IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)

AT DAR ES SALAAM

REVISION NO. 78 OF 2023

(Originating from Execution Case No. 178 of 2021 as per Hon. Kassian, Deputy Registrar)

BETWEEN

CATS TANZANIA LIMITED..... APPLICANT

AND

SAVIO FERNANDES ..... RESPONDENT

RULING

MLYAMBINA, J.

One of the sophisticated legal minds in the name of Matojo Cosatta has invited this Court to undertake herculean judicial task of departing from *ratio decidendi* of its ruling in **Yakobo John Masanja v. Mic Tanzania Limited**, Labour Revision Application No. 385 of 2022, High Court of Tanzania Labour Division at Dar es Salaam (unreported) which outlaws labour revision as appropriate legal remedy in favour of aggrieved party to challenge impugned decision of a Registrar or Deputy Registrar before the Labour Court Judge. The invitation has arisen after the Court *suo motto* raised a legal issue:

> *Whether the decision of the Deputy Registrar of the High Court labour Division can be challenged by way of revision before the Labour Court Judge.*

The call by Mr. Matojo Cosatta was plunged into three perceptions. *One*, accepting the adage by my brethren Lord Denning (1953) ***"The Reform of Equity"*** in C.J. Hamson *et al* (eds), Law Reform Making: at p. 31:

> *The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The judges do every day make law, though it is almost hearsay to say so. If the truth is recognised then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present.*

Two, it is ethical duty of every Advocate to contribute to the development of the laws and the legal system of this jurisdiction by providing proposals for improvement of the law, *bona fide* criticism of laws, proposal or enunciation of new legal principles to resolve legal challenges and problems facing our legal system and our jurisdiction imposed by provisions of *Rule 30 of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 (G.N. No. 118 of 2018)*. In the course of discharge of his ethical duty to develop the law and legal system and to criticize the *lex lata* (the law as it is), in this great *res republica* as *pro tempore* exist in this

jurisdiction on the controversial subject matter in question, Mr. Matojo invited this Court to embrace and adopt the *lex ferenda* (the law as it ought to be) with view to resolve the said legal controversy once and for all.

Mr. Matojo invited this Court to enunciate new legal principles for purpose of resolving legal controversy surrounding the question of appropriate legal remedies available under the law in favour of a party aggrieved by the decision delivered, or order made by a Deputy Registrar of the Labour Court. One of such new principles, proposed by Mr. Matojo was *inter alia*, **the Expansive Interpretation Doctrine**. He invited this Court to revisit the famous wisdom of the Great Jurist in common law jurisdictions, Master Rolls, Lord Denning of Whitchurch (as he then was), embodied in the case of **Parker v. Parker** [1954] All ER 22; [1953] 2 All E.R. 121 wherein the good Lord of Whitchurch made the following observation:

> What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on and that will be bad for both.

The wisdom of Lord Denning of Whitchurch in **Parker v. Parker** *(supra)* was quoted with approval by my brethren Nyangarika, J (as he then

was) in **Exim Bank (T) Ltd v. Kilimanjaro Coffee Co. Ltd,** Commercial Case No. 29 of 2011, pp 5 and 6 of printed ruling.

With the afore legal reminder by Mr. Matojo, I intend in this ruling to revisit and analyse the state laws of United Republic of Tanzania from 22nd July, 1920 to 2023 as far as the same are relevant to subject matter in issue.

It has to be recalled that; on 4th April 2023, the Applicant filed this Revision Application, seeking for this Court to revise and set aside the ruling of Deputy Registrar delivered on 14th March, 2023 arising out of application made by the Applicant for stay of delivery of ruling on preliminary objection to resolve important question of law pertaining to non – compliance with order issued by Deputy Registrar on 28th October, 2022 relating to Refence of matter to the Judge – in – Charge.

Juvenalis J Ngowi, Advocate from Dentons EALC East Africa Law Chambers, on behalf of the Respondent was of the view that this Court does not have jurisdiction to entertain Revision proceedings against the ruling or order of the Registrar or Deputy Registrar for three reasons:

One, the Labour Court has been vested with jurisdiction to revise only decisions from the lower Courts, under *Section 94.- (1) of the The Employment and Labour Relations Act, 2019,* which provides:

> Subject to *the Constitution of the United Republic of Tanzania of 1977,* the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter falling under common law, tortious liability, vicarious liability or breach of contract and to decide-
> (a) appeals from the decisions of the Registrar made under Part IV;
> (b) reviews and revisions of –
>
> (i) Arbitrator's awards made under this Part;
>
> (ii) decisions of the Essential Services Committee made under Part VII;

Two, the Registrar or the Deputy Registrar is part of this Court Constitution since the exercise of their power is derived from *Order XLIII of Civil Procedure Code [Cap 33 Revised Edition 2019].* A clear illustration is enshrined in a statutory provisions of *Section 67 of the Written Laws Miscellaneous Amendment (No.2) Act No. 3 of 2020 which added sub part "b" to Section 50 (2) of the Labour Institution Act and Section 54 which repealed section 54 of the Labour Institutions Act.*

Three, it should be kept in mind that *Rule 28 (1) of the Labour Court Rules of 2007* vested powers to the High Court Labour Division to call for lower Court or Tribunal or Commission records in case of appeal or revision. On this position, he cited the case of **Francis Shenyanga v. Mobisol UK Limited,** Revision Application no. 126 of 2021 (unreported), p. 6. For avoidance of doubt *Section 54 of the Labour Institution Act (supra)* stipulates that:

> There shall be Deputy Registrars who SHALL be Deputy Registrar who SHALL exercise powers and perform such duties as are conferred under;
>
> (a) N/A
>
> (b) *Order XLIII of the Civil Procedure Code*; and
>
> (c) Rules made by the Chief Justice under *section 55.* [Emphasis added]

Hence, it was the settled view of the Respondent's Mr. that the decisions made by the Registrar or Deputy Registrar of the High Court Labour Division forms part of the decisions of the High Court just in a same way as the decisions of the Registrars and Deputy Registrars of the High Court and Sub Registries.

In sum, the Respondent maintained that the route opted for by the Applicant is clearly erroneous and it would be an absurd to entertain this application for Revisions because as only a higher Court has jurisdiction to revise the decisions of the lower Court not of the same Court. It is erroneous to challenge the decision of the Registrar or Deputy Registrar by way of Revision. To buttress such position, the Respondent through Mr. Juvenalis cited the case of **Yakobo John Masanja v. Mic Tanzania Limited** *(supra).* He therefore beseeched the Court to dismiss the application with costs for being misconceived and incompetent.

In reply, Mr. Matojo made a very detailed and in three volumes of submissions which I had never seen in this Court of law. Though not convincing, I shall consider Mr. Matojo's whole submissions for purposes of law students and members of academia. The rationale of doing so is that the wide and varied potential audience when composing a judgement or ruling for a senior Judge includes apart from the parties of the case, the legal advisers to those parties, other Judges, other practicing Lawyers, academic Lawyers, Students and the public at large.

The afore established principle of law was stated by my brethren Justice Dr. Dhananjaya Y. Chandrachud in the case of **State of India and**

Another v. Ajay Kumar Sood, Supreme Court of India, Civil Appeal No.5305 of 2022 as cited in the case of **St. Mathew's Secondary School v. Juma Masamaga Kureba,** Consolidated Labour Revision No. 387 and 394 of 2022, High Court of Tanzania Labour Division at Dar es Salaam (unreported), pp 4-5.

Mr. Matojo apart from appreciating that the ruling in **Yakobo John Masanja** *(supra)* analysed in-depth and in details the eight (8) antagonistic juristic schools of thought on this controversial subject matters, he invited the Court to depart from such decision by borrowing the leaf from Madam Justice, **Regina Mtembei Rweyemamu** (as she then was) who exhibited sufficient judicial boldness and courage to depart from her very own previous judicial decisions whenever she realised that she made erroneous judicial decision or her judicial decision was given *per incurium.* In **Kwila Peter Nkwama v. General Manager Marine Service Co. Ltd,** Labour Revision No. 229 of 2008, the Late Madam Rweyemamu, J (as she then was) had this to say:

> After delivering a ruling in this matter on 12/3/2010, it came to my attention that part of my ruling was patently in error in that, I inadvertently decided therein that the labour laws do not provide for a place of suing.

