

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

MISC. APPLICATION NO. 322 OF 2021

BETWEEN

KULWA NKWABI & 399 OTHERS APPLICANTS

VERSUS

TANZANIA PORTS AUTHORITY RESPONDENT

RULING

S.M. MAGHIMBI, J:

The current application was lodged under the provisions of Rules 24(1)(2)(a), (b), (c)& (d), (e), 24(3)(a), (b),(c),(d) 28(1), (a) & (2) and 55 of the Labour Court Rules GN No. 106 of 2007), Section 91(1)(a), 91(2)(a)(b) and Section 94(1)(b)(i) of the Employment and Labour Relations Act. Act No. 6 of 2004 (as amended). The applicants are seeking to address the Court regarding enforcement of the Decree issued by this Honorable Court over implementation of the award of the Industrial Court of Tanzania dated 24th October, 2003, they are seeking for the following orders:

1. A declaration that all 195 former dockworkers should be paid by the Respondent their employment dues from 1994 till 31st day of March, 2004 amounting to Tshs. 66,500,940,018.24

2. Any other relief which this honorable Court may deem fit to grant.

The application was supported by an affidavit of Mr. Jovinus Ndaro dated 02nd day of August 2021. While filing their notice of opposition the respondent also raised a preliminary point of objection on point of law that:

1. That this court lacks jurisdiction to entertain this application.
2. That, the application is bad in law and unmaintainable for want of leave of representative suit.
3. That, the application is incompetent for being supported by an incurably defective affidavit which does not comply with the mandatory requirements of Rule 24(3)(a),(b) and (c) of the Labour Court Rules.
4. That, the application is bad in law and unmaintainable for being confusing, misconceived, unknown in law and applicants' own invention.

The objections were disposed by way of written submissions. Submitting on the issue of jurisdiction, Mr. Shija, learned State Attorney representing the respondent submitted that the point is on two folds, one is that the court lacks jurisdiction because the notice of appeal to the Court of Appeal has been filed by the applicant on the dismissal of Misc. Application

No. 81/2020. He argued that once the notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter.

I have checked the records of the Misc. Application No. 81/2020 and found that the two cases bear the name of different applicants. Although Mr. Shija wants me to believe that they are the same, I find that he is calling the court to examine the names in the two applications and find that they are the same. With respect to the learned state attorney, this is a matter that requires lengthy analysis of evidence on the two applicants, after all even the number of applicants is different, therefore in order for me to ascertain whether or not it is the same matter, I need evidence and since as laid down in the case of Mukisa Biscuits, that a point of objection which requires evidence can not be determined as a preliminary point, I cannot proceed to determine this issue at this preliminary stage. The objection is therefore overruled.

On the second point that the application is bad in law and unmaintainable for want of leave of representative suit. Mr. Timothy Kahoho argued that the applicants have not obtained leave so that Jovinus Ndaro represents the hence the application is defective for want of leave. I tried to comprehend the reply by applicant in vain. However, since he mentioned the

decision by Hon Mashaka, J as she then was, I revisited that decision and in there, there is mentioned on Ramadhani Ngana in the decision as personal representative and there is no place where the said Joventus was mentioned. Hence he has acted on behalf of the applicants without leave of the court. This makes the affidavit incurably defective which makes the applicant incompetent. The same is hereby struck out.

Dated at Dar es Salaam this 07th day of March, 2022.




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S.M MAGHIMBI
JUDGE