THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT – LABOUR DIVISION

(MUSOMA SUB REGISTRY)

AT MUSOMA

LABOUR REVISION No. 14 OF 2021

(Arising from the Commission for Mediation and Arbitration in Labour Complaint No. CMA/MUS/226/2020 of 2020)

G4S SECURE SOLUTIONS (T) LTD ..... **APPLICANT**

Versus

DAMAS RAMADHAN & 8 OTHERS ..... **RESPONDENTS**

RULING

16.06.2023 & 30.06.2023

Mtulya, J.:

The **Court of Appeal of Tanzania** (the Court) was invited on 7th March 2022 to interpret the provision of section 38 (1) of the **Employment and Labour Relations Act** [Cap. 366 R.E. 2019] (the Labour Act) in the precedent of **Haider Mwinyimvua & 99 Others v. Deposit Insurance Board (Liquidator of the FBME Bank Ltd & Another**, Civil Appeal No. 250 of 2018. Before resolving the dispute on the interpretation of the section, the Court thought that the matter was a narrow, but crucial one. The Court finally, at page 12 of the judgment had resolved that:

> *[section 38 (1) of the Labour Act] applies to any termination for operational requirements, which in other words, is referred to as retrenchment. While section 4 [of the Labour Act] defines operational*

requirement so expansively to mean, requirements based on the economic, technological, structural or similar needs of the employer, no definition is given of what the corresponding term retrenchment means. Nevertheless, by examining the contents of sub section 1 quite closely, it is possible to arrive at what the legislature had in mind by the term retrenchment.

On 16th June 2023, two officers of this court, **Mr. Mosses Kiondo** and **Mr. Paschal Joseph**, appeared and supported the move taken by the Court. However, the dual learned minds were in contest for two issues, namely: first, *whether the definition displayed by the Court applies in normal retrenchment than the liquidation of companies*; and second, *whether there is real or disguised retrenchment in the present labour dispute*.

According to Mr. Kiondo, the precedent of the Court applies to all species of companies which end their activities by operation of the law based on the economic, technological, structural or similar needs of the employer. In support of the move, Mr. Kiondo cited decision of the Court in **Terevael M. Ngalawi v. Kampuni ya Simu (T) TTCL**, Civil Appeal No. 158 of 2017.

In his opinion, in the present dispute, the employer faced the pigeon hole of the operation of the law in contractual obligation that necessitated retrenchment of his employees. In order to substantiate his submission, Mr. Kiondo submitted that in the present revision, the record shows that the applicant had entered into a fixed term contract with the respondents, started at different times for each respondent.

However, more than eight hundred (800) employees, including the respondents had depended on a contract between the applicant and **Barrick North Mara Gold Mine Ltd** (Barrick). According to Mr. Kiondo, on 9th June 2020, the applicant had received a notice from Barrick intending to end the contract by 31st July 2020 hence from the ending date, the applicant noted that he could not be able to accommodate in contract for employment of all his employees related to the contract with Barrick activities.

Following the notice of termination of the contract between the applicant and Barrick, according to Mr. Kiondo, the applicant had fairly followed all necessary steps regulating entrenchment as enacted under sections 37 (2) (b) & 38 of the Labour Act and Rule 23 of the **Employment and Labour Relations (Code Good Practice) Rules of 2007 GN. No. 42 of 2007** (the Rules).

In order to justify the enacted procedures were complied, Mr. Kiondo contended that: first, on 18th June 2020, the applicant had informed all employees on the retrenchment exercise and its associated reasons by issuing a notice; second, all employees had received the notice and accepted the same by signature and thumb print; third, on 19th June 2020, a retrenchment consultation meeting was conducted and all employees participated; fourth, following the consultation meeting, all employees entered into a retrenchment agreement with the applicant; fifth, after the agreement, all employees were given notice of termination displaying ending date of contract being 29th July 2020; and finally, the applicant had issued a retrenchment letter.

In the opinion of Mr. Kiondo, the applicant was so kind and generous to the respondents and other employees to the extent of inviting and engaging them again for one (1) extra month period when Barrick had failed to acquire new vendor for security services. To signify their acceptance and good labour relation between the applicant and his employees, Mr. Kiondo submitted that the employees had signed a special task letter of service and were issued with special task contract, which ended on 31st August 2020. Finally, Mr. Kiondo submitted that all

employees were paid their earnings as per exhibit D. 10, without any contests or complaints as per law in section 38 (2) of the Labour Act.

