

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS APPLICATION NO. 259 OF 2020**

**BETWEEN**

**SAMSON JEREMIAH MAGOTI..... 1<sup>ST</sup> APPLICANT**

**FABIAN NGUYEJE..... 2<sup>ND</sup> APPLICANT**

**AND**

**BANK OF TANZANIA..... RESPONDENT**

**RULING**

Date of Last Order: 09/03/2021

Date of Judgment: 07/05/2021

**A. E. MWIPOPO, J**

The applicants herein namely **SAMSON JEREMIAH MAGOTI** and **FABIAN NGUYEJE** have filed the present application praying for the Court to grant them leave to institute a representative suit for application to review decree of the settlement agreement in Misc. Civil Cause No. 67 of 2002 dated 26<sup>th</sup> February, 2019 before the High Court.

The application was made under rule 44(1) and (2) of the Labour Court Rules, G.N. No 106 of 2017. The application is supported by the Applicants' joint affidavit. The Respondent namely Bank of Tanzania opposed the application by filing counter affidavit of Stanford Mbengane, Respondents' State Attorney.

At the hearing of the application both parties enjoyed representation. The Applicants were represented by Mr. Timothy Kahoho, Personal Representative, while the Respondent was represented by Mr. Stanford Mbengane, and Ms. Vaileth Luhanjo, State Attorneys. Hearing of the application was by way of written submission following the court order.

The Applicant's Representative submitted that the Applicants were among the Applicants in Misc. Application No. 67 of 2002 before the High Court of Tanzania and in Misc. Labour Application No. 86 of 2020 before the High Court Labour Division at Dar Es Salaam. They were not satisfied with the way the Respondent settled Misc. Civil Cause No. 67 of 2002 where they were paid lesser amount than they were claiming. The Applicants alleged that the Respondent settled the matter with them without involving the Applicants' Representative. Thus, they are applying to be granted leave to file review of the respective decree of the Court. The Applicants prayed for the Court to allow this application and grant the leave to file representative suit.

In a very unusual approach, the Respondent's Counsel filed two submission in Court. The first submission is in respect of Preliminary Objection (P.O.) which the Respondent filed notice of the same on 28<sup>th</sup> July, 2020 and the second submission is in opposition to the application. However, since the Respondent failed to appear on the date fixed for hearing of the

respective P.O. on 19<sup>th</sup> October, 2020, the respective P.O. was dismissed and the Court ordered for the hearing to proceed on merits. Thus, I'm not going to consider the Respondent submission on the preliminary objection.

In the Respondent's submission in opposition to the application, the Counsel submitted that the facts in the affidavit in support of the application was declared by Samson Jeremiah Magoti and Fabian Nguyeje but in the *jurat* of the affidavit was signed by 24 persons who did not declare to have knowledge of the facts. For that reason the affidavit is incurable defective as it was held in the case of **D.P. Shapriya & Co. Ltd vs. Bish International B.V. [2002] E.A. 47.**

The Counsel submitted further that the reasons advanced by the Applicant in the submission do not state why the Court should grant leave to file representative suit rather they are stating on how they are dissatisfied by the previous decision of the Court and management of the settlement by the Respondent. There is nothing in the submission and in the affidavit to support the application for representative suit.

In rejoinder, the Applicant's Representative submitted that the Respondent filed submission on the preliminary objection while the same was dismissed by Court. He is of the opinion that the Respondent failed to challenge the Applicants' application. The Applicant's Representative retaliated his prayers in the submission in chief.

From the submissions, the main issue for determination before this court is whether the application has fulfilled the condition for the Court to grant a leave for the Applicants to file a dispute in a representative capacity.

In determination of the main issue, the relevant law providing for representative suit is rule 44(2) of the Labour Court Rules, G.N. No. 106 of 2007. The rule provides as follows, I quote; -

*"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 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, it is an established principle that a person can only act as a representative and initiate proceedings on behalf of others after he or she has obtained leave of the Court. In order for the Court to grant the leave for representative suit the Applicants have to prove that there are numerous persons, the persons have the same interest in the suit, and they have consented to appoint one or more persons to represent them in the intended suit (See. **Abdallah Mohamed Msakandeo and Others vs. City Commission of Dar es salaam and Two Others (1998) TLR 439**).

The Applicants have submitted that they are not satisfied with the Court decision in the Misc. Application No. 67 of 2002 before the High Court of Tanzania at Dar Es Salaam which recorded the settlement agreement between the parties herein and they intend to file application for the review of the respective decree. In rebuttal, the Respondent was of the view that the Applicants failed to show that the Applicants have consented to file representative suit since the persons who declared in the affidavit and those who signed in the jurat are different. Also, the Applicants failed to provide sufficient grounds for the Court to grant leave for representative suit.

Having gone through the Applicants' submission, Notice of Application, Chamber Summons and Applicants' Joint Affidavit there is nothing to show that the Applicants have the same interest in the intended application and they have appointed one or more persons to appear, be heard and defend on their behalf.

The respective application and its accompanied documents is tainted was serious errors. Notice of Application, Chamber Summons and Affidavit shows in the title that there are two Applicants namely Samson Jeremiah Magoti and Fabian Nguyeje. The Affidavit further shows that the Applicants are adults, Christians and residents of Dar Es Salaam who took an oath and stated the facts found in the affidavit. In the 1<sup>st</sup> paragraph of the affidavit the Applicants stated that they were given authority to represent 22 former

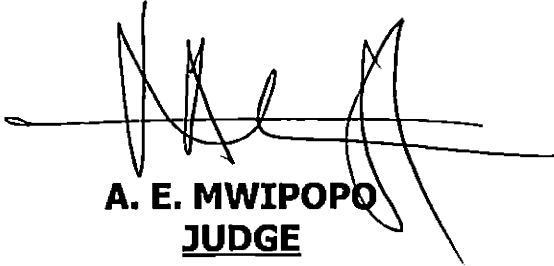
employees of the Respondent. However, there is nothing in the record to show who gave the authority to the Applicants to represent the 22 former employees of the Respondent. In paragraph 10 of the affidavits the Applicants states that the rest of 22 Applicant have appointed them to make appearance on their behalf. But, the application shows that the Applicants herein are only 2 and not 24 as it is stated in paragraph 10 of the affidavit. Thus, there are clear confusion as to the number of the Applicants in this application.

Further, as correctly submitted by the Respondent regarding Applicants' attestation, the *jurat* of attestation is defective as it was signed by 24 persons while there are two deponents in the affidavit as it is shown by the title, introductory part, 1<sup>st</sup> paragraph and verification clause of the respective affidavit. Thus, the affidavit is defective and confusing as to the number of the Applicants. In such circumstance where the affidavit is defective and the number of Applicants is not clear, I find that there is nothing to prove that there was consent between the Applicants to file the representative suit. This is contrary to Rule 44(2) of the Labour Court Rules G.N No. 106 of 2007.

Moreover, as submitted by the Respondent Counsel there is nothing in the Applicants' submission or affidavit which lays down the grounds relied

by the Applicants in their application to be granted leave for the representative suit.

Therefore, I find the application is short of merits. Consequently, the application is hereby dismissed. The parties to take care of their own cost of the suit.



**A. E. MWIPOPO**  
**JUDGE**  
**07/05/2021**