

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

MISCELLANEOUS LABOUR APPLICATION NO. 357 OF 2020

BETWEEN

MAGNUS TEKULA & 16 OTHERS..... APPLICANTS

VERSUS

TANZANIA RAILWAY LTD..... RESPONDENT

EX-PARTE RULING

Date of Last Hearing: 11/11/2021

Date of Ruling: 11/11/2021

I. Arufani, J.

This ruling is for the two points of preliminary objection raised by the respondent which are to the effect that:-

- (i) The application is bad in law for being instituted against the wrong party.
- (ii) The application is bad in law for being instituted by a person having no *locus standi* contrary to the established principles of law.

After the above points of law being filed in the court, the court fixed a date of hearing them and the applicants were duly notified. On 9th September, 2021 when the matter was coming for hearing the

said points of preliminary objection the applicants were represented by Advocate Neema. From that date the applicants and their advocate failed to appear in the court and that prompted the court to grant the prayer made to the court by Ms. Neisha Shao, Learned State Attorney representing the respondent in this matter that they be allowed to argue the above listed points of law ex-parte.

Ms. Neisha Shao told the court in relation to the first point of law that, the instant application was filed in the court on 18th August, 2020 against Tanzania Railway Limited. She argued that by the time when the present application was filed in the court Tanzania Railway Limited was no longer in existence and its rights, liabilities, interest and obligations had already been transferred to Tanzania Railway Corporation as per section 116 of the Railways Act, 2017.

She submitted that the mentioned law came into operation under GN. No. 65 of 2018 published on 2nd March, 2028. She prayed the court to find that, as Tanzania Railway Limited is no longer in existence and instead of that there is Tanzania Railway Corporation, Tanzania Railway Limited is not a right party to be joined in the matter as a party.

She argued in relation to the second point of preliminary objection that, the application at hand was filed in this court by Geovani Kyaruzi seeking for leave to appear in the court and represent himself and four other applicants in the revision they intend to file in the court. She submitted that, while the record of the matter shows the persons who are seeking to file revision in the court are five but the record of the matter shows the applicants in the matter are Magnus Tekula and 16 others.

She argued that, the said Geovani Kyaruzi is seeking for leave to represent persons who have not authorized him to represent them in the intended revision. She argued that, Geovani Kyaruzi has no *locus standi* to apply for an order of representing the applicants who have not authorized him to represent them in the intended revision. To support her argument she referred the court to the case of **Hemed A. Kibule V. Simba Plastic Co. Limited**, Revision No. 351 of 2019, HCLD at DSM (unreported) where it was stated a party bringing an application in the court must show the court he has power to bring the application and is entitled to bring the application in the court.

At the end she prayed the points of preliminary objection raised by the respondent be upheld and the application filed in the court by the applicants be struck out with costs for being incompetent.

Having carefully considered the submission made in this court by the Learned State Attorney in support of the points of preliminary objection and after going through the documents used to initiate the present application the court has found the issue to determine in the instant application is whether the points of preliminary objection raised by the respondent are meritorious.

Starting with the first point of preliminary objection the court has found the applicants have joined Tanzania Railway Limited in the matter as the respondent. When the court probed the Learned State Attorney to say who was respondent before the Commission for Mediation and Arbitration she said Tanzania Railway Limited was the respondent and said Tanzania Railway Corporation came after the matter being determined by the Commission for Mediation and Arbitration.

That being the position of the matter the court has found that, as the Learned State Attorney has informed the court Tanzania Railway Limited is no longer in existence and its rights, obligation,

interest and liabilities have been transferred to Tanzania Railway Corporation by the law the applicants were required to make Tanzania Railway Corporation their respondent in the present application or joint Tanzania Railway Corporation in the matter as a respondent. In the premises the court has found there is a merit in the first point of preliminary objection.

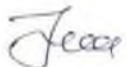
Coming to the second point of preliminary objection the court has found that, as rightly argued by the Learned State Attorney the applicants in the present application are Magnus Tekula and 16 others. However, it is stated in the notice of application and at paragraph 3 (g) of the affidavit that the applicants who are seeking to be represented in the matter are five applicants and not seventeen applicants.

The applicants who are seeking to be represented in the matter by Geovani Kyaruzi as listed in the affidavit are Geovani Kyaruzi, Abudl Yusuf Mlanzi, Ally H. Bisusu, Mgeni Mwinyimvua and Obadi Nzilani. That being the position of the matter the court has found that as rightly argued by the Learned State Attorney the persons who are not seeking to be represented in the matter were not required to be joined in the matter as applicants.

The court has found that as it is only five applicants listed herein above who have signed the notice of application and sworn the affidavit to show their intention of being represented in the matter by Geovani Kyaruzi and eleven others have not shown anywhere that they wish to proceed with the matter and authorize the said Geovani Kyaruzi to represent them in the intended revision it is crystal clear that they were not required to be included in the present application. That caused the court to find there is merit in the second point of preliminary objection.

Consequently, the two points of preliminary objection raised by the respondent have been found to be meritorious and they are accordingly upheld. In the upshot the application of the applicants is hereby struck out for being incompetent because of the above stated reasons. The prayer of costs made by the Learned State Attorney has not been granted because this is a labour matter and she has not stated why costs should be granted in the present application. It is so ordered.

Dated at Dar es Salaam this 11th day of November, 2021.



I. Arufani

JUDGE

11/11/2021

Court: Ruling delivered today 11th day of November, 2021 in the presence of Ms. Neisha Shao, Learned State Attorney for the Respondent and in the absence of the Applicants.



Jessa

Arufani

JUDGE

17/11/2021

Labour Court TZ.