

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

REVISION NO. 435 OF 2022

BETWEEN
HASHIM ALLY DIGELLO & 4 OTHERS APPLICANTS

VERSUS
ALPHA KRUST LIMITED RESPONDENT

RULING

Date of last Order: 14/03/2023

Date of Ruling: 06/04/2023

MLYAMBINA, J.

The Applicant filed the present application urging the Court to revise and set aside the award of the Commission for Mediation and Arbitration (herein after CMA) in Labour Dispute No. CMA/DSM/ILA/16/21/92/21 delivered by Hon. Mbeyale, R Arbitrator on 29th November, 2022. The application was supported by the joint affidavit of the Applicants. On the other hand, the Respondent challenged the application through the affidavit sworn by Mr. Rafael Mafuru, the Respondent's Human Resource Manager.

Prior hearing of the application as scheduled, the Applicant's Personal Representative, Mr. Majaliwa Musa notified the Court that the

Personal Representative of the Respondent is improperly before the Court as he violated the provisions of *Section 56(b) of the Labour Institutions Act [Cap 300 Revised Edition 2019] (herein after Cap 300) read together with Rule 43(1) (a) and (b) of the Labour Court Rules, G.N. No. 106 of 2007 (herein after the Labour Court Rules)*. He argued that; since this is the Court of law, the Representative of the Respondent should not be allowed to proceed with this matter so that it becomes a lesson to him and all other Personal Representative. He added that Personal Representative should abide with the law and guiding Rules.

In response to the objection, Mr. Stephano Haonga, the Respondent's Personal Representative, after scrutinizing and going through *Rule 43(1)(a) & (b) of the Labour Courts Rules* read together with *Section 56(b) of Cap 300*, conceded with the raised objection.

In rejoinder, Mr. Majaliwa objected the prayer of filing a proper Notice of Representation. He strongly submitted that; the Court must comply with the procedure. He added that; the alleged Personal Representative was barred before the CMA, that is why his Notice of Representation is for *Execution Application No. 435/2022* and not for *Labour Revision No. 435/2022*. That, the application was filed

unlawfully. He urged the Court to bar the herein Personal Representative from representing the Respondent. He further urged the Court to let the Respondent appoint another Personal Representative.

In further response, Mr. Haonga conceded to the allegation that he was barred from representing his client at the CMA. He conceded that after the objection before CMA, he could not represent his client till the case was determined. He added that he was barred because his client complained after failure to appear three times during session. The representative elaborated that the Notice of Representation bears a typal error of execution that is why, the same document was served to the Applicant. He stated that the CMA barred him by virtue of *Section 88 of the Employment and Labour Relations Act [Cap 366 Revised Edition 2004]* (herein ELRA). He prayed to be allowed to represent the Respondent in the case even though he was barred by CMA.

After considering the rival submissions of the Parties' Representatives, I find the Court is called upon to decide *whether the Respondent's notice of representation is proper before the Court.*

It is the findings of the Court that Representation in Labour Court is governed by *Section 56 of Cap 300* which provides that:

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

- (a) an official of a registered trade union or employer's organization;
- (b) a personal representative of the party's own choice;
or
- (c) an advocate.

The manner of representation in Labour Court is governed under *Rule 43(1) of the Labour Court Rules* which provides:

A representative who acts on behalf of any party in any proceedings shall, by a written notice, advise the Registrar and all other parties of the following particulars-

- (a) the name of the representative;
- (b) the postal address and place of employment or business; and any available fax number, e-mail and telephone number.

In the matter at hand, the Respondent is represented by the Personal Representative in accordance with *Section 56(b) of Cap 300 R.E 2019*. Pursuant to the above provisions, the Personal Representative at hand filed a notice of representation signed by himself notifying the Court that he is the Respondent's Representative. In the circumstances, it is my view that, since the Personal Representative is chosen by the party

bringing or opposing the application before the Court, the mandate to choose the Personal Representative is vested to the party him/herself. A Representative cannot authorize himself and act on behalf of a party to the proceedings. In other words, the Representative cannot appoint himself. Thus, it is the duty of the party to the proceeding to notify the Court the Representative of his/her own choice. Therefore, the notice must be signed by the Applicant or Respondent only and not his/her Representative.

It is my further view that, the provisions of the Labour Court Rules must be construed conjunctively with the principal legislation which made them. This is in accordance with the provision of *Section 39(1) of the Interpretation of Laws Act [CAP. 1 R.E. 2019]* which is to the effect that:

Words and expressions used in subsidiary legislation shall have the same respective meaning as in the written law under which the subsidiary legislation is made.

The Labour Court Rules are made under the provision of *Section 55(1) of Cap 300 R.E. 2019* which provides that:

The Chief Justice, after consultation with the Minister, shall make rules to govern the practice and procedure of the Labour Court.

Therefore, since the provision of *Section 56(b) of Cap 300* specifically requires a Personal Representative should be of a Party's own choice, the Representative must be chosen by the Party him/herself. A Party to Court's proceedings is defined in the case of **Simon John v. BRAC Tanzania Finance Ltd.** Misc. Appl. No. 60 of 2018, High Court Labour Division at Dar es salaam (unreported) as follows:

It is my view a party to Court proceedings is the one who brings the case to the Court, and that representative of the party to proceedings before this Court has no automatic right to sign pleadings on behalf of a party to the proceedings because legally, he/she is not a party to these proceedings. I would say the drafter of this piece of legislation might overlooked on this point that in no any reason an advocate will assume the right and responsibilities of a party in Court proceedings including execution of awards and orders of the Court. In most of labour Court proceedings, parties are either employer or employee and this is considered in a wider perspective. That, not only representative of those employers and employees will be entitled to sign the pleadings including notice of application but also, they will be bound by the final Court decision and have to execute the orders thereto if are regarded as parties to this Courts proceeding as defined under Rule 2(2) of the Labour Court Rules. Thus,

when they want to authorize any person to assume the parties' position, they have to follow the legal procedures...

In the premises, the Representative not being a Party to the case, he has no mandate to appoint himself and notify the Registrar suo motto without authorization from the appointing Party. Thus, the Respondent's notice of Representation is improperly filed before the Court.

This Court take note that, the Respondent's Personal Representative was barred to appear at the CMA and represent the Respondent for failure to appear three times and represent him accordingly. Again, since the Representative in question appeared before this Court and filed improper notice of representation signed by himself without authorization from the Respondent, this Court lacks trust on him. He is therefore, barred to represent the Respondent in this Court.

In the end result, the Respondent's notice of representation is hereby struck out from the Court's registry for being improper. Leave is granted to the Respondent to choose another Personal Representative and file the notice of representation in accordance with the law.

It is so ordered.



Y.J. MLYAMBINA

JUDGE

06/04/2023

Ruling delivered and dated 6th April, 2023 in the presence of the Applicants and Mr. Stephano Haonga.



Y.J. MLYAMBINA

JUDGE

06/04/2023