE.....3RD APPLICANT

VERSUS

VIETTEL TANZANIA LTD.....RESPONDENT

RULING

Date of Last Order: 16/03/2020

Date of Ruling: 24/04/2020

A. E. MWIPOPO, J

This application was filed by the applicants namely **SARAH HAONGA, PENDO NYEMBEKE AND RAPHAEL GEORGE** praying for the Court to grant leave to file representative suit. The application is preferred under Rule 24 (1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) and rule 44 (2) of the Labour Court Rules, G.N. No. 106 of 2007. The applicant is praying for the following orders:-

1. That this Honourable Court be pleased to grant leave to SARAHA HAONGA to appear and be heard or defend in this application and further proceedings relating to this case that may arise out in this context following being aggrieved by the decision of Commission dated 05/ 11/ 2018 delivered by Hon. Grace Wilbard Massawe, arbitrator.
2. Any other order the Court may deem fit and equity to grant.

The history of this application is the applicants were employed to do cleanliness at apartment used by respondent's employees. On 07/01/2017 their employment was terminated. They referred the matter to the Commission for Mediation and Arbitration which awarded each of the applicant payment of Tshs. 380,769/= being Notice for termination, severance pay and compensation for one month salary. Aggrieved by the CMA decision the applicants filed revision no. 835 of 2018 which was struck out for failure to obtain leave for representative and they were granted a seven days leave to file a proper application. Then the applicants filed this application for representative suit in order to be granted leave to file revision against the CMA award.

When the matter came for hearing on 16/03/2020 Mr. Peter Mnyanyi from TARUTWU appeared for the applicants whereas Advocate Anaseli

Lesika appeared for the Respondent. The hearing of the application proceeded orally.

Mr. Peter Mnyanyi submitted that in this application for Representative suit the applicants prays for Ms. Sarah Haonga to represent others in the Revision application before this Court against CMA award. The Labour Court Rules 2007 in Rule 44 made it mandatory for applicants to institute representative suit so that one of them can do each and everything on behalf of the others in suit or dispute arising from the CMA decision. He prayed for this Court to grant the leave to file Representative Suit. That is all.

In reply the learned Advocate for the respondent Anaseli Lesika commenced his submission by praying for the adoption of the content of counter affidavit to form part of respondent's submission. He was of opinion that the application have no merits and it consume the time of the court.

He stated that the applicant already instituted Revision application No. 835 of 2018 concerning the same CMA Award in Labour Dispute CMA/DSM/ILA/R.14/17. The revision was struck out with with leave to file another application or representative suit within 7 days. He then prayed for the matter to be dismissed for lack of merits.

In rejoinder the applicant stated that it is true that on 02/04/2019 this court did strike out the application and ordered the applicants to bring representative suit. That is the reason for filing this representative suit.

After hearing the submission for both parties the main issue for determination is following:-

- i. Whether the applicants have sufficient reasons to be granted leave to file representative suit.

This application for representative suit by the applicants did not fit the requirements of Rule 44(2) of the Labour Court Rules, GN No. 106 of 2007.

The rule provides for requirements for instituting the representative suit. Rule 44 (2) of GN. No 106 of 2007 reads as follows;

44(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.

From above provision one or more of persons may, with the permission of the Court, appear and be heard or defend in dispute on behalf of other persons with the same interest in a suit. It is a requirement of the law that where there are numerous persons with the same interest who want to appear in the suit on behalf of other interest persons have to do so after obtaining the permission of the court to file the same.

The Court of Appeal expounded the principle and the relevancy of leave in such suits having more than one person in the case of **KJ Motors & 3 Others Ltd Vs Richard Kishimba & Others, Civil Appeal No. 74 of 1999, CAT at Dar es Salaam**, where it held that: "the rationale for this view is fairly apparent Where, for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non - existent or either fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorized him to do so. If this is not checked it can lead to undesirable consequences. The Court can exclude such

possibilities only by granting leave to the representative to sue on behalf of persons whom he must satisfy the Court they do exist and that they have duly mandate him to sue on their behalf."

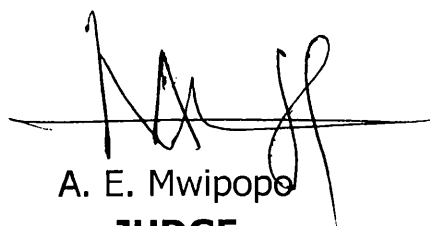
The applicants have to file for a representative suit for leave of the Court, which one of them or more is or are authorized to represent the others. In the present case the applicants have prayed for Ms. Sarah Haonga to represent others in the Revision application before this Court against CMA award. In contention the respondent was of opinion that the application have no merits and it consume the time of the court.

The applicants' affidavit shows in paragraph 2 that all 3 of them were complainants in the labour dispute no. CMA/DSM/ ILA/ R.14/ 17 where their claims did arise from the same cause of action. The affidavit states that the applicants have unanimously appointed SARAHA HAONGA to appear, be hear and defend them in this application and any other application that may rise out of this context following the CMA award. The affidavit was signed by all 3 applicants to prove the facts stated therein.

The respondent's counter affidavit opposed to the content in affidavit. The respondent stated that the court in its ruling dated 02/04/2019 simply advised the applicants on the option to take. It is my opinion that this reason as contained in the counter affidavit does not show at all if the applicants

failed to meet the requirements provided by the law for filing representative suit. The respondent in their affidavit have shown that they are numerous persons, three of them, and that they have appointed SARAHA HAONGA to appear be heard and defend on their behalf. Their affidavit further show that the applicants have common interest in the suit as all 3 of them were complainants in the labour dispute no. CMA/DSM/ ILA/ R.14/ 17 where their claims arose from the same cause of action. Thus, it is my finding that the applicants have met all the requirements for being granted leave to file representative suit.

From above, the application for representative suit is allowed. I hereby appoint SARAH HAONGA to represent other applicants in the intended revision application arising from CMA Labour Dispute No. CMA/DSM/ILA/R.14/17.



A. E. Mwipopo

JUDGE

24/04/2020

Date: 24/04/2020

Coram: Hon. A. E. Mwipopo, J

Applicant: 1st Applicant, Present in person

For Applicant:

Respondent: Mr. Anaseli Resika, Advocate for the Respondent

For Respondent:

CC: Neema

Court: Ruling delivered in the presence of Mr. Anaseli Resika, Advocate for the Respondent and Ms. Sarah Haonga the applicant in my presence this 24/04/2020.

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

A. E. Mwipope

JUDGE

24/04/2020