Mr. Kiondo thinks that the law was followed as exhibited on the record by D.1 to D.10 registered in the **Commissions for Mediation and Arbitration** (the Commission) during hearing of the **Labour Complaint No. CMA/MUS/226/2020 of 2020** (the dispute) hence the respondents could be estopped from denying their own statements agreed during the retrenchment process. In substantiating his submission, Mr. Kiondo had cited precedent of the Court in **Terevael M. Ngalawi v. Kampuni ya Simu (T) TTCL** (supra) and this court in **Standard Charted Bank Ltd v. Justin Tineishemo**, Application for Revision No. 184 of 2022.

Replying the submission, Mr. Joseph contended that the retrenchment for the respondents was not real, but disguised by the notice from Barrick to the applicant. According to Mr. Joseph, the notice was used to camouflage a bad intention of the applicant to retrench the respondents as the notice was a reminder of the contract duly signed by the applicant and Barrick on 5th April 2016 to end on 31st July 2020. In the opinion of Mr. Joseph, the notification letter from the applicant to the

respondents to terminate their contract did not link with the contract signed 5th April 2016 between the applicant and Barrick.

According to Mr. Joseph, the law allows retrenchment, but the same should be valid and fair, as per section 37 (2) of the Labour Act and employer must produce good reasons in doing so per sections 38 & 39 of the Labour Act and Rule 23 (4) of the Rules. In his opinion, the consultation meetings conducted by the applicant and respondents did not produce any minutes and denied the respondents legal representation.

Regarding the issue of estoppel against the respondents, Mr. Joseph submitted that estoppel cannot apply against the law in section 38 of the Labour Act and Rule 23 of the Rules. Finally, Mr. Joseph submitted that the cited precedents in **Terevael M. Ngalawi v. Kampuni ya Simu (T) TTCL** (supra) and this court in **Standard Charted Bank Ltd v. Justin Tineishemo** (supra) cannot apply in the disguised retrenchment.

Responding to the interpretation of section 38 (1) of the Labour Act in the precedent of **Haider Mwinyimvua & 99 Others v. Deposit Insurance Board (Liquidator of the FBME Bank Ltd & Another** (supra), Mr. Joseph contended that the interpretation was specific to the circumstances of liquidation of the company cited in the case, and cannot be invited in all categories

contracts that end their courses like in the present dispute. In his opinion, Mr. Joseph thinks that the appellant had several available options in other sites of services that could have been used to accommodate the respondents by transferring them to those sites than retrenching them from employment. In support of the idea, Mr. Joseph cited the precedent in **Sijaona Moshi & Twenty-Eight Others v. Double Tree By Hilion & Golden Sands Services Apartment Limited,** Revision No. 540 of 2019.

In a brief rejoinder, Mr. Kiondo thought that in the present revision the record shows that the retrenchment is not disguised as there were prior notices to all employees to avoid surprises on their part and in any case, there were more than eight hundred (800) security guards with high salaries that could not be transferred to other applicant's sites of service. In the opinion of Mr. Kiondo, there in direct nexus between the contract of the Barrick, the applicant and respondents as is displayed at second paragraph of the contract between the applicant and respondents in exhibit D.2. Finally, Mr. Kiondo submitted that all necessary legal steps were followed and complied in retrenching the respondents and they did not protest at any stage of the retrenchment as displayed in exhibits D.1 to D.10.

Replying on the precedent in **Sijaona Moshi & Twenty-Eight Others v. Double Tree By Hilion & Golden Sands Services Apartment Limited** (supra), Mr. Kiondo submitted that the case is distinguished with the present scenario, as in the indicated precedent the applicant had failed to produce evidence of economic hardship, whereas in the present case the record in exhibits D.1 to D.10 is vivid on the evidence and process of retrenchment.

This court is empowered under the provisions of section 91 (1) (a) & (2) (a), (b), and 94 (1) (i) of the **Labour Institutions Act [Act no. 7 of 2004]** (the Labour Institution Act) and Rule 24 (1) & (2) and 28 (1) & (2) of the **Labour Court Rules, 2007 [GN. No. 106 of 2007]** (the Labour Court Rules) to revise proceedings and awards issued by the Commission in various labour disputes.

