

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 333 OF 2021**

*Arising from the Ruling and Orders of this Hon. Court in Revision No. 18 of 2012 (Hon. R.M Rweyemamu, J ) delivered on 15<sup>th</sup> March*

**BERNARD GINDO.....APPLICANT**

**VERSUS**

**TOL GASES LIMITED.....RESPONDENT**

**RULING**

**K. T. R. MTEULE, J.**

**11<sup>th</sup> August 2022 & 12<sup>th</sup> September 2022**

This ruling is in respect of the application for leave to the applicant to represent other 27 employees and so as to file an application for extension of time to file the notice of intention to lodge notice of appeal to the court of appeal against the decision of this court in Revision No 18 of 2012 issued by Hon. R.M Rweyemamu, J delivered on 15<sup>th</sup> March 2013.

According to what I gather from the contents of the affidavit supporting this application, there has been several court actions going back and forth from the CMA to this Court until to the Court of Appeal. In the Court of Appeal, the applicant managed to lodge an appeal against the impugned high court decision mentioned above. Their latest appeal in

the Court of appeal was struck out for missing important documents from the record of the CMA.

The latest matter filed in this Court before the instant one was Miscellaneous Application No. 13 of 2021 filed on 13<sup>th</sup> January 2021 for extension of time within which to file Notice of Intention to appeal against the judgement and Decree of this Court in Revision No. 18 of 2012. The said application was struck out with leave to refile it on 6<sup>th</sup> July 2021 on the ground that it was defective for missing necessary documents to support the applicant's mandate to represent others. It was after the striking out of this application that the applicant lodged this matter seeking for such a leave to represent his fellows.

At the hearing the applicant was represented by Mr. Richard Madibi, Learned Counsel from JBK Advocates whereas Mr. Frank Kiliani, learned Counsel from Kariwa and Company Limited appeared for the respondent. I appreciate their rival submissions which will be considered in drafting this judgement.

Having gone through the parties' submissions and their sworn statements, I am inclined to address one issue, as to **whether the applicant has adduced sufficient grounds for this Court to grant leave for filing a representative suit.?**

In addressing the above issue, the applicant's Counsel averred that this application has 28 applicants who have common interest and whose interest originated from being terminated from their employment by that respondent. He further added that through the meeting conducted on 12<sup>th</sup> July 2021 the applicant herein was appointed by the 27 applicants to represent them in pursuing the matter. Supporting his assertion, he cited the case of **Sarah Haonga & 12 Others v. Viettel Tanzania Ltd**, Misc. Application No. 179 of 2019, High Court of Tanzania, Labour Division, at Dar es salaam, (unreported).

In resisting the application, Mr. Killian refuted the applicant's assertion that a meeting was conducted with 28 applicants who appointed the applicant to represent the others. According to Mr. Killian, Annexure GG-12 shows that only 19 applicant appointed the applicant to represent others. In such circumstances he is of the view that this contravenes **Rule 44 (2) (a) (b) of the Labour Court Rules G.N No. 106 of 2007**. In strengthening his argument, Mr. Killian cited the cases of **Abdalah Mohamed Mokondeo vs. City Commissioner of Dar es salaam and two others, (1998) TRP page 44** and **Gibson Kachingwe and 620 Others v. Tanzania Plantation and Agriculture Workers Union (TPAWU)**, Misc. Application No. 759 of

2019, High Court of Tanzania, at Dar es salaam, (unreported). On that basis he is of the view that the applicant's affidavit tells lies and that means there was no consent of other applicants.

In his view, it is an established principle that, for someone to represent others they must have the same interest and should be appointed by others who wish to be represented. He submitted that on top of that, leave of the Court should be craved for someone to act as a representative of others in accordance with Rule 44 of GM. No. 106 of 2007 which provides: -

*'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.'*

From the above provision having gone through the record of this application including the disputed Annexure B-G, I2 which are the minutes of the appointing meeting, I have noted that there were 20 applicants in attendance who signed the minutes of the meeting to appoint the applicant to represent them. However according to the minutes, 8 out of 28 applicants were not present with notice. I agree with Mr. Madibi that having 8 claimant's not authorizing the applicant to represent them is not proper.

In addition to the impropriety of having 8 claimants not signing the minutes of authorization, I have as well noted that even the affidavit in support of this application is not signed by all the applicants. Only the instant applicant signed. This impliedly shows that the applicant has assumed the power of appointing himself to represent the parties.

In the case of **Kitere Menezes and 33 others v. Area Engineering works Ltd. and AG.** (1998) TLR 335 it was held that, it will be absurd for a representative to exist before a representation order has been made. In light of this decision, this application ought to have been filed by all the applicants. Guided by this authority, I am of the view that the applicants ought to have signed the affidavit supporting this application. The logic behind it is not only to secure the willingness of applicants to

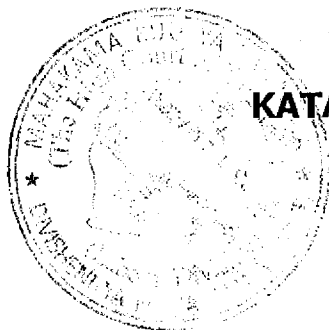
be represented but also to avoid multiplicity of cases by being filed partly on the same matter. As well, the applicant may sometimes be personally responsible with the outcome of the matter. Their authorization must be clear and unambiguous.

Having found so, I discredit the application for it cannot stand to support the interests of all the applicants.

Having found so, I am of the view that the appropriate measure is to strike out the application. Consequently, I strike out the application for being defective. Each party to take care of its own cost.

It is so ordered.

Dated at Dar es salaam this 12<sup>th</sup> Day of September 2022



**KATARINA REVOCATI MTEULE**

**JUDGE**

**12/09/2022**