

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA

MISC. LABOUR APPLICATION NO. 03 OF 2020.

*(From the Decision of Registrar of Organizations, Dated at
08/02/2020).*

BETWEEN

CHAMA CHA KUTETEA HAKI NA MASLAHI

YA WALIMU TANZANIA (CHAKAMWATA)APPLICANT

VERSUS

THE REGISTRAR OF ORGANIZATIONS.....RESPONDENT

RULING

17/09 & 14/12/2020.

UTAMWA, J:

This ruling is on a preliminary objection (PO) raised by the respondent's counsel, Mr. Ayoub Sanga, learned State Attorney against the application at hand. The applicant's counsel, Mr. Luca Ngogo did not concede to the PO.

The applicant, CHAMA CHA KUTETEA HAKI NA MASLAHI YA WALIMU TANZANIA (CHAKAMWATA) is seeking for an extension of time to appeal against the decision of the respondent, the REGISTRAR OF ORGANIZATIONS dated 8/2/2020. The decision canceled the registration of the applicant from the register and ordered for submission of the registration certificate and other documents within 14 days from the date of the decision.

The application is preferred under Rules 24 (1), (2) (a-f), (3) (a-d), 25 (1), (2) (a & b), (3) 55 (1), (2) and 56 (1) and 56 (1) and (3) of the Labour Court Rules, 2007, GN. No. 106 of 2007. It is supported by an affidavit of the General Secretary and Accounting Officer of the applicant one Mr. Meshack Lupakisyo Kapange. The respondent objected the application through a counter affidavit sworn by the Principal Officer of the respondent one Pendo Z. Berege. The respondent also lodged a notice of PO as shown above.

The PO was based on the following three limbs:

- 1) That, the applicant has no legal capacity to perform any legal function including instituting this application.
- 2) That, the application is untenable in law for want of the applicant's *locus standi*.

3) That, the application is incurably defective for improper citing the name of this court.

The PO was heard by way of written submissions. Submitting in support of the PO, the learned State Attorney argued the first and second limbs cumulatively. He argued that, the applicant in this application has no legal capacity to perform any legal function thus, the application is untenable for want of *locus standi*. He also contended that the applicant was registered under the Employment and Labour Relations Act, Cap. 366 R.E 2019, hereinafter referred to as the ELRA. However, for the applicant to have capacity to sue or to be sued had to register a board of trustees under the Trustees Incorporation Act, Cap. 318 R.E 2019. He further argued that, the requirement for registration of the board of trustees of the applicant is found under the provisions of her constitution, specifically under clauses 25 to 30 of the Constitution of the applicant (Katiba ya CHAKAMWATA).

Moreover, the learned State Attorney argued that, under the provision of section 49 of the ELRA, there are two categories of the trade union of employees. The first category becomes a legal person after obtaining the certificate of registration and the second category is like the applicant whose legal personality comes after registering a board of trustees which is capable of suing and being sued. He added that, since the applicant had not registered the board of trustees in order to become a legal person, she cannot take any action including instituting this application. To substantiate his contentions he cited the decision of the Court of Appeal of Tanzania (CAT) in the case of **the Registered**

Trustees of Chama cha Mapinduzi v. Mohamed Ibrahim Versi and Sons & Another, Civil Appeal No. 16 of 2008, CAT at Zanzibar (unreported). He also cited the decisions of this court in the cases **Kanisa la Anglikana Ujiji v. Abel Samson Heguye, Lab. Revision No. 5 of 2009, HCLD at Kigoma** (unreported) and **Registered Trustees of the Catholic Diocese of Arusha v. The Board of Trustees of Simanjiro Pastoral Education Trust, Civil case No. 3 of 1998, HCT at Arusha** (unreported). The learned State Attorney thus, prayed for this court to strike out the application for want of *locus standi*.

Regarding the third limb of the PO, the learned State Attorney for the respondent argued that, the application is incompetent for wrong citation of this court's name. To him, the application, i.e chamber summons and affidavit bearing a title "IN THE HIGH COURT OF TANZANIA" contravened Article 108 (1) of the Constitution of United Republic of Tanzania of 1977 as amended from time to time. He also contended that, the same contravened the provision of section 4 of the Interpretation of Laws Act, Cap. 1 R.E 2019 and Rule 8 (2) of the High Court Registry Rules, 2005 (G.N 96 of 2005). All these provisions of law require this court to be named/ cited as the "THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA" and not the way the applicant cited it. The learned State Attorney for the respondent thus, urged this court to strike out the application as it did in the case of **The Registered Trustees Archdiocese of Dar es Salaam v. Adelmarsi Kamili Mosha, Misc. Land Application No. 32 of 2019** (unreported).

On his party, concerning the first and second limbs of the PO, the applicants' counsel basically challenged it for not being a fit PO in law since it was not based on pure point of law. That, the referred constitution of the applicant is not a law and was not pleaded or annexed in this application. He pegged this point on the famous case of **Mukisa Biscuits Manufacturing Company Limited v. West End Distributors [1969] E. A. 701**. He further argued that, the applicant is a trade union which after being registered becomes a legal person capable of suing and being sued. He supported his argument with the provision of section 49 (1) of the ELRA and the decision of the CAT in the case of **Trade Union Congress of Tanzania (TUCTA) v. Engineering Systems Consultant Ltd and Others, Civil Appeal No. 51 of 2016 at Dar es Salaam** (unreported).

Moreover, the applicant's counsel contended that, this application intends to seek time to appeal against the decision of the Registrar of Organizations under the labour laws. That, these labour laws under section 57 of the ELRA permits any person to appeal on any decision made by the respondent.

