

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISC. APPLICATION NO. 379 OF 2020

AKO CATERING SERVICES LIMITED..... APPLICANT

VERSUS

SUDI J. KAMUGISHA..... RESPONDENT

RULING

K. T. R. MTEULE, J.

21st February 2022 & 24th February 2022

The Applicant herein namely **AKO CATERING SERVICES LIMITED** has filed the present application seeking for extension of time within which to file application for revision against the CMA award. The applicant is praying for the orders of the court in the following terms:-

- i) *This Honourable Court be pleased to extend time limit to file an application for revision out of time against the award and proceedings of the arbitrator; Commission for Mediation and Arbitration at Dar es salaam in the matter CMA/DSM/UB/R.06/18/160 delivered by Hon. Mbeyale, R. on 12th day of June 2020.*
- ii) *Any other reliefs (s) this Honourable Court deems proper to grant.*

When the matter was called for hearing on 21/02/2022, **Ms. Angelina** who appeared for the applicant informed the Court that she had a direction



to address the court on the issue of the Notice of Application being signed by the applicant's Counsel and not applicant himself. I allow parties to address me.

Ms. Evangelina was of the view that it is appropriate for the counsel of the applicant to sign the notice of application. She argued that **Rule 24 (2) of the Rules** requires a notice of application to be signed by the applicant. She however submitted that **Form No. 4** of the schedule to the Rules shows that it can be signed by the applicant's representative, and therefore the notice of application in this matter is proper for being signed by the counsel for the applicant.

In response thereto, the respondent is of the view that the counsel is the legal representative hence he did not oppose the submission by Evangelina.

Although the Respondent has not disputed what the applicant's counsel submitted, I feel obliged to expound the position of law on this aspect. It is clear that institution of applications in the High Court Labour Division is guided by **Rule 24 of the Rules**. Subrule (1) and (2) of this Rule 24 provide: -

- (1) Any application shall be made on notice to all persons who have an interest in the application.*
- (2) "The notice of application shall substantially comply with Form No. 4 in the schedule to these rules, signed by the party bringing the application and filed and shall contain the following.....".*

My comprehension to the above provision connotes that a notice of Application must **firstly**, comply with **Form No. 4** in the schedule to the Rules. For ease of reference, I reproduce **Form No. 4** hereunder.



2

FORM NO .4
(Rule 24 (2))
NOTICE OF APPLICATION

Held at
Application No.

Between

..... (Applicant)

and

..... (Respondent)

TAKE NOTICE THAT the Applicant intends to apply to the Court at a date and time fixed by the Registrar for an order in the following terms:

AND TAKE NOTICE THAT the applicant appoints as Applicant's representative in this matter.

TAKE NOTICE THAT the Applicant will accept service of all the proceedings in the above matter at the address of the offices of the Applicant's representative, which is set out below:

AND FURTHER TAKE NOTICE THAT the affidavit of will be used in support of the application.

Signed and dated at this day of 20...

Applicant's representative Address:

.....
.....
.....

.....

Signature of the Applicant's
Representative

Telephone Number:

Fax Number:

Reference Number:

E-mail:

FORWARDED TO:

THE REGISTRAR

Address:

Telephone Number:

Fax Number:

Reference Number:

E-mail:

SERVED TO:

Respondent's Representative

Postal Address:

Telephone Number:

Fax Number:

Reference Number:

E-mail:

Received copy hereby on this..... day of

.....
For the Respondent



The above reproduced **Form No. 4** is the actual Notice of Application to which Rule 24 commands compliance with. It is apparent on it that at the signing section, it is indicated that the signature required is of the applicant's representative. This means by signing the form, there is a compliance with the first aspect of **Rule 24 (2) of the Rules**.

Secondly and further to compliance with **Form No 4**, according to **Rule 24 (2) of the Rules**, Notice of Application must be signed by the **party bringing the application**. **Rule 2(2) of the Rules** defines who is a "party". It states: -

"A party to Court proceedings includes a person representing a party in terms of section 56 of the Act and section 88 of the Employment and Labour Relations Act, 2004."

In my plain interpretation, the above definition signifies that a "party" to court proceedings include a person representing a party in terms of **Section 56 of the Act (The Act is the Labour Institutions Act [CAP. 300 R.E. 2019])** and **Section 88 of the Employment and Labour Relations Act, 2004, [CAP. 366 R.E. 2019]**. **Section 56 of the Act** provides:

"56. Representation in Labour Court

In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by

(a) an official of a registered trade union or employers' organisation;

(b) a personal representative of the party's own choice

(c) an advocate"

This means in accordance with item **(c) of Section 56**, an advocate has a capacity to act as a party in court proceedings.

With regards to Section 88 of **CAP. 366 R.E. 2019**, the relevant part which describes a "party" is subrule 9 which states: -

"88 (9) In any arbitration hearing, a party to a dispute may be represented by-

(a) member or official of that party's trade union or employers' association;

(b) an advocate; or

(c) a personal representative of the party's own choice."

Further to the aforesaid, and according to the above reproduced provisions, my more comprehensive conception to Rule 2 (2) of the Rules is to the effect that a "party" to Court proceedings includes *an official of a registered trade union or employers' organisation, an advocate, and a personal representative of a party's own choice* in accordance with **Section 56 of the Act** for purpose of the High Court Labour Division and **Section 88 of CAP. 366 R.E. 2019** for the purposes of arbitration proceedings.

This Court (Hon Mashaka, J) when faced with a similar situation in **Sijaona Moshi and 16 Others versus Double Tree By Hilton and Golden Sands Services Apartment Limited Lab. Div., Misc. Appl. No 398 of 2017** stated as quoted hereunder.

"On the second point of preliminary objection that the pending application is fatally defective for contravening Rule 24(2) (e) (f) of the Labour Court Rules G.N No.106/2007, having gone through the Notice of Application by the applicant, the same does not contravene the said rule on the reason that the Notice of Application by the applicant is a prescribed form under the Labour Court Rule, Government Notice No. 106/2007, named as, LCI: 4 (FORM NO 4) made under Rule 24(2). The applicant has adhered to the format provided for under the law hence not defective."

From the above cited authority and the provisions of **Rule 24 of the Rules, Rule 2(2) of the Rules, Section 56 of the Act and Section 88 (9) of CAP. 366 R.E. 2019**, I am of the same view that allowing a

representative to sign a notice of application does not contravene **Rule 24 of the Rules**. The legal position suggests that a notice of application can be signed by either the applicant in person or the applicant's representative.

From the above legal reasoning I have no hesitation to hold that the application was properly initiated by the applicant's Counsel who signed the notice of application.

Dated at Dar es Salaam this 24th Day of February 2022.



KATARINA T. REVOCATI MTEULE
JUDGE
24/2/2022

Court: The Ruling is delivered this 24th Day of February 2022 in the presence of Evangelina Efrahim Advocate for the Applicant and in the absence of the respondent.



KATARINA T. REVOCATI MTEULE
JUDGE
24/2/2022