

TANZANIA / JUDGMENT

victoria john mwakalasya and another vs first national bank tanzania ltd 2021 tzhcld 340 18 august 2021

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18 August 2021

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION NO. 304
OF 2020 BETWEEN VICTORIA JOHN MWAKALASYA AND ANOTHER..... APPLICANTS VERSUS
FIRST NATIONAL BANK TANZANIA LIMITED..... RESPONDENT

RULING

Date of last Order:03/06/2021 Date of Ruling: 18/08/2021 Z.G.Muruke, J. Victoria John Mwakalasya and another, before their termination from employment on 29th May, 2019 were employees of the First National Bank Tanzania Limited in the capacity of Teller coordinator and Branch Administrative Manager respectively. Being dissatisfied, with termination, they filed dispute at CMA, in which their claims were dismissed, thus filed present revision. Hearing was conducted by way of written submission both parties complied. In the course of composing Judgment, I realized that, revision has been preferred by Victoria John Mwakalasya and another. Through proceedings there is nowhere shown that Victoria John Makalasya has the authority to represent another (Richard Katuli). The title of the case is Victoria John Mwakalasya and another. There is no any leave of The importance of requirement to obtain leave, by a party who act on others, was once illustrated by the Court of Appeal of Tanzania, in the case of Hamisi Kaka and 78 others Vs. Tanzania Railways Corporation and Kunduchi Leisure and Farming Co. Ltd, Civil Application No. 68/2008, CAT at Dar es Salaam [unreported] Bwana, JA, (as he then was) held that:-"....a part whom leave is not sought and obtain may refuse to be bound by a decree passed by the court against him..." As records shows, there is no leave attached to the application for revision. The affidavit and submissions refers as applicants meaning that it is Victoria and another (Richard Katuli). Thus present revision is incompetent because Victoria John Mwakalasya has no power to represent another Richard Katuli. Application for revision is incompetent, thus struck out. For interest of justice and in terms of Rule 55(1) and (2) applicants are grant 60 days leave to file competent application for revision. Z.G. JUDGE 18/08/2021 3 representative suit filed by the so called another to be represented by Victoria John Mwakalasya. In another words Victoria John Mwakalasya has no power to represent her colleague. It is a clearly principle of law that , when there are numerous persons having same interest in a suit, and one has to appear on behalf of others, he must seek leave of the court for the same. % ■ It has been prescribed under Rule 44(2)

of the Labour Court Rules, Government Notice No. 106/2007 that:- R.44(2) " where there are numerous person having the same interest in the suit, one or more of such person may, with leave of ■ the court appear and be heard or defend in such dispute, on Ik behalf of or for the benefit of all persons so interested, except that the court shall in such case give at the complainant expenses notice of the institution of the suit to all such person either by personal service or where it is from the number of person or any other service reasonably practicable, by public advertisement or otherwise as the court in each case may direct..." Similar position was stated in the case of Christopher Gasper and Richard Rukizangabo and 437 Others Vs. Tanzania Ports Authority Misc. Application No. 281/2013 (unreported) where it was held inter alia that:- 'Leave is mandatory, employee who want to appear in a representative suit in CMA or labour Court should seek and obtain leave' 2

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