> Accordingly, I held that "a labour dispute can be filed where the complainant resides, carries on business or where the cause of action arose." As results, that patent error was one of the reasons I revised the Commission for Mediation and Arbitration (CMA) award. My decision was patently in error in view of the clear provisions of Rule 22 of the Labour Institutions (Mediation and Arbitration) Rules, GN 64/2007...labour laws specifically provide the place of suing being where the cause of action arose unless the Commission directs otherwise, as such there is no lacuna in law as I concluded in the ruling now varied...in view of that clear provisions, my decision on the issue was patently in error.

After making such observation in **Kwila Peter Nkwama** *(supra),* Rweyemamu, J (as she then was) preceded to invoke *Rule 38 (1) (b) of the Labour Court Rules, 2007* to correct error tainted with her ruling delivered on 12th March, 2010 in the same case.

Mr. Matojo properly submitted that the question on appropriate legal remedy available under the law to challenge decision of the Deputy Registrar of Labour Court in particular and Registrar and Deputy Registrar of other Divisions or Registries or Sub-registries of the High Court in general has been a controversial issue surrounded by a lot of legal intricacies or conundrums over a decade. Madam Regina Rweyemamu in her ruling delivered on 8th July 2014 in in the case of **George Mapunda & Wema Abdalla v.**

Dawasco, Misc. Revision No. 1 of 2014 [2014] LCCD No. 89, pp.118 to 128, at page 4 of the unreported printed ruling on the said legal intricacies had this to say:

> *The practices have created impasse, regarding what remedy is available for a party aggrieved by the Registrar's decision in exercise of such powers; and two, the procedure for accessing such remedy.*

Madam Judge Rweyemamu (as she then was) had earlier expressed the controversies surrounding this subject matter 3 years before, in her ruling delivered on 16th June, 2011 in **Joachim Walter & 6 Others v. Venture Communications East & Central Africa, Mrs Urmelaben Pater & Huila Calvin Mlama,** Misc. Labour Application. No. 38 of 2010 [2011-2012] LCCD No. 55 from page 164 to 167.

Again, my learned Sister Rweyemamu, J (as she then was) had earliest expressed the controversies surrounding the said subject matter 3 months before, in her ruling delivered on 1st March, 2011 in **Globeleq Tanzania Services Ltd. v. Evarist Sessa,** Misc. Application. No. 47 of 2010[2011-2012] LCCD No. 14 from page 92 to 95.

Again, the said legal intricacies that surrounds this subject matter is well captured by one of reputable legal minds in this jurisdiction, Senior Mr.,

Frank Mwalongo in his scholarly paper titled **"Labour Disputes Handling Procedure in Tanzania** (Accessed at Academia Edu) specifically from page 20 to 26. In this scholarly work, learned author cited earliest decisions of the Labour Court at its earliest stage of development such as **Distributors Nufaika v. Charles Tafsiri,** Revision No. 185 of 2009 as well as **Mary Mwalufunga v. TPC Ltd,** Execution No. 186 of 2010 in which the Labour Court revised and quashed *ultra vire* decision made by the Registrar of Labour Court.

Further, in his work learned author Mwalongo cited earliest judicial decisions such as **Total (T) Ltd v. Godliver Massawe,** Execution No. 405 of 2009 (unreported) as well as **LAPF v. Isaack Holela & 2 Others,** Execution No. 266 of 2008 (unreported) in which the Labour Court maintained that decisions of Registrar are appealable to the Court of Appeal.

Learned author Mwalongo went on to cite and analyse the case of **Hemed Omary Kimwaga v. SBC Tanzania Limited**, Misc. Application No. 75 of 2011 (unreported) in which the Labour Court took a legal stance that decision of a Registrar is amenable to review before Judge of Labour Court. As such, Senior Mr., **Frank Mwalongo** observed at page 24:

> Here again there are two conflicting positions while Judge Rweyemamu maintains that those aggrieved by decisions of the registrar of the labour Court *should appeal to the Court of Appeal of Tanzania,* Judge Wambura maintains that the Registrar's decision during execution *are (sic) reviewable by the Judge,* of course because the registrar is accountable to the judge.

I further do agree with Mr. Matojo that, later on, my learned sister Regina Rweyemamu, J (as she then was) in **George Mapunda & Wema Abdalla v. Dawasco** (supra) revealed 4 juristic schools of thought that existed in High Court by the year 2014 on this subject matter. About 9 years (9) later, on 28th February, 2023, this Court (Mlyambina, J) in the case of **Yakobo John Masanja** (supra) revealed 8 juristic schools of thought that exist in High Court *pro tempore* on this subject matter. For purpose of this Ruling, I agree with Mr. Matojo that there are now nine schools of thought. For academic, clarity and identification purposes, as suggested, the said nine conflicting schools are hereby assigned the following legal nomenclature:

(1) Vertical Remedism
(2) Horizontal Revisionism
(3) Horizontal Reviewism
(4) Horizontal Referencism
(5) Registrarial Review
(6) Horizontal Suitism

(7) Registrarial Suitism

(8) Horizontal Prerogativism

(9) Legal Expansivism

1. VERTICAL REMEDISM.

The proponents of **Vertical Remedism** take a firm legal stance that any party aggrieved by the decision of the Registrar or Deputy Registrar should pursue legal remedies which are vertically available in the Court of Appeal of Tanzania namely appeal, revision and reference.

Specifically with regards to labour litigation, vertical remedists in endeavor to defend their juristic school of thought they do put forward three arguments: *First*, the amendment of *Section 50 (2) of the Labour Institutions Act, Cap. 300 vide provisions of Section 67 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020 (Act No. 3 of 2020)* had the effect of formally recognizing Deputy Registrars of Labour Court as part and parcel of the composition of the High Court (Labour Division). *Second*, since Deputy Registrar of Labour Court form part and parcel of the composition of the High Court (Labour Division) under *Section 50 (2) of Cap. 300 as amended by Section 67 of Act No. 3 of 2020* inevitably the decision or order made by the Deputy Registrar of Labour Court is the decision of the High Court (Labour Division). *Third*, the decision of the Deputy Registrar being the decision of the High Court (Labour Division) can only be challenged

vertically by way of an appeal or revision or reference to the Court of Appeal. The leading case on this legal proposition enunciated by vertical remedists is **Iron Steel Limited v. Martin Kumalija & 117 Others,** Labour Revision No. 169 of 2022 of which its ruling was delivered on 21st October, 2022 and this case was quoted with approval in several judicial decisions of the High Court, *inter alia*, include the following: **Ukerewe Saccos Ltd v. Jumanne A. Josiah,** Labour Reference No. 03 of 2022 2022; **Rose @Tanna Ally Nyabange v. Athuman Ally Nyabange,** Misc. Civil Application No. 15 of 2022; and **Teddy Syprian Malya v. Efc Tanzania M.F.C Limited,** Miscelleneous Labour Application No. 409 of 2022.

Though decided before the amendment of *Section 50 (2) of Cap. 300 vide Section 67 of Act No. 3 of 2020* yet the Court in **Total (T) Limited v. Godlever Massawe, Execution No. 405 of 2009** and in **Tanzania Oxygen Limited v. Juma Nkondo, Misc. Application No. 85 of 2011** [2011-2012] LCCD No. 108, pp. 221-224 was of the firm view that a party aggrieved by decision of Registrar of Labour Court should appeal to the Court of Appeal.

Though the Court in the case of **Sogea Satom Company v. Barclays Bank Tanzania** (supra) in its ruling delivered on 2nd March, 2022 took

position that the decision of Registrar is appealable to the Court of Appeal but in its ruling delivered on 11th November, 2021 about 4 months before in **A.H. Jamal Sonix Corporation v. Wellworth Hotels & Lodges Limited,** Misc. Civil Application No. 61 of 2021 held that the decision of Deputy Registrar was not appealable rather an aggrieved party should file reference to be entertained by Judge of High Court.

