

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

MISCELLANEOUS LABOUR APPLICATION NO. 562 OF 2020

BETWEEN

**MWANAIDI RASHIDI ATHUMANI 1ST APPLICANT
SUDI HAMISI SELEMANI 2ND APPLICANT
ANGELA S. SAANANE 3RD APPLICANT
JOHN ALLEN MGANGA 4TH APPLICANT
LESILE ELISHA MGANDILE 5TH APPLICANT
WINFRIDA JOEL YINDI 6TH APPLICANT
JUMA ATHUMANI ABDALLAH 7TH APPLICANT
MATILDA PATSON MWAMBULIMA 8TH APPLICANT
ZUHURA MUHORO SHABANI 9TH APPLICANT**

VERSUS

**OCEAN VIEW APARTMENTS LIMITED.....1ST RESPONDENT
AFRICARRIES LIMITED 2ND RESPONDENT
HILTON APARTMENT LIMITED 3RD RESPONDENT
LEISURE TOURS & HOLIDAYS LIMITED 4TH RESPONDENT**

RULING

Date of last order: 12/05/2021
Date of ruling: 16/07/2021

Aboud, J.

This is an application for representative suit filed by the applicants asking this court to permit Mwanaidi Rashidi Athumani, the first applicant to prosecute the matter before this court on behalf of 8 others. The application is made under section 94 (1) of the

Employment and Labour Relations Act [CAP 366 RE 2019] (herein the Act), Rule 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d), 44 (2) and 55 (1) (2) of the Labour Court Rules, [GN 106 of 2007] (herein referred as the Labour Court Rules).

The respondents filed a joint counter affidavit challenging the application on the ground that the applicants did not demonstrate sufficient reasons for the grant of the application.

The application was argued orally. Mr. Hemed Omari, Personal Representative appeared for the applicants whereas Mr. Ngasa Ganja assisted by Mr. Haji Sama were for the respondents.

Arguing in support of the application Mr. Hemed Omari adopted the applicants' affidavit to form part of his submission. He submitted that, the applicants are praying the court leave to allow Mwanaidi Rashidi Athumani to represent eight (8) others as they appear in the pleadings. He therefore prayed for the application to be allowed.

Resisting to the application Mr. Ngasa Ganja opposed the application that it has no merit. He argued that, according to Rule 44 (2) of the Labour Court Rules there are basic factors to be considered

in allowing the application, he stated that, the applicants must be more than one and have the same interest. The Learned Counsel said that, in this application it is true there are more than one person however, they do not have the common interest. He submitted that, in the CMA ruling of 17/09/2018 intended to be contested, when discussing the commonality of interest in page 4 the CMA decided that there was no collective right.

It was further submitted that, also in the applicants' affidavit at paragraphs 3.1 and 3.5 it pre suggest that they do not have commonality of interest the reason why they did not obtain the leave sought at the CMA. He therefore prayed for the application to be dismissed because the need for the applicants to have common interest has not been demonstrated.

In rejoinder Mr. Hemed Omari submitted that, since it is not disputed that the applicants are more than one this application has merit. He strongly submitted that the applicants have common interest in this application.

After considering the parties submissions and Court records I find the issues for determination is whether the application for representative suit should be granted.

In this court an application for representative suit is guided by Rule 44 (2) of the Labour Court Rules which provides as hereunder: -

'Rule 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.'

As stipulated in the provision above, the court may permit a person to represent others in a suit where the parties are more than one and they have the common interest as correctly submitted by the

respondents' Counsel. It is undisputed fact that the parties at hand are more than one. The Respondents' Counsel contention before this court is that the parties at hand have no common interest thus, the application should not be granted. The Learned Counsel also alleged that, the applicants did not demonstrate sufficient reason for the grant of this application.

It is undisputed fact that the application at hand originates from labour dispute No. CMA/DSM/ILA/R.381/2017/179, therefore the applicants seek leave of the court to permit one Mwanaidi Rashidi Athumani to prosecute on their behalf to challenge the decision in the mentioned labour dispute. The respondents' Counsel submitted that in the impugned ruling at page 4 the Arbitrator stated that there were no collective rights among the applicants. With due respect to the Counsel's submission, I have keenly read the intended contested decision and observed, at page 4 of the same the Arbitrator was only summarizing submission of the parties and his analysis started from page 11 to 17.

Considering the records and in the circumstance of this case it is my view that, the fact that all applicants are aggrieved by the

decision of the Arbitrator in labour dispute No. CMA/DSM/ILA/R.381/2017/179 which they were the parties thereto, suffice to establish that they have the common interest in the intended application. The submission that the parties have no collective right in my view it is suitable to be raised at the main application and not in the present application for representative suit. At this stage the only factors to be considered are the ones provided under Rule 44 (2) of the Labour Court Rules quoted above. Therefore, the applicants have established that their application complied with the relevant law, so the court have no option than to grant the application.

In the event, I find no justifiable reasons to throw away the present application. Thus, the application is allowed and Mwanaidi Rashidi Athumani is hereby permitted to prosecute the matter on behalf of eight others.

It is so ordered.



I.D. Aboud

JUDGE

16/07/2021