

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[ARUSHA SUB- REGISTRY]**

**AT ARUSHA**

**COMPLAINT NO. 1 OF 2023**

**CHODAWU ..... COMPLAINANT**

**VERSUS**

**NGORONGORO CONSERVATION**

**AREA AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

26<sup>th</sup> October & 14<sup>th</sup> December, 2023

**TIGANGA, J**

The complaint at hand has been preferred under the provisions of rule 6(1)(a) i), ii), iii), iv), (b) i), ii), iii), (c), (d) and (e) of the **Labour Court Rules 2007**, GN. No. 106 of 2007. The complainant is moving this Court to declare her entitlement to exercise her union rights at the 1<sup>st</sup> respondent's premises as well as to permit the complainant and her members to exercise their statutory right of association.

According to the statement of the complaint, the main dispute between the parties is the violation of organization rights and improper applicability of law over Para - Military Service. A brief history of the dispute is to the

effect that, the complainant as a trade union was duly registered in accordance with the law with the mandate and function provided for under parts IV and VI of the **Employment and Labour Relations Act**, Cap 366, R.E. 2019. In a bid to carry out her mandate and further the employees' rights of the Association, the complainant managed to establish a field branch with the 1<sup>st</sup> respondent's work premises and recruited a total of 343 members. As the complainant kept carrying out her usual trade union activities including receiving monthly dues from her members, she also signed a collective bargaining agreement with the 1<sup>st</sup> respondent. However, from the beginning of 2019, the 1<sup>st</sup> respondent turned hostile by introducing a Para-Military Scheme which was brought about by the **Written Laws (Miscellaneous Amendments) Act**, No. 2 of 2020 without consulting the complainant.

According to the latter, the same was a breach of the settlement agreement that was concluded at the Commission for Mediation and Arbitration (CMA), and that, introduction of the Para-Military Scheme made the 1<sup>st</sup> respondent remit the trade union dues and completely banned all the trade union activities within her premise hence the current complaint.

In response to the statement of the complaint, the respondents averred that none of the organizational rights were violated as Act. No. 2 of 2020 was properly applied. Also, there was no agreement made at the CMA that was breached by them as they notified the complainant regarding the commencement of the Para-Military Scheme, and the same was correctly interpreted by this Court in Revision Application No. 88 of 2019 between the complainant and the 1<sup>st</sup> respondent. The fact that they banned all complainant activities as a trade union required proof. On top of this reply, the respondent raised the following point of preliminary objection;

***That, this complaint is res judicata.***

When the objection came for hearing both parties were represented by their respective advocates and to begin with the respondents' counsel Mr. Hans Hando, State Attorney, submitted that section 9 of the **Civil Procedure Code**, Cap 33 R.E. 2019 (CPC) provides for *res judicata* that once a court, tribunal or any judicial body of a competent jurisdiction, determines the matter to its finality, such decision, unless reversed is conclusive. He contended that, the present parties to the case were also litigants in Labor Revision No. 88 of 2019 which originated from Execution No. 53 of 2019 and CMA/ARS/MED/552/2016 with the same subject matter

that the respondent breached the settlement agreement signed at the CMA-Arusha requiring the 1<sup>st</sup> respondent to engage the complainant before the introduction of the Para-military Scheme.

The learned State Attorney further argued that, it is from the said background and cause of action the current complaint was filed while the same had already been determined by this Court, Kamuzora, J. to its finality in Labour Revision No. 88 of 2019. According to him, there has no Para-Military Scheme that has been operational or implemented to date, what is done is just training towards establishing the said scheme, hence the deed of settlement signed was never breached. More so, without any pending appeal or any decision which has reversed this Court's decision, Kamuzora, J. this complaint is res-judicata.

Opposing the objection raised, Mr. Asubuhi Yoyo, learned Advocate for the Complainant submitted that the point of objection raised is misconceived as the same is not a pure point of law as it requires evidence as held in the case of **Mikusa Biscuit Manufacturing Ltd vs. West End Distributors Ltd** [1969] E.A. 696. That, one needs to go through CMA Form No. 1 to ascertain if it is the same cause of action and second if the ingredients set under section 9 of the CPC are fully met. Starting with the matter which was

before the CMA, the Para-Military Scheme was not yet in place and that is why they signed an agreement. However, what is before this Court is the violation of the organization right and right of association which are fresh matters contrary to what was determined by this Court Kamuzora, J. Also, it is the first time this Court has been called to investigate the matter, and the parties are not the same.

In re-joinder, Mr. Mbando maintained that this complaint is *res judicata* and hence fit to be a point of objection. What is required of the Court is to confine itself on whether the elements are met take Judicial Notice of the decision of Revision Application No. 88 of 2019 and find that, the same is as the current complaint. Regarding the addition of another party, the 2<sup>nd</sup> party, the Attorney General, learned State Attorney argued that the complainant just joined him as a necessary party as he could have been joined at any time. He insisted that the current complaint is *res judicata* and the same should be dismissed.