There are also several judicial decisions of the High Court which dismissed appeal as appropriate legal remedy for a party aggrieved by decision of the Registrar or Deputy Registrar of Labour Court. The said judicial decisions of the High Court which take the legal stance that decision of the Registrar or Deputy Registrar of Labour Court is not appealable, *inter alia*, include the following: **A.H. Jamal Sonix Corporation v. Wellworth Hotels & Lodges Limited,** Misc. Civil Application No. 61 of 2021 (unreported); **Yakobo John Masanja v. Mic Tanzania Limited,** Labour Revision Application No. 385 of 2022 (unreported); and **Dotto Marco Kahabi v. Seet Peng Swee & Total (T) Ltd,** Labour Revision No. 424 of 2020 (unreported).

Mr. Matojo brought in this case an argument on the construction of the provisions of *Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act, Cap. 141*

which provide that decision of Registrar or Deputy Registrar made under *Rule 1 of Order XLIII of the Civil Procedure Code (supra)* are appealable to the Court of Appeal as matter of right without requirement of leave of the Court to lodge appeal. Nevertheless, it was his view that all judicial decisions of the High Court cited herein which take legal stance that decision of Registrar or Deputy Registrar made in execution proceedings are appealable vertically to the Court of Appeal did neither cite nor premise the *ratio decidendi* enunciated therein on provisions of *Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act, Cap. 141.*

Mr. Matojo called upon this Court to take notice from outset his firm view that the provisions of *Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act, Cap. 141* are unconstitutional for being inconsistent with *Article 109 (1) and 117 (3) of the Constitution* read in tandem with *Section 5 of Judicature and Application of Laws Act, Cap. 358 and Section 50 (1), (3) and (4) of the Labour Institutions Act, Cap. 300* thereby *null et void ab initio* under *Article 64 (5) of the Constitution* as judicially considered by Court of Appeal in **Attorney General v. Lohay Akonaay & Joseph Lohay,** Civil Appeal No 31 of 1994 [1995] TLR 80.

I have taken notice of the call of Mr. Matojo. I, however, decline to his call because this is not a constitutional Court. As such, the Labour Court lacks jurisdiction to declare a certain provision of the law to be unconstitutional.

Indeed, I agree with Mr. Matojo that the argument that decision of Registrar or Deputy Registrar made in execution proceedings is appealable to the Court of Appeal under provisions of *Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act, Cap. 141* was challenged by my brethren Arufan, J in **Dotto Marco Kahabi v. Seet Peng Swee & Total (T) Ltd** *(supra)* who set forth two strong arguments: *First*, the orders which are appealable to the Court of Appeal under *Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act, Cap. 141* are the orders made by the High Court in exercise of its original jurisdiction and but not the orders made by High Court in exercise of other jurisdictions thus orders made by the Deputy Registrar of Labour Court in the course of executing of the award issued by CMA is not made by the Labour Court in exercise of its original jurisdiction thereby not appealable to the Court of Appeal under the said provisions of law. *Second*, *Section 5 (1) (b) (ix) of the Appellate Jurisdiction Act, Cap. 141* do not apply where there is any written law *pro tempore* in force which provides the contrary as there is *the Labour Court Rules, 2007* which is a written law that

provides the contrary in that the order made by Deputy Registrar of Labour Court in execution proceedings should be challenged by way of revision thereby such orders are not appealable to the Court of Appeal under the said provisions of law. The reasoning by Hon. Arufan J is tight but I have and I still maintain a different view on entertaining revision against the decision of Deputy Registrar for the reasons which will be apparent later.

2: HORIZONTAL REVISIONISM.

The proponents of **Horizontal Revisionism** take a firm legal stance that any party aggrieved by the decision of the Registrar or Deputy Registrar should horizontally exhaust appropriate legal remedy which is available in the High Court namely revision. One of the earliest decisions of High Court (Labour Division) that recognized revision as remedy available for the party aggrieved by the decision of the Registrar or Deputy Registrar of Labour Court appears to be case of **Capitol Decoration & Building Works v. Edward Rugayaza, Revision 239** of which its ruling was delivered on 6th March, 2009 wherein Labour Court revised and set aside decision of Deputy Registrar in exercise of execution jurisdiction. In **Capitol Decoration & Building Works Vs Edward Rugayaza**, *(supra)* Deputy Registrar in endavour to exercise executional jurisdiction ordered CMA to conduct

arbitration afresh and this resulted into two arbitral awards consequently Labour Court revised and quashed the said order made by Deputy Registrar.

Another earliest decision of High Court (Labour Division) that recognized revision as remedy available for the party aggrieved by the decision of the Registrar or Deputy Registrar of Labour Court is **Mary Mwaifunga v. TPC Ltd,** Execution File No. 186 of 2010 of which its ruling was delivered on 8th February, 2011 wherein Labour Court revised and quashed decision of Deputy Registrar in exercise of executional jurisdiction on ground of excess of jurisdiction.

Five years later after revision was given clean bill of health in **Capitol Decoration & Building Works v. Edward Rugayaza Case**, Late Madam Regina Rweyemamu in the case of **George Mapunda & Wema Abdalla v. Dawasco,** Misc. Revision No. 1 of 2014 [2014] LCCD No. 89 from page 118 to 128. on 8th July, 2014 seconded the move wherein at page 8 of the unreported printed ruling held as reproduced verbatim hereunder:

> *The LC has inherent power to **revise** not to review, decisions and order made by the Registrar in the course of execution of decrees, if moved properly by the parties, and even suo mottu (sic), where the Court ...considers it expedient in the circumstances, to achieve the objects of*

the Act, and the good ends of justice. Rule 55 (1) and (2) of the Labour Court Rules.

My brethren Mdemu, J (as he then was) in his ruling delivered on 4th August, 2020 in the case of **Pangea Minerals Ltd Applicant v. Mussa Mayeye**, Labour Revision No.61 of 2018 on revisionary jurisdiction of Labour Court over decision of Registrar at page 7 of unreported printing ruling had this to say:

> Last, is the observation of the Applicant's Mr., which I entirely agree that, as the Respondent was uncomfortable with the decretal sum decreed by the first Deputy Registrar, instead of filing a fresh application, thus inviting another Deputy Registrar to review or correct the order of the other, *he would have asked this Court to revise the decision of an application for execution of the former Deputy Registrar.* What therefore was done by the second Deputy Registrar was not only supported by any justification, but also illegal.

The Learned Author, Ally Kileo in his labour treatise, (2023), "Comprehensive Issues of Employment and Labour Law: Practice for Modern Business in Tanzania", Lexis Nexis; Johannesburg: at pg. 655 while citing the case of **George Mapunda & Wema Abdallah v. Dawasco** (supra) opines that Labour Court has jurisdiction to revise the decision of Deputy Registrar thereof under provisions of *55 (1) of the Labour Court Rules, 2007.*

The proponents of **Horizontal Revisionism** put forth four (4) arguments to justify revisability of decision of Deputy Registrar of Labour by High Court (Labour Division). *First*, the provisions of *Rule 28 (1) of the Labour Court Rules, 2007 (G.N. No. 107 of 2007)* vests High Court (Labour Division) with exclusive revisionary jurisdiction over the decision or proceedings of any responsible person (public officer) or responsible body (institution) which/who implements the provisions of "the Acts" (labour statutes). Horizontal Revisionists postulate asseveration that the jurisdiction to revise decisions or proceedings of any public office (public authority) or public institution established under labour statutes exclusively vests in High Court (Labour Division) by virtue of *Rule 28 (1) of the Labour Court Rules, 2007*. *Second*, the Deputy Registrar of High Court (Labour Division) is a person or public officer who purports to implement the provisions of *"the Acts"* (the labour statutes) under provisions *Section 54 (b) of the Labour Institutions Act, Cap. 300* and provisions of *Section 87 (4), 89 (2), 91 (3) 95 (4) of the Employment and Labour Relations Act, Cap. 366* through execution of decree or stay of execution of decrees of labour institutions and offices established by labour statutes. *Third*, the Deputy Registrar of High Court (Labour Division) being a person who implements the provisions of

"the Acts" (labour statutes) is amenable to revision by High Court (Labour Division) constituted by Judge of High Court under *Rule 28 (1) of the Labour Court Rules, 2007.* In many cases Labour Court revised and set aside decision of Deputy Registrar under *Rule 28 (1) of the Labour Court Rules, 2007* in exercise of his executional jurisdiction or stay of executional jurisdiction and such cases, *inter alia*, include case of **Pangea Minerals Ltd Applicant v. Mussa Mayeye,** Labour Revision No.61 of 2018. *Fourth*, the High Court (Labour Division) enjoy inherent jurisdiction under provisions of *Rule 55 (1) and (2) of the Labour Court Rules, 2007* to revise the decision of Deputy Registrar of Labour Court as reflected in **George Mapunda & Wema Abdalla v. Dawasco**, Misc. Revision No. 1 of 2014.