The record in the present revision shows that the applicant on 5th April 2016 had entered into service agreement with Barrick as exhibited in D.2. On 9th June 2020, a month or so before expiry of the service agreement, Barrick drafted a letter to the applicant, and its second paragraph reads:

> *The Company [Barrick] hereby gives the Contractor [the applicant] notice that the Contractor's appointment pursuant to the Agreement at the*

North Mara Gold Mine will terminate on 31st July 2020. For avoidance of doubt, the Contractor will not be required to provide the Services at the North Mara Gold Mine beyond the termination date.

As per this paragraph, the contract between the applicant and Barrick was expected to end on 31st July 2020. The record shows further that, after the service agreement of 5th April 2016 between the applicant and Barrick, the applicant had moved in different dates to employ several employees for the indicated services, including the present respondents.

As per exhibit D.2, the agreement between Barrick and the applicant suggested a possibility of renewal save upon agreement of both parties, or else termination upon notice. In this case, termination notice was issued by Barrick to the applicant and the applicant had communicated the same to the employees, save for the ninth respondent, via exhibit D.3 on 18th June 2020. Exhibit D.3 was titled: **Notice of Intention to Retrench G4S Employee at Barrick North Mara** (the notice of retrenchment), which in part reads as follows:

As an employee of our company...under fixed term contract...entered between you and our company, basing on our contract to provide security services

between our company and Barrick North Mara...that we have received a notice from Barrick North Mara that our tender to provide security services to Barrick North Mara was unsuccessful, and that the existing contract will terminate on 31st July 2020...the Management has found it prudent to involve you before the implementation of this process, which shall unavoidably affect your position as an employee.

Following the notice of retrenchment, the applicant had invited all affected employees, including the respondents save for the ninth, in a consultation meeting with the management as exhibited in D.4, titled: **Invitation to Consultation Meeting with G4S Management to Retrench G4S Employees at North Mara Barrick Gold Mine** (the consultation notice), which in brief reads as:

...we have received a notice from our Customer, Barrick North Mara that our tender to provide security services to Barrick North Mara was unsuccessful and that the existing contract to provide security services to the said company will terminate on 31st July 2020...following loss of the

tender and contract, in which our employees' contracts were based, we are operationally obligated to start consultation meetings with all related parties to ensure a smooth transition process.

The meeting was scheduled and held on 23rd June 2020 at G4S offices at Mwanza Region with three (3) main agenda, namely: first, joint problem-solving exercise on the intended retrenchment; second, timing of the retrenchment; and finally, employees' benefits. The resolutions and settlements of the agenda was signed in exhibit D.5, titled: **Agreement between G4S Secure Solutions (T) Ltd and Employees** (the agreement between G4S and employees), which in part reads that:

...this agreement is full and final settlement of all issues between the parties herein and closing of your services with the company and no cause will follow...upon signing it, signifies upon expiry of the notice to be worked, release and discharge the parties from their contract and any claim that may arise...the parties agree and acknowledge all the terms and conditions that the same shall be in substitution for and supersede prior arrangements,

if any, whether oral or written relating in the subject matter and remain to be bound by these covenants...

The record of instant appeal shows that the confirmation of retrenchment and notice of termination of employment on retrenchment were issued to the employees via exhibit D.6 and D.7 and subsequently the employees were paid their entitlements as exhibited in D.10, including: salary up to the last day of service, cash in lieu of untaken leaves, repatriation costs and certificate of service thanking the employees for their cooperation and job well done. It was fortunate that before their departure in totality, the respondents were invited by the applicant for further one (1) month special contract titled: **Specific Task Contract of Employment** (the special contract) and fully cooperated as exhibited in D.8 and D.9.

According to Mr. Kiondo, all these procedures were following in order to comply with the provisions of section 37 (2) (b) & 38 (2) of the Labour Act and Rules 23 of the Rules, whereas Mr. Joseph thinks that all that was intended to camouflage the retrenchment of the respondents, and in any case, there is no nexus between the notice of entrenchment (exhibit D.3) and notice of termination of contract (exhibit D.2).

Similarly, Mr. Joseph thinks that the respondents were curtailed the right to legal representation and no minutes of the consultation meetings were produced in the Commission.

