

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

LABOUR APPEAL NO. 01 OF 2021.

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

BETWEEN

**CHAMA CHA KUTETEA HAKI NA MASLAHI
YA WALIMU TANZANIA (CHAKAMWATA)APPELLANT
VERSUS**

THE REGISTRAR OF ORGANIZATIONS.....RESPONDENT

RULING

Date of last Order: 17.02.2022

Date of Ruling: 18.03.2022

Ebrahim, J.

CHAMA CHA KUTETEA HAKI NA MASLAHI YA WALIMU TANZANIA (CHAKAMWATA) filed the appeal challenging the decision of the REGISTRAR OF ORGANIZATIONS dated 8/2/2020. The decision cancelled the registration of the appellant from the register of organisations and ordered for submission of the certificate of

registration and other documents within 14 days from the date of the decision.

The respondent through her counsel Mr. Francis Rogers, learned Senior State Attorney resisted the appeal. He also raised a preliminary objection (PO) against it. The PO was on two limbs:

- 1) The appellant has no *locus standi* to institute this appeal against the respondent.
- 2) The appeal is incompetent and bad in law for contravening **section 25(3) (4) of the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020.**

The Preliminary Objection was heard by way of written submissions.

Submitting in support of the Preliminary Objection, Mr. Rogers argued the first limb that, the appellant derive her capacity to sue and/or be sued from section 49 (1) and (5) of the Employment and Labour Relations Act, Cap. 366 R.E 2019. According to him the capacity is acquired after being issued with Certificate of Registration. However, in this matter the appellant has lost such

capacity since the respondent had cancelled the registration of the appellant and the certificate had been called to be returned to the respondent. Thus, after calling for the return of the certificate the appellant seized to have legal capacity hence no *locus standi*, Mr. Rogers argued.

Regarding the second limb of the PO, Mr. Rogers argued that the appellant did not abide to the Government Proceedings Act, Cap. 5 R.E 2019 as amended by section 25(3) of Written Laws (Miscellaneous Amendment) Act, No. 1 of 2020 which requires civil proceedings against the government to be instituted at the High Court and the Attorney General be joined as a party. He submitted that the appellant instituted the present appeal against the respondent (the government department) but, the Attorney General was not joined. The omission therefore, renders the appeal incompetent. In that regard Mr. Rogers urged this court to strike out the appeal with costs.

In response, Mr. Ngogo for the appellant submitted regarding the first limb of the PO that the issue of *locus standi* had been raised by the respondent in Misc. Labour Application No. 03 of 2020 before

this court and it was decided that the appellant has capacity, she cannot thus, raise the same in the present appeal.

Mr. Ngogo further argued that the fact that the appellant's name was removed from the register of organisations does not take away her legal capacity. This is because, the same respondent's decision is the subject of the instant appeal.

As to the second limb of the PO. Mr. Ngogo argued that the said law i.e The Government Proceedings Act with its amendments does not apply in the present matter. This is because, labour appeal is not a civil proceeding referred by the law. He further argued that labour appeal is governed by the extinct law i.e the Employment and Labour Relations Act, Cap. 366 R.E 2019 and the Labour Institutions Act, Cap. 300 R.E 2019. According to him, since labour matters are governed by their own laws, those law takes precedence over all other laws including the Government Proceedings Act. To substantiate his argument that labour laws take precedence over all other laws he cited the case of **Attorney General v. Maria Mselem**, Labour Revision No. 270 of 2008.

Mr. Ngogo also submitted that civil proceedings referred by the Government Proceedings Act only covers civil wrong and suit committed by the government or its agents. It does not include labour appeals like the one at hand. He thus, prayed for this court to overrule the PO and hear the appeal on merits.

In his rejoinder submissions, Mr. Rogers for the respondent raised another issue that the appellant's counsel is unqualified person thus, the appeal is incompetent as the documents filed in this court in regard with the appeal were drawn by unqualified person contrary to section 39(1) (b) and 41 of the Advocates' Act Cap. 341 R.E 2019. In supporting the effects of the documents drawn by the unqualified person Mr. Rogers cited the cases of **Werandumi Benjamin Ulomi v. Zainabu Rashid and Another**, Misc. Civil Application No. 10 of 2019 HCT (unreported) and **Edson Oswald Mbogoro v. Dr. Emmanuel John Nchimbi and Another**, Civil Appeal No. 140 of 2006 CAT (unreported). He thus, insisted the prayer that the appeal be struck out for being incompetent.

I have keenly considered the submissions by the counsel for both parties and the law. Regarding the first limb of the Preliminary

Objection, it is my opinion that this court should not labour much. This is due to the fact that, the appellant is a legal person having capacity to sue and/or be sued as per **section 49 (1) and (5) of the ELRA**. It is also true as it was argued by Mr. Ngogo for the appellant that this appeal is challenging the decision of the respondent of removing the appellant's name from the register of organisations. It is thus, my concerted view that the mere removal of the appellant's name and order of the return of the certificate of registration does not extinguish the appellant's capacity to institute the instant appeal.