Though my learned Sister Rweyemamu, J in **Total (T) Ltd v. Godliver Massawe,** *Execution No. 405 of 2009 (supra)* in her ruling delivered on 20th December, 2010 took position that decision of Registrar of Labour Court is Appealable to the Court of Appeal but in her ruling delivered on 8th July, 2014 about 4 years later in **George Mapunda & Wema Abdalla v. Dawasco,** Misc. Revision No. 1 of 2014 held that the decision of Deputy Registrar is revisable by Labour Court and it is not reviewable as

review falls in domain of power of Deputy Registrar to review his own decision.

The legal proposition that decision of the Registrar or Deputy Registrar of Labour Court is revisable by High Court (Labour Division) was given clean bill of health by many judicial decisions of the High Court than any other legal remedies such as appeal, revision, reference, suit, review and Registrarial review. There is *plethora* of unbroken chain of precedential authorities that support the legal proposition that decision of the Registrar or Deputy Registrar of Labour Court is revisable by High Court (Labour Division) and such judicial decisions, *inter alia*, include the following: **Mary Mwaifunga v. TPC Ltd**, Execution File No. 186 of 2010 (Rweyemamu, J s she then was); **Arnold Mganga v. KCB Tanzania Ltd**, Revision 215 of 2014 (Mipawa, J as he then was); **George Mapunda & Wema Abdalla v. Dawasco,** Misc. Revision No. 1 of 2014 (Rweyemamu, J as she then was); **Pangea Minerals Ltd Applicant v. Mussa Mayeye**, Labour Revision No.61 of 2018 (Mdemu, J as he then was); **China Railway Seventh Group Co. Limited v. Baraka Rajabu Kidori**, Application for Reference No. 4 of 2020 (Mzuna, J as he then was); **Deloitte Consulting Ltd v. Meneral Rwezaura & Comrade Auction Mart Co. Ltd,** Revision No. 340 of 2015

(Mashaka, J); **Finca Microfinance Bank v. Vedastus Chundu**, Revision No. 23 of 2020 (Mkwizu, J); **Seleman Athman Salehe and 7 Others v. Joinven Investment (T) Limited and AL-Hatimy Developers,** Revision No. 813 of 2019 (Aboud, J); **Richard Julius Rukambura v. Tanzania Local Government Workers Union,** Labour Revision No. 55 of 2020 (Ismail, J as he then was); **David John v. Uniliver Tea Tanzania Limited**, Revision Application No. 05 of 2019 (Matogolo J. as he then was); **Baker Hughes Eno Ltd v. Nelson S. Makene & Another**, Revision No. 117 of 2018 (Wambura, J as she then was); **Dotto Marco Kahabi v. Seet Peng Swee & Total (T) Ltd,** Labour Revision No. 424 of 2020 (Arufan, J); **NMB Bank LC v. Sarah Richard Hamza**, Labour Revision No. 85 of 2019 (Rumanyika, J); **Alliance One Tobacco Tanzania Ltd v. Halfan Abdallah**, Marejeo Na. 19 ya 2020 (Mwaipopo, J); **Capitol Decoration & Building Works v. Edward Rugayaza,** Revision 239 of 2008 (Rweyemamu, J as she then was); **MIC Tanzania Limited v. Edwin Kasanga**, Misc. Labour Application No. 404 of 2019 (Aboud, J); **Deposit Insurance Board (Liquidator of Fbme Bank Limited) v. Vinayachandran Pathaya Thingal,** Misc. Labour Application No. 384 of 2021 (Mganga, J); **Rashid Bowa v. D.T. Dobbie and Co (T) Limited,**

Misc. Application No. 120 of 2019; **Impala Warehouse and Logistics (T) Limited v. Samuel Kayombo and io 3 Others,** Revision No. 926 of 2018 (Mwaipopo, J); **Chui Security Co. Limited v. Thomas Bangu**, Revision No. 27 of 2019 (Mwaipopo, J); **Akbar Hassan Mohamed v. Zetas Zemin Teknolojis A.S,** Revision No. 417 of 2020 (Maghimbi, J); **Central Security Guards Ltd v. Ramadhani Shomari & 97 Others,** Revision Application No. 128 of 2020 (Mwaipopo, J); **Freco Equipment Limited v. Neema Omari Mkila**, Revision No. 282 of 2022 (Mganga, J); **National Bank of Commerce Ltd v. Kilulu Kisongo,** Revision No. 274 Of 2021 (Maghimbi, J); **Total (T) Ltd v. Godliver Massawe,** Misc. Application No. 93 of 2011 (Mosha, J); **UAP Insurance (T) Limited v. Yuda Shayo & 6 Others**, Revision Application No. 433 of 2021 (Mganga, J); **Wilson Chacha v. the Dar es Salaam Water and Sewarage Authority**, Revision No. 482 of 2019 (Aboud, J); **Mary Mbelle v. Akiba Commercial Bank Ltd,** Revision No. 262 of 2016 (Nyerere, J as she then was.); **Alliance One Tobacco Tanzania Limited v. Martin Chembeli General & 3 Others**, Revision No. 20 of 2020 (Rwizile, J); **Malmo Development Co. Ltd v. the Labour Commissioner & Another**, Revision Application No. 288 of 2021 (Mganga, J); **Mufindi Tea And Coffee Limited v. Valerian Joseph Assey,** Misc.

Labour, Revision No. 4 of 2022 (Utamwa, J as he then was); **China Communication Construction Company Limited v. Boaz Matoba & 298 Others**, Revision No. 04 of 2014, Part II [2015] LCCD No. 135 from page 71 to 75. (Nyerere, J as she then was); and **African Barrick Goldmine v. Eddie Hamza,** Revision No. 346 of 2015, [2015] LCCD No. 172 from page 181 to 183 (Nyerere, J as she then was).

In the first fifteen (15) Labour Cases hereinabove, the Labour Court granted application for revision against the decisions made by Registrar and Deputy Registrars of Labour Court, *id est*, Labour Court revised the decisions of Registrar and Deputy Registrar of Labour Court by setting such decisions aside. In two Labour cases of **Fredo Equipment Limited** *(supra)* **and Kilulu Kisonga** *(supra)* numbered 16th and 17th, Labour Court granted application for extension of time within which to lodge application for revision to challenge legal validity of the decisions of the Deputy Registrar of Labour Court. The 18th Labour case **(Total T Ltd)** (supra), that is the case the Labour Court by necessary legal implications embraced revision as appropriate legal remedy.

However, Labour Court dismissed for want of merits application for extension of time within which to lodge application for revision to challenge

decision of the Deputy Registrar of Labour Court. In 14 Labour Cases from 19th Labour Case consecutively to 33th Labour Case, the Labour Court embraced revision as appropriate legal remedy available under the law for challenging the decision of Deputy Registrar of Labour Court. However, the Labour Court dismissed 14 applications for revision for want of merits.

It is worth noting that my brethren Mipawa, J (as he then was) set aside decision of Deputy Registrar in **Ebrahim Haji Charitable Health Centre v. Jenifer Mlondezi & 3 Others,** Misc. Labour Application No. 227 of 2016. However, the ruling in this case is silent with regards to legal remedy which was pursued and provisions of law under which Applicant preferred labour application.

3. HORIZONTAL REVIEWISM.

The proponents of **Horizontal Reviewism** take a firm legal stance that any party aggrieved by the decision of the Registrar or Deputy Registrar should horizontally pursue review as appropriate legal remedy available in the High Court against decision of Registrar or Deputy Registrar. One of the earliest decisions of High Court (Labour Division) that recognized review as remedy available for the party aggrieved by the decision of the Registrar or

Deputy Registrar of Labour Court appears to be case of **Capitol Decoration & Building Works v. Edward Rugayaza,** Execution No. 418 of 2009 of which its ruling was delivered on 8th January, 2010 by **Rweyemamu, J** (she then was) wherein Labour Court reviewed and affirmed the decision of Deputy Registrar in exercise of executional jurisdiction.

