

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 2 OF 2022

TUMAINI SHIRIMA ..... 1<sup>st</sup> APPLICANT  
MODESTA BUCHUMI IHOLIHOZE ..... 2<sup>nd</sup> APPLICANT  
SEMENI HASSAN BUTWENGO ..... 3<sup>rd</sup> APPLICANT  
AYOUB SHABAN HAMIS ..... 4<sup>th</sup> APPLICANT  
IDD JUMA MITIMINGI ..... 5<sup>th</sup> APPLICANT  
SELEMANI RAMADHANI CHAKUPEWA ..... 6<sup>th</sup> APPLICANT  
GOZBERT JOSEPH SIGARÉTI ..... 7<sup>th</sup> APPLICANT

VERSUS

CHINA RAILWAY SEVENTH GROUP CO. LIMITED ..... RESPONDENT

(Application for revision from the Award of the Commission for Mediation and  
Arbitration for Kafavi at Mpanda)

(Ngaruka O., Arbitrator)

Dated 28<sup>th</sup> day of May 2020

In

(Labour Dispute No. KTV/CMA/43/2019)

**RULING**

Date: 11/08 & 12/09/2022

**NKWABI, J.:**

Apart from the counter-affidavit to resist the application for revision, the counsel for the respondent also lodged a notice of preliminary objection on points of law. In fact, three legal points of objection were preferred. Since the legal point of objection in respect of the representative suit disposes this matter, I will not determine the rest of the legal points of objection.

That legal point of objection that I am going to consider is that the application for revision is incompetent for want of leave of the Court on the part of the 7<sup>th</sup> applicant herein to endorse the Notice of application and the affidavit; institute; and prosecute this application for and on behalf of the remaining applicants in representative capacity.

Expounding on this point, the respondent's counsel contended that the notice of application, chamber summons and the affidavit are signed by the applicant alone and are instituted on behalf of the remaining applicants purporting to be a representative suit. He said that offends rule 44(2) of the Labour Court Rules, 2007. He added, in absence of leave on the part of the 7<sup>th</sup> applicant to represent the remaining applicants in this matter or notice of institution of the suit, render the application incurably defective and liable to be struck out with costs.

In what appears to be a written submission, Mr. Gadiel Sindamenya, learned counsel for the applicant asserted that the application for revision is competent in that, lack of leave of the Court on part of the 7<sup>th</sup> applicant does not occasion failure of justice.

It is worthwhile to point out here that there was no rejoinder submission from the counsel for the respondent.

It is clear that the counsel for the applicant conceded that the 7<sup>th</sup> applicant has no leave to represent the rest of the applicants. He merely justifies it by claiming that lack of leave does not occasion a failure of justice. I do not purchase the assertion made by the counsel of the applicant because the omission to have the leave is contrary to the law and it is unacceptable. It is not acceptable in law based on the ruling that can be seen in the decision of the Court of Appeal of Tanzania that was clearly stated in **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021 CAT (unreported) decision which held that:

*"Letters of administration being an instrument through which the applicant traces his standing to commence the proceedings, was in our view an essential ingredient of the application in whose absence the Court cannot have any factual basis to imply the asserted representative capacity. It is now a settled law that, where, like in instant case, a party commences proceedings in*

*representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of the necessary standing."*

It is overused law that failure to sue or be sued in the proper capacity is fatal. See **Abdullatif Mohamed Hamis v. Mehboob Yusuph Osman & Another**, Civil Revision No. 6 of 2017 CAT (unreported) where it was, at pages 27 & 28, authoritatively stated:

*"When all is said and applied to the situation at hand, as already mentioned, it is beyond question that the 2<sup>nd</sup> respondent was, at all material times, the administratrix of the deceased's estate. The life of her legal representation with respect to the estate was still subsisting at the time of her transaction with the 1<sup>st</sup> respondent just as the suit land was vested in her in her capacity as legal administratrix. But, as we have also hinted upon, the 2<sup>nd</sup> respondent was not sued in that capacity. Instead, the 1<sup>st</sup> respondent sued her in her personal capacity and, for that matter, no executable relief could be*

*granted as against her personally with respect to the suit land which, as it turns out, was vested in her other capacity as the legal representative."*

Consequently, and it is for that basis that I rule that the application for revision is incompetent. I proceed to strike it out of this Court's register. Each party to bear their own costs for this matter is a labour application.

It is so ordered.



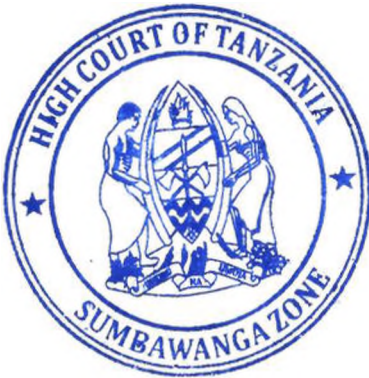
  
J. F. NKWABI

**JUDGE**

12/09 2022

Date - 12/09/2022  
Coram - Hon. M.S. Kasonde - DR  
Applicants - 7<sup>th</sup> Present in person  
Respondent - Absent  
B/C - A.K. Sichilima – PRMA

**Court:** Ruling delivered this 9<sup>th</sup> day of September, 2022 in the presence of 7<sup>th</sup> applicant in person but in absence of the Respondent.



**M.S. Kasonde**  
**Deputy Registrar**  
**12/09/2022**