

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

MISC. LABOUR APPLICATION NO 33 OF 2022

(A rising from Labour Dispute No. CMA/ARS/ARS/118/2021)

MASHANGILIO ABITHON CHUSSY1ST APPLICANT

EDSON DISMAS MLOWE.....2ND APPLICANT

CHARLES BARNABAS MKONYI.....3RD APPLICANT

VERSUS

THE TRUSTEES OF TANZANIA NATIONAL PARK.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of last Order:19-9-2022

Date of Ruling:20-10-2022

B.K.PHILLIP,J

This is an application for extension of time for filing an application for revision in respect of the award issued by the Commission for Mediation and Arbitration ("CMA") in Employment Dispute No. CMA/ARS/ARS/118/2021. Upon being served with the application, the learned Sate Attorney Mukama Musalama who appears for the respondents filed a notice of opposition together with the following points of preliminary objections.

- (i) That this application is incompetent and incurably defective for failure to observe mandatory legal procedure set under

Rule 44 (2) of the Labour Court Rules, Government Notice Number 106 of 2007.

- (ii) That the application is incompetent and incurably defective for want of the affidavit of the applicants.
- (iii) That, the application is incompetent and incurably defective for containing defective notice of representation.

This ruling is in respect of the above mentioned points of preliminary objections. When the application was called for hearing of the points of preliminary objection aforementioned , only the learned State Attorney Mukama Musalama entered appearance in Court. The applicants and their personal representative Mr. Leonard David did not enter appearance in Court. Consequently, I ordered the hearing of the aforementioned points of preliminary objection to proceed ex- parte following the prayer made by the learned Mr. Mukama. However, Mr. Mukama abandoned the 3rd point of preliminary objection. Thus, he submitted for the 1st and 2nd points of preliminary objection only.

With regard to the 1st point of preliminary objection, Mr. Mukama argued that this application contravenes Rules 44 (2) of G.N. No. 106 of 2007 which requires that where there are numerous applicants with the same interest, one of them can seek the leave of the Court to file an application on behalf of others as their representative. He contended that this application appears to have been filed by three applicants whereas the 2nd and 3rd respondents' name were strike out by the Arbitrator in the original labour dispute CMA/ARS/BML/159/21/118/21 on 29/7/2021 and their complaints were struck out as well. Furthermore , he submitted that the dispute that was adjudicated at the

CMA was in respect of the 1st applicant. To fortify his argument, he referred this Court to paragraph 5 of affidavit in support of this application. He went on arguing that Mr. Leonard David who deponed the affidavit in support the application stated that he is a representative of all applicants in contravention of Rule 44 (2) of GN. 106 of 2007 because no leave of this Court was sought and obtained by him to represent the applicants.

Moreover, Mr. Mukama contended that no leave of this Court was sought and obtained to include 2nd and 3rd in this application since their names were and complaints were strike out at CMA. To support his position, he cited the cases of **Emmanuel Petro and 39 others vs Tanganyika Wilderness Camps Ltd Revision Application No. 58 of 2021 and Jackson Mungure and 18 others and Tanganyika Wilderness Camps Ltd (both unreported)**. He maintained that Mr. Leonard was required to obtain leave of this Court to appear to represent the applicants.

With regard to the 2nd point of preliminary objection, Mr. Mukama submitted that Mr. Leonard swore the affidavit in support of this application without seeking and obtaining leave of this Court to represent the applicants. To buttress his argument, he cited the case of **Mohamed Abdallah Nuru and three others vs Hamad Masauni and two others, Civil Appeal No.436/16 of 2022** (unreported).

Lastly, he urged this Court to uphold the points of preliminary objections and dismiss this application this application

I have dispassionately analysed the arguments made by Mr. Mukama as well as read the provisions of Rule 44 (2) of Labour Courts Rules GN.

106 of 2007. I will deal with both points of preliminary objection conjointly since the arguments raised by Mr. Mukama in support of the same are intertwined. I wish to state on the onset that, with due respect to Mr. Mukama, this application is not a representative suit as envisaged in the provisions of Rule 44 (2) of Labour Courts Rules GN. 106 of 2007 since none of the applicants has indicated that he is a representative of any other person/applicant. For clarity and ease of reference, let me reproduce here under the provisions of Rule 44 (2) of Labour Court Rules, GN. 106 of 2007 ;

*"Where a numerous person are **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, a notice of institution of the suit to all persons either by personal services 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 may direct".*

(Emphasis is added)

From the above quoted provision of the law, it is clear that for suit/application to be termed as "a representative suit" one person who is allowed to represent them defends the suit on behalf of others. However, as I have alluded herein above in this application none of the applicant has indicated that he is representing the others. Again, with due respect to Mr. Mukama, his contention that Mr. Leonard, the applicants' personal representative was supposed to obtain leave of this Court to represent the applicants is misconceived because Mr. Leonard

is a not a party in this application and has no any interest in this application. He is just a personal representative. His appearance in this application is made pursuant to the Section 56 of the Labour Institution Act (Cap 300 R.E 2019) which provides as follows;

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 employers' organisation*
- (b) **a personal representative of the party's own choice** or*
- (c) an advocate.*

(Emphasis added)

Thus, reading the above quoted provision of the law, it is obvious that Mr. Leonard was not required to apply for leave to represent the applicants in this application. Mr. Leonard's role in this application is like that of an advocate though he is not advocate.

In addition to the above and with due respect to Mr. Mukama, his arguments on Mr. Leonard's capacity to represent the applicants are misconceived because Mr. Leonard swore the affidavit in support of this application as a personal representative of the applicants pursuant to Section 56 of the Labour Institution Act (Cap 300 R.E 2019). It is on record that Mr. Leonard filed in Court a notice of representation pursuant to Section 56 of the Labour Institution Act (Cap 300 R.E 2019).

From the foregoing it is the finding of this Court that the cases cited by Mr. Mukama are distinguishable from the facts of this case because in those cases the applicants were the ones who purported to represent their fellow workers without seeking and obtaining the leave to do so. I

do not need to be repetitive, I have already alluded earlier in this Ruling that in this application none of applicants is appearing as a representative of others in terms of Rule 44 (2) of Labour Court Rules, GN. 106 of 2007 .

I have also taken into consideration Mr. Mukama's concern that the names of the 2nd and 3rd applicant were removed from the case at the CMA and their complaints were struck out. In my considered opinion, that issue cannot be dealt with at this stage and in fact does not fit in any of points of preliminary objections raised and argued by Mr. Mukama as it has nothing to do with filing of a representative suit.

In the upshot, the points of preliminary objection are hereby overruled.

Dated this 20th day of October 2022




B.K.PHILLIP

JUDGE