About 2 years later after review was given clean bill of health in **Capitol Decoration Case**, Wambura, J her ruling delivered on 24th April, 2012 in **Hemed Omary Kimwaga and SBC Tanzania Limited,** Misc. Application No. 75 of 2011 Labour Court Case Digest [2011 – 2012] at page 241 reviewed and affirmed the decision of Deputy Registrar of Labour Court in exercise of executional jurisdiction.

Another subscriber to the Horizontal Reviewism juristic school of thought is reflected in the case of **Yakobo John Masanja v. Mic Tanzania Limited,** Labour Revision Application No. 385 of 2022 delivered on 28th February, 2023 and consolidated the position in the ruling delivered on 31st May, 2023 in the case of **National Bank of Commerce Ltd v. Z.S. M Kondya**, Labour Revision No. 96 of 2023. Furthermore, two days later, the position was consolidated in the ruling delivered on 2nd June, 2023 in the

case of **Sylvesters Mboje v. CRDB Bank Plc**, Labour Review No. 07 of 2023.

In **Yakobo John Masanja v. Mic Tanzania Limited** *(supra)* at page 26 and 27 of unreported printed ruling, the Court embraced Horizontal Reviewism juristic school of thought in following words:

> Under Rule 26 of the Labour Court Rules, *the Labour Court has the inherent jurisdiction to review decisions of the Deputy Registrar* and it will do so in any of the following circumstances to wit; where there is a manifest error or any mathematical or clerical 26 error on the face of the record which resulted in miscarriage of justice, or where the decision was attained by fraud; or where a party was wrongly deprived of the opportunity to be heard, or where there is discovery of new important matter or evidence, or where there is any other reasonable ground to the satisfaction of the Labour Judge. It is mF needless to emphasize that the scope of an application for review is much more restricted than that of an appeal.

The proponents of Horizontal Reviewism put forward seventeen (17) arguments to justify reviewabiliy of decision of Deputy Registrar of Labour Court out of which 16 arguments were discussed in detail in **Yakobo John Masanja v. Mic Tanzania Limited** (supra) from page 26 *et sequentes* to page 39 of unreported printed ruling. However, for the interest of time and brevity this work discusses only 9 arguments put forward by horizontal reviewists.

First, horizontal reviewists contend that the Labour Court has the inherent jurisdiction to review decisions of the Deputy Registrar under Rule 26 of the Labour Court Rules, 2007.

Second, Judges of Labour Court have been vested with powers under labour laws to review the decisions of the Deputy Registrar which is not normal in ordinary suit where the reviewing body is the same person who formerly made such decision save in case of death, retirement or incapacitation of any kind, where review may be done by another judicial officer of similar rank. Unlike classical review under traditional civil procedure and practice, the Judge of High Court (Labour Division) is vested with power to review the decisions of the inferior or subordinate bodies or officers such as awards or decision of CMA and Deputy Registrar.

Third, horizontal reviewists asseverate a proposition that invocation of the review by Labour Court over decision of Registrar of Labour Court is necessary and important to alleviate or reduce the work load or backlog of the Justices of Appeal (Court of Appeal).

Fourth, review expedites determination of labour dispute thereby promote the demand of public policy on the finality of litigation (*Reipublicae*

Ut Sit Finis Litium) and economy development and efficiency in the conduct of labour litigation in the interests of the parties and of the public as a whole.

Fifth, horizontal reviewists avow that High Court (Labour Division) derives legal legitimacy to review decision of Deputy Registrar from provisions of *Article 108 (2) of the Constitution* which confers upon High Court inherent jurisdiction to prevent miscarriage of justice or to correct grave errors committed by it or its officer.

Sixth, horizontal reviewists expostulate proposition that the Labour Court has power to revised decision of Deputy Registrar under *Rule 28 of the Labour Court Rules, 2007 (supra)* on ground that these provisions empower the Court to revise proceedings decided by any responsible person or body implementing the provisions of the labour law but the Registrar is defined as part of the Labour thereby he does not feature in the persons specified under *Rule 28 of the Labour Court Rules, 2007 (supra)*.

Seventh, revision is implied remedy, it is not expressly provided by law as revision is brought under Rule 55 of the Labour Court Rules, 2007 which is not express thereby the Court is required to adopt fall back procedure it deems appropriate to fill the *lacuna* whereas review is brough under specific

provisions namely *Rule 26 of the Labour Court Rules, 2007 (supra)* which are express thereby revision under Rules 55 of the said Rules cannot be invoked in presence of express provisions of law in *Rule 26 of Labour Court Rules, 2007 (supra).*

Eighth, horizontal reviewists' opinion posit an idea that matters which are abnormal or uncommon under classical or traditional civil procedure and practice are made normal and common under the labour procedure and practice and one of such abnormal or uncommon under classical or traditional civil procedure and practice which is made normal is procedure and practice of Judge of High Court (Labour Division) to review decision of Registrar or Deputy Registrar of High Court as under new labour regime there are special laws which establish special institutions which apply special procedures in administration or dispensation of labour justice through special mechanisms of resolution of labour disputes such as collective bargaining, Mediation, Arbitration and where necessary adjudication. **Ninth**, horizontal reviewists propound a logical legal proposition that it is within the ambit of the peculiar labour law of Tanzania that the Judges of Labour Court have the general supervisory powers to all person or body performing functions under the labour laws including the Deputy Registrars as one of unique or peculiar

feature thereby any person aggrieved by the decision of the Deputy Registrar can pursue view in the Labour Court constituted by Judge and not appeal to the Court of Appeal as normal or ordinary civil suit dictates.

Though there are few judicial decisions that subscribe to horizontal reviewism yet there are several judicial decisions of the High Court which dismissed review as appropriate legal remedy for a party aggrieved by decision of the Registrar or Deputy Registrar of Labour Court. The said judicial decisions of the High Court which take the legal stance that decision of the Registrar or Deputy Registrar of Labour Court is not reviewable by Judge of High Court, *inter alia*, include the following: **Sogea Satom Company v. Barclays Bank Tanzania & 2 Others,** Misc. Civil Reference No. 15 of 2021; **James Mgaya & 3 Others v. TTCL (T) Ltd**, Mis. Application No. 15 of 2013.

My brethren Mruma, J in **Sogea Satom Company v. Barclays Bank Tanzania & 2 others** (*supra*) held that a decision delivered or order made by the Deputy Registrar of the High Court is a decision of the High Court therefore the same cannot be challenged by way of review to Judge of the same High Court except where the law clearly and expressly states otherwise thereby the only way Judge of High Court can legally review a decision of

the Deputy Registrar is by way of reference under *Rule 7(1) of the Advocates Remuneration Order, 2015* in which case the law expressly provides so.

4: REGISTRARIAL REVIEWISM.

Registrarial Reviewism postulates a legal theory that review against decision of Registrar or Deputy Registrar should be entertained by Registrar or Deputy Registrar himself. The jurisprudence behind this legal theory hypothesised by Registrarial Reviewists are both legal tradition and law which dictate or demand that the judicial decision should be reviewed by the same or similar judicial officer who delivered such judicial decision. And the jurisprudence behind this legal preposition is that judicial officer who heard and determined the matter in detail and applied his mind both on law and on facts on such matter knows well such legal matter with regards to applicable law, the facts of the case, evidence, demeanours of the parties and all the circumstances surrounding the case that led to arriving at the decision in question. The judge who did not hear and determine the case needs a lot of time and effort to know or familiarize himself with the case and comprehend the case to establish the existence or non-existence of grounds for review. All these arguments which Registrarial Reviewists postulate to legtimatise the Registrarial Reviewism juristic school of thought

in legal realm were well captured in the ruling in **Yakobo John Masanja v. Mic Tanzania Limited** *(supra)* particularly at page 35 of unreported printed ruling.

The High Court (Labour Division) judicially proclaimed review under auspices of Registrar or Deputy Registrar as remedy available for the party aggrieved by the decision of the Registrar or Deputy Registrar of Labour Court in 2013 in the case of **James Mgaya & 3 Others v. TTCL (T) Ltd, Mis. Application No. 15 of 2013** of which its ruling was delivered on 19th February, 2014. Also, the Labour Court embraced similar position in the case of **George Mapunda & Wema Abdalla v. Dawasco** (supra) of which its ruling was delivered on 8th July, 2014. In the said case of **James Mgaya & 3 Others v. TTCL (T) Ltd**, Labour Court refused to review the decision of Registrar in exercise of executional jurisdiction on ground that review of the decision of Registrar falls within exclusive domain of Registrar himself.