Concerning the third limb, the applicant's counsel argued that, labour disputes are governed by its court as per the Labour Institutions Act, No. 7 of 2004 and the Labour courts Rules, GN. No 106 of 2007. According to him the said laws define the labour court to mean the Labour Division of the High Court which is distinct from the High Court as per the High Court Registry Rules, GN. No. 96 of 2005. He also distinguished the precedent

cited by the learned State Attorney for the respondent, i. e. the **Adelmasi Case** (supra). He argued that, the same was about the District Registry of the High Court. He thus, prayed for this court to overrule the PO for demerits.

In his rejoinder submissions, the learned State Attorney for the respondent basically reiterated the content of his submissions in chief. He however, challenged the argument by the applicant's counsel that, the present PO does not qualify with the conditions laid down in the **Mukisa Biscuit case** (supra). He contended that, the PO is fit because the constitution of the applicant is part of the law since it is made under section 47 (1) (t) of the ELRA and it did not conflict with the requirements prescribed under section 47 (2) of the ELRA. He therefore insisted his prayers as hinted above.

I have considered the arguments of the parties, the record and the law. I will now test the first and second limbs of the PO cumulatively as argued by the parties. In my view, the issue regarding these limbs is *whether or not the applicant has a locus standi in the matter at hand*.

It should be noted that, in law only a natural person or a juristic person can sue or be sued. As rightly submitted by the respondent's counsel, legal personality is acquired through the operation of law. This includes being so declared or registered through various legislations like the Companies Act, Cap. 212, the Trustees Incorporation Act, the ELRA etc. In labour matters like the one at hand, the requirements for registration are provided for under sections 46 and 47 of the ELRA. Also

section 48 (3) of the ELRA requires the registrar to issue certificate of registration after a trade union has complied with the requirements under the provisions of sections 46 and 47. The applicant in the matter at hand was issued with certificate of registration which in fact was issued as per section 48 of the ELRA. This section (i.e section 48 of the ELRA) provides for the processes which an organization should complete before the registrar includes it in the register. In that course, it is presumed that, the applicant was issued with the certificate of registration after completing all requirements. Besides, after registering the organization, it becomes a body corporate with capacity to sue and be sued; see section 49 (1) (b) (i) of the ELRA.

In the circumstance of this PO and in regard of the submissions by the learned State Attorney for the respondent, I also went through the Act i.e. the ELRA to find the other category that was envisaged by the learned State Attorney. The said category as contended by State attorney requires the registered organization to go further to incorporate a board of trustees under the Cap. 318. Unfortunately, I did not find any provision to that effect. Equally the learned State Attorney did not cite any law, than contending that, the organization is bound by its constitution since the constitution of an organization is the requirement under section 47 of the ELRA. Indeed, constitution of an organization is the requirement of the law. However, it is my opinion that, an organization like the applicant cannot obtain legal personality merely because its constitution to govern some internal arrangements declares some requirement. If that has been the case, the law (which provides for the registration of the organization) could

have explicitly stated so. In that case even the certificate for registration could have been issued under that option. Nevertheless, the applicant was given the certificate of registration without option.

Moreover, it is my view that, since the application intends to obtain extension of time to challenge the decision of the respondent, and since the respondent's decision was directed to the applicant, it is my further opinion that, denying this application on the bases that the applicant has no *locus standi* cannot be just. This is because, the decision of the respondent was directed to the applicant. It is the applicant thus, who was affected by the decision hence she has capacity to challenge by way of appeal in case he obtains the grant of extension of time. For the above reasons I answer the issue positively that, the applicant in the matter has *locus standi*. These limbs are thus, overruled.

In regard with the third limb, in my view this should not detain me. This is because, as rightly argued by the applican'st counsel that, labour matters are governed by their own laws. It is also a law that, where a specific law is enacted to govern specific matters, which said specific law takes precedence over other general laws (if any). It is thus, clear that, the legislative purpose in enacting Act No. 7 of 2004 was to make a specific law to establish the institutions to deal with labour matters. It has been legally underscored that, the legislature inserts every part of statutory provisions for a purpose and the legislative intention is that, every part of the statute should have effect; see the observation by the CAT in **Republic v. Dodoli Kapufi and Another, Criminal Revision No. 1 of 2008 (C/F No. 2 of 2008), CAT at Mbeya** (unreported). This was a

criminal matter yes, but the principle it propounded apply *mutatis mutandis* in construing statutory provisions related to civil matters like the one under consideration.

Furthermore, in regard with this limb, I visited the chamber summons and the affidavit challenged by the learned State Attorney to see the title. I found them appearing as follows:

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JUDICIARY
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LABOUR DIVISION
AT MBEYA"

In the above title, I like to confess that, I do not see any problem with how the applicant wrongly titled the name of this court. This is because the title starts with the clause "THE UNITED REPUBLIC OF TANZANIA" this suffices for one to understand that, the High Court below that clause is of the United Republic of Tanzania. In that view, I see this limb of PO demerit. I also overrule it.

Owing to the reasons shown above, I overrule the entire PO. I consequently order that, this application is competent and it should thus, proceed to the hearing on merits. It is so ordered.



J.H.K. UTAMWA

JUDGE

14/12/2020.

15/12/2020.

CORAM; Hon. N. Mwakatobe, DR.

Appellant: present Mr. Abinel Zephania, advocate.

Respondent: absent.

BC; Mr. Patrick, RMA.

Court: ruling is delivered this 15th December, 2020 in the presence of Mr. Abinel Zephania, advocate for the applicant and in the absence of the respondent.



N. MWAKATOBÉ
DEPUTY REGISTRAR
15/12/2020.