The law regulating the present dispute is enacted in section 38 (2) of the Labour Act, and in brief, provides that: *where in the consultation, no agreement is reached between the parties, the matter shall be referred to mediation*. However, the respondents, save for the ninth respondent did not comply with the provision. They assumed the provision was enacted for cosmetic purposes. The indicated enactment has already received precedent of this court in **Standard Charted Bank Ltd v. Justin Tineishemo** (supra) with the support of the Court in **Trade Union Congress of Tanzania (TUCTA) v. Engineering Systems Consultants Ltd & Others**, Civil Appeal No. 190 of 2018. The mostly quoted paragraph in the two precedents shows that:

> *The true principle of promissory estoppel is where a party has by his words or conduct made to the other a clear and unequivocal promise, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made, and it is in*

fact acted upon by the other party making it and he would not be entitled to go back upon it....under the Evidence Act, Cap. 6, there is a provision in section 123...the overt conduct and expression of the appellant during the signing of the contract and during the respondent's claims for payment, are binding on it...by the choice of agreement, the employee was barred to file the dispute.

In the present revision, the respondents, save for the ninth, had preferred and agreed on their choice by signing exhibit D.5 to settle the matter rather than section 38 (2) of the Labour Act and directives of this court and the Court in the cited precedents of **Standard Charted Bank Ltd v. Justin Tineishemo** (supra) and **Trade Union Congress of Tanzania (TUCTA) v. Engineering Systems Consultants Ltd & Others** (supra), respectively.

In the record, exhibit D.5, shows, in brief, that: *the agreement is full and final settlement of all issues between the parties and it is the closure of services between the applicant and respondents and that no cause will follow.* The record on the other hand shows that the respondents did not prefer protest for D.5. It is unfortunate that the record is silent on whether the respondents were: forced to sign D.5 or influenced by any

means. Similarly, no materials of fraud or mistakes in signing D.5 were produced. In such circumstances of the present dispute, it is difficult to hold that the applicant had retrenched the respondents unfairly (see: **Otieno Roche & Others v. Kariakoo Market Corporation** [2013] LCCD 53). In the present contest, I am persuaded by the submission of Mr. Kiondo that the respondents should be estopped from denying their earlier statements in exhibit D.5.

I am aware that the Commission had decided in favor of **Ms. Vasilisa Marco Mollel** (the ninth respondent) and ordered the applicant to pay her **Tanzanian Shillings Six Million Nine Hundred Thousand Only** (6,900, 000/=) being six months salaries. However, Mr. Kiondo also protested the payments contending that the ninth respondent had absconded from employment.

In substantiating his statement, Mr. Kiondo submitted that the ninth respondent was granted annual leave to enjoy forty-one (41) days from 11th June 2020 to 21st July 2020. However, after the expiry of the leave, she declined appearance at her work without any reasons for seven (7) days. According to Mr. Kiondo, the ninth respondent had breached Rule 9 (1) of the Rules regulating five (5) days absence from work. In his opinion,

the ninth respondent had terminated her contract for service in her own initiatives hence she cannot raise at the Commission and complain on unfair termination.

In support of the five (5) days rule Mr. Kiondo cited the decision of **Muhimbili National Hospital v. Constantine Victor John**, Civil Application No. 44 of 2013, where the Court at page 14 of the Ruling stated that respondent's absence from work was without excusable reasons hence termination of the respondent was based on justifiable reasons.

The thinking of Mr. Kiondo and his support of the indicated precedent was protested by Mr. Joseph who thought that the ninth respondent did not abscond from her services. However, she was enjoying maternity leave after the expiry of the annual leave and the applicant was well aware of the maternity leave. Regarding the retrenchment process, Mr. Joseph submitted that the applicant did not inform the ninth respondent the process of retrenchment and had declined cooperation on the subject. In the opinion of Mr. Joseph, the retrenchment against the ninth respondent was unfair and invalid hence decision of the Commission was proper to grant the indicated award to the ninth respondent.

Replying the citation of the precedent in **Muhimbili National Hospital v. Constantine Victor John** (supra), Mr. Joseph submitted that in the indicated precedent, the respondent was not in maternity leave whereas in the present dispute the ninth respondent brought a child in this world and the applicant knew her pregnancy status hence she cannot be denied her labour rights.

I have perused the present record regarding the contest of the applicant and ninth respondent. After registration of all relevant materials in the Commission, at page 13 of the Award of the Commission, it was resolved that: *Mlalamikaji Vasilisa Marco atastahili kulipwa mshahara wake kwa muda uliobaki kwenye mkataba kama ilivyoanishwa*. The reasoning of the tribunal is found at the same page 12 of the Award that:

> *...ushahidi wa pande zote mbili umeonesha kuwa, wakati wa mchakato wa upunguzwaji kazi wafanyakazi unaendelea, yeye alikuwa likizo na hivyo kutoshiriki zoezi hilo. Kwa mujibu wa Kanuni ya 8 (2) (b) ya GN. No. 42, ni wazi mlalamikiwa alikiuka taratibu za kusitisha mkataba wa mlalamikaji uliokuwa uishe tarehe 31/01/2021. Katika shauri la marejeo baina ya* ***Good***