In **James Mgaya & 3 Others v. TTCL (T) Ltd**, Applicants were aggrieved by order made by Registrar in the course of exercising his executional jurisdiction whereas Applicant alleged that the order of Registrar was contrary to the decision of labour Court namely **Revision No. 30 of 2011**. Applicant lodged application for review under *Section 94 of the*

Employment and Labour Relations Act, 2004 and Rule 24 and 26 of the Labour Court Rules, 2007 to challenge the order of Registrar before Judge of High Court. The Court in its own words held:

> *Application for of the Registrar's decision has to be made to, and decided by, the Registrar who made the decision which is sought to be reviewed.*

Just like all antagonistic school of thought registrarial reviewism happened to face both acceptance and rejection by some members of the bench and some members of the Bar. There are several judicial decisions of the High Court which dismissed registrarial review as appropriate legal remedy for a party aggrieved by decision of the Registrar or Deputy Registrar. The said judicial decisions of the High Court which take the legal stance that decision of the Registrar or Deputy Registrar cannot be reviewed by Registrar or Deputy Registrar himself, *inter alia*, include the case of **Pangea Minerals Ltd v. Mussa Mayeye** *(supra).*

5: HORIZONTAL REFERENCISM.

The proponents of **Horizontal Referencism** opine that any party aggrieved by the decision of the Registrar or Deputy Registrar should horizontally pursue reference. Further, horizontal Referencists hold a view

that Reference should be lodged in the High Court and should be heard and determined by Judge of High Court. Furthermore, horizontal Referencists claim that the decision of Registrar or Deputy Registrar in exercise of his or her powers of execution under *Rule 1 (g) of Order XLIII and under Order XXI* is not appealable to the Court of Appeal as the same is not enumerated in the list of appealable orders under *Rule 1 (1) of Order XL of the Civil Procedure Code, Cap. 33.* Consequently, horizontal Referencists maintain that since the decision of Registrar or Deputy Registrar is not appealable order under *the Civil Procedure Code, Cap. 33* automatically such decision should be challenged by way of Reference which lies to the High Court under *Rule 1 of Order XL of the Civil Procedure Code, Cap. 33* and the same should be heard and determined by Judge of the High Court. All these four (4) arguments set forth by horizontal Referencists are well captured in ruling of Mruma, J in the case of **A.H. Jamal Sonix Corporation v. Wellworth Hotels & Lodges Limited,** Misc. Civil Application No. 61 of 2021 delivered on 11th November, 2021.

My brethren Mruma, J in the case of **A.H. Jamal Sonix Corporation v. Wellworth Hotels & Lodges Limited**, *(supra)* offers two sources of

law from which High Court derives jurisdiction to entertain reference arising out of decision of Registrar or Deputy Registrar namely:

(a) legal tradition (legal practice).
(b) Rule 1 of Order XLI of the Civil Procedure Code, Cap. 33.

My brethren Mruma J, observed:

> *Apparently there is no specific provision in the Civil Procedure Code or any other law which governs procedure of appeal from the decision of a Deputy Registrar or Registrar of the High Court but generally the practice has been that any person who is dissatisfied with a decision of the Registrar or Deputy in his or her capacity as such may refer that decision to a judge.*

On legal basis of reference, Rweyemamu, J in **Globeleq Tanzania Services Ltd. v. Evarist Sessa,** Misc. Application No. 47 of 2010 [2011 – 2012] LCCD No. 14 from page 94 and 95 of [2011-2012] Labour Court Case Digest had this to say:

> *The third option is for the aggrieved party to put a machinery of reference under Order XLI of the CPC in motion. That is, an aggrieved party may make an application to the Registrar, requesting a reference be made to the High Court on the matter on which doubt is entertained. The Registrar may then, 'draw up statement of the relevant facts and the point on which doubt is entertained and refer such a statement with his/ her opinion on the point' for decision of the High Court under the cited Order. Such an application to the Registrar would in my considered opinion, be made under the cited Order*

of the CPC, read together with rule 24 and 55 of the rules. The High Court may then act as prescribed by rule 5 of that Order or may revise or take appropriate action in respect of the CMA proceedings under its powers vested by rule 38 of the rule.

However, in the case of **Yakobo John Masanja v. Mic Tanzania Limited** *(supra)*, the Court observed that another source of law which horizontal referencists claim that High Court derives jurisdiction to entertain reference is *Section 38 (1) of the Civil Procedure Code, Cap 33* and to buttress the view, the Court cited the ruling of Mansour, J in **National Microfinance Bank Pic v. Victor Modesta Banda,** Labour Revision No. 34 of 2020.

Nevertheless, I now agree with Mr. Mattojo that **National Microfinance Bank Plc v. Victor Modesta Banda** *(supra)* belong to independent, separate and autonomous juristic school of thought which in this submission is assigned the name of **Horizontal Suitism**.

Reference as a legal remedy available under the law for a party aggrieved by decision of Registrar or Deputy Registrar was given clean bill of health in following cases: **A.H. Jamal Sonix Corporation v. Wellworth Hotels & Lodges Limited,** Misc. Civil Application No. 61 of 2021 (Mruma, J); **Globeleq Tanzania Services Ltd. v. Evarist Sessa,** Misc. Application

No. 47 of 2010 (Rweyemamu, J); **Tanzania Oxygen Limited v. Juma Nkondo**, Misc. Application No. 85 of 2011 (Moshi, J); **Mustafa Mbinga v. Tourism Promotion Services,** Reference No. 3 of 2020 (Robert, J); **National Insurance Corporation of Tanzania Ltd v. Steven Zakaria Kiteu Edmund D. Nzela George Nzela**, Civil Reference No. 07 of 2020 (Gwae, J); **China Railway Seventh Group Co. Ltd v. Baraka Rajabu Kidori,** Application for Reference No. 4 of 2020 (Mzuna, J); **K- Group (T) Limited v. Diamond Motors Limited**, Civil Reference No. 13 of 2020 (Rwizile, J); **Mantis Limited v. Allan Van Heerden,** Reference No. 1 of 2022 (Mwaseba, J); and **Valerian Chrispin Mlay v. Kagera Tea Company Ltd**, Misc. Labour Application No. 10 of 2019 (Mtulya, J).

Though there are several judicial decisions that subscribe to horizontal referencism, yet there are several judicial decisions of the High Court which dismissed Reference as appropriate legal remedy for a party aggrieved by decision of the Registrar or Deputy Registrar. The said judicial decisions of the High Court which take the legal stance that decision of the Registrar or Deputy Registrar of Labour Court cannot be challenged by way of reference, *inter alia*, include the following: **Nurdin Mohamed Chingo v. Salum Said Mfiwe,** Reference No. 6 of 2022; **Sogea Salum Company v. Barclays**

Bank Tanzania, Misc. Reference 15 of 2021 (Mruma, J); **Duncan Shilly Nkya & Another v. Oysterbay Hospital Co. Ltd** (Reference 26 of 2022 (Hemedi, J); **Philip Joseph Lukonde v. Faraja Ally**, Land Reference No. 01 of 2020 (Kagomba, J); **Nizar Abdallah Hirji v. Rehema Salumu Abdallah,** Misc. Civil Application No. 34 of 2020; **Registered Trustee of Taqwa Private Secondary School v. Registered Trustee of Bakwata,** Land Reference No. 03 of 2022 (Mnyukwa, J); **The Treasurey Registrar the Permanent Secretary Ministry for Finance & the Attorney General v. Hadrian Benedict Chipeta,** Reference No. 25 of 2022 (Mgeyekwa, J); **Ukerewe Saccos Ltd v. Jumanne A. Josiah,** Labour Reference No. 03 of 2022 2022 (Mnyukwa, J); and **Yohana Maiko Sengasu v. Mirambo Mabula**, Civil Reference No. 1 of 2023 (Msafiri, J).