Having gone through the party's submissions, I find it apposite to start with what *res judicata* entails. Section 9 of the CPC provides that;

*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in*

*a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court”*

The section bars Courts from entertaining any suit or issue which involves the same parties on the same subject matter and has been determined to its finality by a court of competent jurisdiction. In the case of **Emmanuel Simforian Massawe vs. The Attorney General**, Civil Appeals No. 216 of 2019, CAT at Dsm, the Court of Appeal mentioned the following three aspects to be considered for the principle of res judicata to apply; it held thus;

*"In terms of the above provision, we wish to restate three essential elements for the principle of res judicata to apply hereunder: -*

- 1. The matter which is directly and substantially in issue in the present case must also have been directly and substantially in issue in the former suit.*
- 2. The previous suit must have been finally and conclusively determined.*
- 3. Parties claiming in the present suit and the former suit must be the same parties claiming under the same title.”*

Guided by the above authority, and starting with the 1<sup>st</sup> element, in the former suit i.e. CMA/ARS/MED/552/2016, the contentious matters, among others included the breach of the settlement agreement entered at the CMA that, before implementing or effecting the Para-Military Scheme, both parties shall sign and conclude a collective bargaining agreement. However, according to the complainant, the 1<sup>st</sup> respondent breached their agreement as there was ongoing paramilitary transformation training and induction of the said scheme within the 1<sup>st</sup> respondent's premises hence, she filed for Execution No. 88 of 2019 praying for the execution of the settlement agreement. The Deputy Registrar (DR) among others ruled that the said deed of agreement was not executable as the same was pre-mature thus, there was no need to make a specific order.

Dissatisfied with the DR's decision, the complainant herein filed for Revision Application No. 88 of 2019 before this Court where Kamuzora, J. upheld the DR's decision. Instead of appealing further against the said decision to the Court of Appeal of Tanzania, the complainant herein came through the back door and filed this complaint with the same contentious matters. Although the complainant's counsel argued that, the nature of the dispute is the violation of the organization's right and improper applicability

of the law regarding Para-Military Service, however, reading the statement of the facts of the dispute, I find the complaint at hand is the same as the which was before the Court (Kamuzora, J). It was therefore directly and substantially in issue in Revision Application No. 88 of 2018 which emanated from Execution No. 53 of 2019 and CMA/ARS/MED/552/2016. the first element has been therefore established.

On the second element, this will not detain me much because, in the previous suits, the same dispute was determined to its finality by the court of the competent jurisdiction. Without appeal, revision, or any other decision reversing the last decision of this Court, Kamuzora, J. the same remains the final order. Filing other complaints of the same nature as the one at hand is an abuse of the court process which in my view, should not be condoned. I hold so because, at some point, litigations must come to an end and not be open-ended which is the rationale behind the doctrine of *res judicata* as observed in the case of **Umoja Garage vs National Bank of Commerce Holding Corporation** [2003] TLR 339.

It is therefore prohibited under the law to entertain any suit or issue to which the conditions of *res judicata* as outlined above apply. See also **George Shambwe V Tanzania Italian Petroleum Company LTD**



[1995] TLR 21. Had the complaint not been satisfied with the decision of this Court, Kamuzora, J. would have appealed to the Court of Appeal instead of filing a new complaint.

As to the third element, regarding the same parties, it is clear that the 2<sup>nd</sup> respondent in this complaint was not party to the previous complaints. However, his presence in the current complaint is due to the mandatory requirement of the law pursuant to section 17(1) a), b), 17(2) a), b) and 3 of **Attorney General (Discharge of Duties) Act**, [Cap 268, R.E 2019] that, the Attorney General has to be joined in suit, inquiry or administrative proceedings to which public interest, public property, legislative, the judiciary, an independent department or agency of the Government is involved. More so, in Explanation VI of section 9 of the CPC provides,

*"Explanation VI: Where **persons litigate bona fide in respect of a public right** or of a private right claimed in common for themselves and others, **all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.**" (Emphasis added)*

In light of the above, since in the previous dispute, the 1<sup>st</sup> respondent was litigating on behalf of Ngorongoro Conservation Area Authority, the

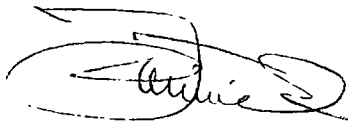
presence of the 2<sup>nd</sup> respondent in the current complaint serves the same purpose of protecting the interest of the 1<sup>st</sup> respondent.

Having analyzed the three elements above, I am of the firm view that this complaint falls within the ambit of *res judicata* hence the point of objection raised is sustained with cost.

It is so ordered.

**DATED** and delivered at **ARUSHA** this 14<sup>th</sup> day of December 2023



  
**J. C. TIGANGA**  
**JUDGE**