Samaritan v. Joseph Savari Munthu, Revision No. 165 of 2011 *inaeleza kuwa in law premature termination of fixed term contract, without consent of the employee is wrong and unlawful unless lawfully done according to the agreement...ni uhamuzi wa Tume kuwa mkataba wa mlalamikaji umevunjwa isivyo halali kiutaratibu.*

The record of revision shows that **Mr. Anold Rweshabire** (DW1), applicant's Branch Manager, was summoned and testified before the Commission that:

...Vasilisa aliondoka mgodini Kwenda likizo ya kawaida na ilivyoisha, hakurudi tena mgodini. Wakati huo, ilikuwa kipindi ambacho kampuni ilipata notice kutoka kwa client ya kutoendelea kutoa huduma. Vasilisa alitafutwa ili aje kusaini documents, lakini hakufika ofisini. Kampuni ilishindwa kumpata ili kukamilisha taarifa zake...Kampuni ilimtafuta bila mafanikio...hakuna taarifa official ila tulisikia kwamba alijifungua kwa operation. Akaamua Kwenda maternity leave bila kufuata utaratibu wa kampuni...mhusika anatakiwa kuomba likizo ya uzazi siku 20 kabla ya kujifungua, lakini hakufanya hivyo. Kwa hiyo hakufuata utaratibu...hasiyefuata utaratibu anakuwa ame-

abscond...yeye ni mjamzito na anafahamu likizo zake...mama mjamzito anapofikia umri wa kujifungua, anatakiwa atoe taarifa kwa mwajiri wake kwa kuwa anajua tarehe ya kujifungua siku 20 kabla. Anaweza kupewa light duty au kupunzika kulingana na afya yake...alipopewa likizo hakurudi...Vasilisa aliajiriwa Mwanza na ni mkazi wa Mwanza. Alipewa taarifa ya kuchukua form baada ya kujifungua, akasema hawezi kutembea kwa kuwa amejifungua kwa operation. Tukamwelekeza atume mtu, akasema hayuko Mwanza. Yuko Arusha, akaambiwa atume mtu ofisi za G4s Arusha, hakufanya hivyo...alitafutwa kwa njia za simu...alilipwa mshahara wa mwisho Agosti 31/2020...hakuwahi kurudi [kazini].

On the other hand, the evidence of the ninth respondent before the Commission shows that:

...[nilianza likizo] tarehe 10/06/2020. Nilienda hospitali ya pale mgodini kwa clinic ya kawaida ya kinamama...Daktari kaandika e-mail kwa Site Manager wangu...kueleza kuwa sipaswi kuwepo pale. Nilibadilishiwa post. Baada ya hapo nikarudi ofisini kwa Meneja ambaye alikataa na kuniambia niende likizo kwa kuwa mimi nina siku nyingi. Nikaomba likizo yangu ya mwaka nitunze mpaka baada ya maternity

leave, lakini hakukubali. Alilazimisha niende likizo ya zaidi ya siku 40. Ofisini nilibembeleza, lakini ilishindikana. Nikasainishwa fomu ya likizo, ambayo inaisha 21/07/2020. Nikawaambia kuwa, nitakuwa bado sijajifungua kwa sababu matarajio yalikuwa tarehe 02/08/2020. Nikaanza likizo 11/06/2020...nilipokuwa kijijini nilipigiwa simu na HR kwamba ninahitajika ofisi za Mwanza, nilimjibu kulingana na ushauri wa daktari, siruhusiwi Kwenda safari ya mbali. Akasema ni lazima. Nikaomba anitumie hizo documents kwa e-mail ili nitume mtu aniprintie, nikisaini atume tena, lakini akakataa na kusisitiza kuwa nahitajika ofisini. Nikaomba wanivumilie mpaka nitakapomaliza likizo...baada ya hapo nikiwa bado likizo, nikaugua na kupelekwa hospitali tarehe 17/07/2020 na kujifungua kwa operesheni. Tarehe 18/07/2020, nilituma ujumbe wa simu kwa HR Kisaka na Site Manager Deus kwamba nimejifungua. HR hakujibu, ila Site Manager aliniambia hongera na nyingine akaniambie nipitie ofisi za G4S kusaini fomu za maternity leave. Nilikuwa na hali sio nzuri kiafya, nikawa napigiwa simu ya ofisi ya Mwanza kuwa hawazioni maternity leave form yangu, nikawaambia sikuweza kupita ofisini kuchukua kutokana na na hali yangu...nikaomba nimuagize mume wangu, akajibu haiwezekani, inatakiwa wewe kwani kuna