On 27th June, 2023, High Court (Land Division) in **Yohana Maiko Sengasu v. Mirambo Mabula,** Civil Reference No. 1 of 2023 (as per Msafiri, J), the Court held that High Court does not have jurisdiction to entertain an application for reference against decision of Deputy Registrar as reference lies against decision of subordinate Court.

My brethren Mruma, J in **Sogea Satom Company v. Barclays Bank Tanzania & 2 Others** *(supra)* held that a decision or order delivered or

made by the Deputy Registrar of the High Court is a decision of the High Court therefore the same cannot be challenged by way of Reference to the same High Court except where the law clearly and expressly states otherwise thereby the only way Judge of High Court can legally entertain Reference arising out of decision of the Deputy Registrar is by way of reference under *Rule 7(1) of the Advocates Remuneration Order, 2015* in which case the law expressly provides so. The same legal position was taken by High Court at Dodoma in the case of **Nizar Abdailah Hirji v. Rehema Salumu Abdallah,** Misc. Civil Application No. 34 of 2020.

To my knowledge, the Court of Appeal has not expressed itself on the move of challenging decision of Registrar by way of reference as it is captured in the case of **Tito Shumo & 49 Others v. Kiteto District Council,** Civil Application No. 170 of 2012 as well as in the case of **Laemthong Rice Co. Ltd v. Principal Secretary Ministry of Finance Zanzibar, Civil Appeal No. 259 of 2019**. In the latter case, Court of Appeal embraced the reference as it entertained and allowed appeal arising out of decision of High Court made in reference and in the former case, it refused to entertain decision of the High Court arising out of reference not

because reference is illegal but only because reference is not appealable order under *the Civil Procedure Code (supra).*

6: HORIZONTAL SUITISM.

The proponents of Horizontal Suitism set forth four (4) arguments immediately provided hereinafter. *First*, any party aggrieved by the decision of the Registrar or Deputy Registrar in relation to the execution or discharge or satisfaction of the decree should horizontally adjudicate the matter through lodging application with status of suit under *Section 38 (1) of the Civil Procedure Code, Cap. 33. Second*, the said application lodged under *Section 38 (1) of the Civil Procedure Code, Cap. 33* should be treated as suit and at discretion of the Court. Additional Court fees may be paid for institution of such suit. *Third*, such suit in form of application should be heard and determined by Judge of High Court. *Fourth*, horizontal suitists asseverate a legal proposition that registrar or Deputy Registrar of High Court does not have power to hear and determine the suit instituted under *Section 38 (1) of the Civil Procedure Code (supra)* relating questions arising out of the execution or discharge or satisfaction of the decree *in lieu* thereof such judicial power vests in the Judge of the High Court.

All these four (4) arguments advanced by horizontal suitists are well captured in ruling of Mansoor, J in the case of **National Microfinance Bank PLC v. Victor Modesta Banda,** Labour, Revision No 34 of 2020 delivered on 31st May, 2022. Mansoor, J in **National Microfinance Bank PLC v. Victor Modesta Banda Case** held that; judgment debtor who is aggrieved by decision of the Deputy Registrar relating to discharge of the decree should lodge application under *Section 38 (1) of the Civil Procedure Code, Cap. 33.* Mansoor, J further held; through that application, *Section 38 (1) of the Civil Procedure Code, Cap. 33* should be treated as suit and should be determined by the Judge of the High Court.

Though my learned Sister Monsoor, J in **National Microfinance Bank Plc v. Victor Modesta Banda** *(supra)* subscribed to horizontal suitism juristic school of thought yet my brethren Morris, J in **Rose @Tanna Ally Nyabange v. Athuman Ally Nyabange** (supra) dismissed adjudication of matter arising from execution by way of suit as appropriate legal remedy for a party aggrieved by decision of the Registrar or Deputy.

The Court of Appeal in **Hassan Twaib Ngonyani v. Tazama Pipe Line Ltd,** Civil Appeal No. 201 of 201 of 2018 subscribes to Suitism juristic school of thought as in this case it held that executing Court enjoys exclusive

jurisdiction under *Section 38 (1) of the Civii Procedure Code, Cap. 33* to deal with any question relating to execution, discharge and satisfaction of the decree. However, in the case of **Hassan Twaib Ngonyani** *(supra),* the Court of Appeal did not resolve the legal controversy who constitutes the executing Court or who presides over the executing Court under *Section 38 (supra)* as between a Judge and a Registrar given the fact that there are conflicting decisions on this subject. While the Horizontal Suitists maintain that the executing Court under *Section 38 (supra)* is properly constituted where it is presided over by Judge of High Court as it was held by Mansoor, J in **National Microfinance Bank Plc v. Victor Modesta Banda** (supra). However, the Registrarial Suitists contend that the executing Court under *Section 38 (supra)* is properly constituted where it is presided over by Registrar or Deputy Registrar of High Court as it was held by Rwizile, J in **K-Group (T) Limited v. Diamond Motors Limited** (supra) as well as Kagomba, J in **Nizar Abdallah Hirji v. Rehema Salumu Abdallah** *(supra).*

7: REGISTRARIAL SUITISM

The Registrarial Suitism shares almost everything in common with Horizontal Suitism. However, the point of departure centres on judicial

authority with jurisdiction to entertain suit arising out of execution proceedings. While Horizontal Suitism contends that judicial authority vested with jurisdiction to entertain suit arising out of execution proceedings under *Section 38 (1) of the Civil Procedure Code (supra)* is the Judge of the High Court, Registrarial Suitism maintains that judicial authority vested with such jurisdiction is the Registrar or Deputy Registrar of the High Court.

The proponents of Registrarial Suitism just like proponents of Horizontal Suitism set forth four (4) arguments immediately stated hereinafter. *First*, just like their juristic cousins namely horizontal suitists, Registrarial suitists claim that any party aggrieved by the decision of Registrar or Deputy Registrar in relation to the execution or discharge or satisfaction of the decree should horizontally adjudicate the matter through lodging application with status of suit under *Section 38 (1) of the Civil Procedure Code (supra). Second*, registrarial suitists proclaim that the said application lodged under *Section 38 (1) of the Civil Procedure Code (supra)* should be treated as suit. *Third,* registrarial suitists maintain that such suit in form of application should be heard and determined by Registrar or Deputy Registrar of High Court. *Fourth*, registrarial suitists asseverate a legal proposition that Judge of High Court does not have power to hear and

determine the suit instituted under *Section 38 (1) of the Civil Procedure Code (supra)* relating questions arising out of the execution or discharge or satisfaction of the decree *in lieu* thereof such judicial power vests in the Registrar or Deputy Registrar of High Court.

All these four (4) arguments set forth by horizontal suitists are well captured in following judicial decisions of High Court: **K-Group (T) Limited v. Diamond Motors Limited,** Civil Reference No. 13 of 2020 (Rwizile, J); **Nizar Abdallah Hirji v. Rehema Salumu Abdallah**, Misc. Civil Application No. 34 Of 2020 (Kagomba, J).

My brethren Rwizile, J in **K-Group (T) Limited v. Diamond Motors Limited** (supra) on judicial authority vested with jurisdiction to entertain suit arising out of execution proceedings under *Section 38 (1) (supra)* at page 6 and 7 of unreported printed ruling had this to say:

> In her ruling when asked to award compounded interest, the Deputy Registrar rejected the request on ground that she has no such powers. She did so under *section 38 of CPC,* which requires the executing Court to determine all issues arising from execution...Discerning from the provision, it is the duty of *the Court executing the decree, in this case the Deputy Registrar* to interpret the terms of the judgement as passed by the Court.

Also, Kagomba, J in **Nizar Abdallah Hirji v. Rehema Salumu Abdallah** (supra) on similar subject matter at page 10 of unreported printed ruling had this to say:

> Section 38 (1) of the CPC enables *the presiding officer of the executing Court, who was the Deputy Registrar,* to answer and clarify issues arising from execution.

From the above cited and quoted judicial decisions of High Court, it is clear that Registrarial Suitism juristic school of thought takes a legal stance that a party who is aggrieved by decision of the Registrar or Deputy Registrar relating to execution, discharge or satisfaction of the decree should lodge application under *Section 38 (1) of the Civil Procedure Code (supra).* Ultimately such application, under *Section 38 (1) of the Civil Procedure Code (supra)* should be treated as suit and should be determined by the Registrar or Deputy Registrar of the High Court.