If I may add, for the sake of clarifications, the decision of the respondent currently only bars the appellant from exercising her powers such as mobilizing teachers, collecting fees, defending its members against the employer etc. The first limb of the PO has no merit. It is thus, overruled.

As to the second limb of the PO, counsels for both sides are not disputing that the respondent is the Government Department. There are thus, two issues for determination in this limb of the PO. These are:

- i) Whether or not the instant appeal is one of the civil suits/proceedings referred under the Government Proceedings Act.
- ii) If the answer in (i) is in affirmative then it is whether or not there should be the joining of the Attorney General.

Starting with the first issue, the Government Proceedings Act does not specifically provide for the meaning of civil suit/proceeding. It only provides for what encompasses civil proceedings. It Provides under section 2 that:

“ "civil proceedings" include proceedings in the High Court or a magistrate's court for the recovery of fines or penalties;"

However, the Court of Appeal of Tanzania (CAT) in **the Honourable Attorney General v. Reverend Christopher Mtikila**, Civil Appeal No. 20 of 2007 defined 'suits' to mean:

"Proceedings of a civil nature in a court of law involving two or more parties on a dispute or claim which needs to be adjudicated upon, to determine or declare the rights of the disputing parties."

Also, the CAT in the case of **Tanzania Motors Services Ltd and Another v. Mehar Singh t/a Thaker Singh**, Civil Appeal No. 115 of 2005 at Dodoma (unreported) observed that the word 'suit' is a word of comprehensive import. While quoting the guidance from the **Law Lexicon, The Encyclopaedic & Commercial Dictionary, 2002** (Reprint) at page 1831 it stated:

"The term "suit" is a very comprehensive one and is said to apply to **any proceeding in a Court of Justice by which an individual pursues a remedy which the law affords him**. The modes of proceedings may be various; but if the right is litigated between the parties in the Court of Justice the Proceeding in(sic) is a suit".
(emphasis added)

Looking at the definition by the Court of Appeal of Tanzania which was arrived after making the analysis from other sources which defined the term suit; it is obvious that the contention by Mr. Ngogo that labour appeal is not among of the civil suits referred by the Government Proceedings Act does not hold water. This is because, labour appeal as it was instituted by the appellant is a dispute which needs to be adjudicated upon, and it needs this court to determine

or declare the rights of the disputing parties. It is therefore my view that, labour appeal squarely fits into the meaning of a civil suit.

Having resolved the first issue in affirmative, I turn to the second issue as posed above. In that regard Mr. Ngogo was of the view that labour appeals like one at hand are governed by the distinct law. Thus, the Government Proceedings Act does not apply and the Attorney General is not supposed to be joined as a party to the proceedings. With due respect, Counsel for the Applicant has misconstrued the law. This is due to the fact that neither the labour laws nor the Government Proceedings Act provides that labour appeals are excluded from the matters governed by the Government Proceedings Act. My view is in line with **section 10 of the Government Proceedings Act** which requires civil proceedings against the government to be instituted against the Attorney General unless the law provides otherwise or the Minister by the order published in the Gazette directs otherwise. For quick reference, the section provides as follows:

“Subject to the provisions of any other written law, civil proceedings by or against the Government **shall be instituted by or against the Attorney-General:**

Provided that, the Minister may, by order published in the Gazette, direct that any particular civil proceedings or class of civil proceedings be instituted by any officer designated in the order instead of by the Attorney-General.” (Emphasis is added)

Again, the law through the Written Laws (Miscellaneous Amendment) Act, No.1 of 2020 makes mandatory to join the Attorney General in the civil proceedings against the government, ministry, government department, local government authority, executive agency, public corporation, parastatal organisation or public company; see **subsection (4) of section 25 Act No. 1 of 2020.** The law also provides that, non-joinder of the Attorney General vitiates the proceedings of the suit.

This means that if there is no specific provision of the law or the order by the Minister; the joining of the Attorney General is mandatory in any civil proceeding. Counsel for the appellant did not cite any provision from the labour laws which gives different directions as clearly provided by Cap. 5. It is thus, my opinion that

since there is no order or specific provision which extinguishes labour proceedings from joining the Attorney General this court cannot safely conclude that labour appeal like the one at hand does not need the joining of the Attorney General as it is mandatorily required.

Having so found, I uphold the second limb of the PO. Consequently, I hereby strike out the appeal for being incompetent. Being a labour matter, I give no order as to costs.

Ordered accordingly.



Mbeya

18.03.2022



R.A. Ebrahim
JUDGE