majadailiano na mimi. Akasisitiza kuwa ikipita siku tano baada ya kujifungua, nitakuwa nimejiachisha kwa utoro...kwa hali niliyokuwa nayo katika zile siku tano, sikuweza kufanya chochote...julai mshahara wangu ulikatwa...Baada ya hapo tarehe 16/10/2020, nilituma hiyo message, baada ya simu kutopokelewa, message kutojibiwa, ndipo nilipowasiliana na wakili aliyetuma demand note kupitia e-mail yangu, lakini pia sikupata majibu. Ndio nilipofungua kesi...sijaleta [uthibitisho kwamba nimejifungua mtoto]..mwajiri alinilazimisha Kwenda likizo kwa sababu ya hali yangu...sikuwa na wa kumpa hayo malalmiko, kwani HR ndio aliyenitaka niende likizo. hakuna maandishi...[nimefanya kazi G4S] kwa miaka mitatu sasa...niliwahi Kwenda G4S Desemba 2020...mwajiri wangu aliniambia nisiposaini documents ndani ya siku tano nitakuwa nimeji-absent. Nilikuwa najua utaratibu baada ya [maternity leave], lakini North Mara hawakuwepo. Nilitaka utaratibu kutoka kwa mwajiri...[sikurudi ofisini baada ya maternity leave kwisha], [kwa sababu] niliomba utaratibu kwa HR, lakini hakunijibu...najua utaratibu wa likizo, ila fomu nilinyimwa. Fomu zisipokuwepo, kampuni haijui ulipo...[sina e-mail iliyotumwa kwa Deus Masimba kuwa nibadilishwe post]...[nilikuwa najua procees ya

retrenchment ilipokuwa inaendelea. Najua hali ya mwajiri kukosa Tenda Barrick kisheria].

From the above indicated testimonies of DW1 and the ninth respondent, it is vivid that the only question this court need to reply is: *whether the respondent's absence within the period between 11th June 2020 and December 2020, is excusable*.

From the record, it seems the ninth respondent was well aware of the complications related to her alleged pregnancy, leave form and maternity leave and finally the retrenchment exercise which was taking course in the applicant's offices, but was unable to make follow-up the process. From the narrations of DW1 and the ninths respondent, it is clear that the ninth respondent and the applicant were well aware of the existence of pregnancy of the ninth respondent and her associated delivery complications and difficulties to access the applicant's offices in Arusha and Mwanza, in accordance to the applicant's directives.

However, it is clearly evident from the ninth respondent's evidence that she failed to access the applicant's offices after the lapse of three (3) months maternity leave, that is between 17th October 2020 to December 2020. The record shows that the ninth respondent delivered by operation on 17th July 2020 and

she was in bad conditions. However, the record is silent as to when the ninth respondent's bad conditions ended or else what efforts in documents were put in place after expiry of the purported maternity leave.

In my considered opinion, the period between 17th October and December 2020, which the ninth respondent was able to access legal services, but unwilling to access the applicant's offices in Arusha or Mwanza, is not excusable. In absence of the relevant materials in document on the record to explain the absence of the ninth respondent in the indicated period leaves a lot to be desired. Had the Commission properly considered the evidence on this unexplained silence on part of the ninth respondent, it would have found otherwise in its Award. The contest between the applicant and the ninth respondent is clear dispute which fits well in the decision of the Court in **Muhimbili National Hospital v. Constantine Victor John** (supra).

On the basis of the indicated reasons, I am ,oved to grant the application. I hereby revise and uphold the Award of the Commission from the first up to the eighth respondent, and set aside Award decided in favour of the ninth respondent issued on 28th May 2021. The termination of all nine (9) respondents is justifiable in the circumstances of the present dispute. I decide

so without any costs. Each part shall bear its cost as this is a labour dispute.

It is so ordered.

F.H. Mtulya

Judge

30.06.2023

This Ruling was pronounced in Chambers under the Seal of this court in the presence of the applicant's learned counsel, **Mr. Mosses Kiondo** and in the presence of the respondents' learned counsel, **Mr. Paschal Joseph**.

F.H. Mtulya

Judge

30.06.2023