Registrarial Suitism just like all other antagonistic juristic school of thought happened to face rejection by both some members of the Bench and some members of the Bar. Morris, J in **Rose @Tanna Ally Nyabange v. Athuman Ally Nyabange** (supra) dismissed adjudication of matter arising from execution by way of suit as appropriate legal remedy for a party

aggrieved by decision of the Registrar or Deputy regardless of whether such suit is entertained by Registrar or Deputy Registrar or Judge.

8: HORIZONTAL PREROGATIVISM

As properly noted by Mr. Matojo, it is ethical duty of every advocate to contribute to the development of the law and the legal system. In his quest to develop the law, he has proposed, and I hereby approve such new juristic school of thought with regards to the question of appropriate legal remedy for a party aggrieved by the decision of Deputy Registrar of Labour. Mr. Matojo has assigned the said juristic school of thought the name of Horizontal Prerogativism.

Mr. Matojo was of the submission that there is no provisions of law which provides expressly the legal remedy and procedure to pursue such legal remedy for party aggrieved by decision of Deputy Registrar save for few matters which the law prescribe expressly both the legal and procedure connected therewith such taxation proceedings and election petitions. This state of legal affairs leads to believe that the law is silent with regards to appropriate legal remedy available under the law for party aggrieved by decision of Deputy Registrar. Mr. Matojo has called upon the Court to

adjudge that law is silent with regards to this controversial subject matter. As such, the aggrieved party cannot be left without legal remedy at common law as judicial review chips in circumstances of silence of the law or in the circumstances where the law ousts jurisdiction of the Court to entertain a certain matter.

It was the submission of Mr. Matojo that even in total absence of express provision or implied provision of law which openly provides remedy for, and the procedure on how to challenge decision of Registrar or Deputy Registrar of High Court yet still High Court would have jurisdiction to entertain disputes arising out of decision of Registrar or Deputy Registrar of High Court by way of Judicial Review on simple ground that where the law is silent with regards to Court with jurisdiction to entertain certain matter, automatically the High Court is bestowed with jurisdiction to entertain such matter in terms of **Article 108 (2) of the Constitution** as judicially considered by Masabo, J in **GBP Tanzania Limited v. Assaa Simba Haroon,** Civil Case No. 55 of 2021.

In **Yakobo John Masanja v. Mic Tanzania Limited** (supra), I *inter alia* held that the High Court (Labour Division) derives legal legitimacy to review decision of Deputy Registrar from the provisions of *Article 108 (2) of*

the Constitution through which confers upon High Court inherent jurisdiction to prevent miscarriage of justice or to correct grave errors committed by it or its officer.

Mr. Matojo argued that since the Labour Court has status of the Division of the High Court under *Section 50 (1) of the Labour Institutions Act, Cap. 300,* indispensably the Labour Court just like any other Divisions of the High Court enjoys power to entertain an application for judicial review. Indeed, by default, Labour Court rather enjoys power to issue prerogative orders namely certiorari, mandamus and probation.

The power of High Court (Labour Division) to issue prerogative orders is derived from three legal sources. *First, Section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2002]* as judicially considered by High Court in **Vidyadhar Girdhalal Chavda v. the Director of Immigration Services and Others** [1995] TLR 125 as per Samatta, JK (as he then was). *Second*, inherent, classical and traditional jurisdiction derived under the English Common incorporated into laws of Tanzania vide *Section 2(2) of the Judicature and Application of Laws Act, Cap. 358* as judicially considered by the High Court in **Alfred Lakaru v. Town Director (Arusha)** [1980] TLR 326 (HC, per Mganga J) and

in **Tanzania Dairies Ltd v. Chairman, Arusha Conciliation Board and Isaack Kirangi** [1994] TLR 33 (HC). Third, the Constitution itself especially *Article 13 (6) (a) and Article 108 (2) of the Constitution* as judicially considered by the High Court in **James F. Gwagilo v. Attorney General** [1994] TLR 73 and as postulated by **Prof. Issa G. Shivji** in his scholarly article titled "Developments in Judicial Review in Mainland Tanzania" (2006) in William Binchy and Catherine Finnegan, (eds), **Human Rights, Constitutionalism and the Judiciary: Tanzanian and Irish Perspectives,** Clarus Press, Dublin, pg. 129- 145, at pg. 131-132.

My Sister the late Rweyemamu, J in **Gidion *Mwenda* v. DED *Njombe District Council*, President of United Republic of Tanzania, Teachers Service Department & Attorney General,** Labour Dispute No. 44 of 2009 held that the High Court (Labour Division) is vested with jurisdiction to entertain an application for judicial review against the decision of any public authority or public officer and the Labour Court can issue prerogative orders against the decision of public authority or public officer if such decision is tainted with illegality, procedural impropriety and irrationality.

It was the view of Mr. Matojo that if it has to be adjudged that the law is silent with regard to the disputes arising out of decision of Registrar or Deputy Registrar of High Court, by default, High Court is seized with inherent jurisdiction to entertain such matter by way of judicial review under *Article 13 (6) (a) and 108 (2) of the Constitution* read in tandem with *Section 17 (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [Cap 310 RE 2002] as well as Section 2(2) of the Judicature and Application of Laws Act, Cap. 358.* Therefore, any party to execution proceedings or stay of execution proceedings or any other proceeding aggrieved by the decision of the Deputy Registrar of Labour Court can challenge the decision of Deputy Registrar by way of judicial review in the High Court (Labour Division) presided over by Judge of Labour Court.

With due respect to Mr. Matojo, I still maintain the position that the provision of *Rule 27 (2) of the Labour Court Rules (supra)* deals with review of the Judgement, decree or order of the Court as judiciary considered in the case of **Sylivester S. Mboje v. CRDB Bank PLC**, Labour Review No. 07 of 2023 High Court of Tanzania Labour Division at Dar es Salaam (unreported). Therefore, whoever aggrieved with the decision of the Deputy Registrar of the Labour Court or the Judgement of the Court can challenge

it before the Judge of the Labour Court by way of memorandum of review together with the notice of review. Upon service, the Respondent is required within 15 days to file a concise statement of response in respect of the memorandum of review without narratives or arguments. It follows therefore not true that the law is silent with regard to the disputes arising out of decision of Registrar or Deputy Registrar of High Court Labour Division. I however, reserve my answer as regards to other Divisions of the High Court to relevant time and space.

9: LEGAL EXPANSIVISM.

Mr. Matojo has emphasised, at the expense of repeating himself that it is ethical duty of every Advocate to contribute to the development of the law and the legal system by providing proposals for improvement of the law, bona fide criticism of laws, proposal or enunciation of new legal principles to resolve legal challenges or problems in our legal system and in our jurisdiction under *Rule 30 of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 (G.N. No. 118 of 2018).* He has taken this historic and precious opportunity to propose new juristic school of thought which accommodates all antagonistic schools of thought and of which he firmly believe it will resolve this legal controversy once and for all.

In the course of discharge of his ethical duty to develop the law and legal system and to criticize the *lex lata* (the law as it is) *pro tempore*, Mr. Matojo humbly invited this Court to embrace and adopt the *lex ferenda* (the law as it out to be), with regards to the question of appropriate legal remedy for a party aggrieved by decision of Deputy Registrar of Labour Court by assigning the said juristic school of thought the name of the Legal Expansivism.

As proponent of the Legal Expansivism, Mr. Matojo took a firm legal stance that any party aggrieved by the decision of the Registrar or Deputy Registrar of High Court should be allowed to pursue any legal remedy that best protect his legal rights and interests or that best addresses his concerns amongst the competing horizontal legal remedies available in the High Court namely revision, review, registrarial review, reference, judicial review and suit as well as vertical legal remedies available in the Court of Appeal namely revision, appeal and reference. According to Mr. Matojo, the jurisprudence behind the Legal Expansivism juristic school of thought is **the Expansive Interpretation Doctrine** enunciated by the Tripartite Bench of the Court of Appeal in the case of **Bulyanhulu Gold Mine (T) Ltd v. Nicodemes Kajungu & 1511 Others,** Civil Application No. 37 of 2013 in its ruling dated

22nd August, 2014 and it was approved by Full Bench *(En Banc)* of Court of Appeal in **Tanzania Teacher's Union v. