

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

MISCELLANEOUS LABOUR APPLICATION NO. 115 OF 2023

BETWEEN

INTERNATIONAL TAX CONSULTANTS LIMITED APPLICANT

VERSUS

MACDONALD JUSTUS RWEYEMAMU RESPONDENT

COURT RULING

Date of last Order: 30/05/2023

Date of Ruling: 30/05/2023

MLYAMBINA, J.

There is no doubt that the difficulties for the parties and the Court exist in applying the provision of *Rule 34 (1)(2) & (3) of the Labour Court Rules G.N. No. 106 of 2007* when the Applicant wants to withdraw the application informally in the course of hearing. *Rule 34 (supra)* requires a party to file a notice of withdrawal. For easy of Reference, *Rule 34(supra)* provides:

- (1) A party who has initiated proceedings and wants to withdraw the matter shall file a notice of withdrawal as soon as possible and the Court shall proceed to mark the matter accordingly, on such terms as to costs or otherwise in accordance with these rules.

- (2) Where the parties reach a settlement, the party who initiated the proceeding shall notify the Registrar of the settlement as soon as possible.
- (3) The parties may, with leave of the Court, agree to postpone the hearing, to such date as the Court may direct.

In the instant application, Counsel Bernard Chuwa for the Applicant, in the course of hearing, has orally moved the Court to withdraw the application with leave to refile. The essence behind withdrawal of the application is to comply with the requirement of *Rule 24(3)(c) of the Labour Court Rules (supra)*.

There has been no objection from such prayer by senior learned Counsel Evance Nzowa for the Respondent.

However, as noted on the introductory part of this brief ruling, *Rule 34(1) (supra)* requires written notice. For that reason, I find necessitated to invoke the provisions of *Rule 55(1)(2) of the Labour Court Rules (supra)* which covers procedures not specifically provided. *Rule 55(1) & (2)* provides:

- (1) Where a situation arises in proceedings or contemplated proceedings which these rules do not provide the Court may adopt any procedure that it deems, appropriate in the circumstances.
- (2) In the exercise and performance of its powers and functions or in any incidental matter, the Court may act in a manner that it consider expedient in the

circumstances, to achieve the objects of the Act and, or the good ends of justice.

It follows, therefore, for expedience and for achieving good ends of justice in this matter, it will be wise to borrow leaf into *Rules 58 of the Court of Appeal Rules G.N. No. 368 of 2009 as amended from time to time* which allows withdrawal of the application either informally or formally.

Rule 58 (supra) read:


An Applicant may at any time apply to the Court for leave to withdraw the application, whether informally in the course of hearing or formally in writing.

Being guided by the import of the Provisions of *Rule 58(supra)*, it would be proper and advantageous if *Rule 34(1) of the Labour Court Rules (supra)* is amended to cover situations where a party wants to withdraw the application informally.

The amended *Rule 34(1)* would read:

A party who has initiated proceedings and wants to withdraw the matter shall file a notice of withdrawal as soon as possible or apply informally in the course of hearing and the Court shall proceed to mark the matter accordingly, on such terms as to costs or otherwise in accordance with these rules.

In the event, the application is hereby marked withdrawn with no costs. Fourteen (14) days leave to refile is granted to the Applicant. Order accordingly.



Y.J. MLYAMBINA
JUDGE
30/05/2023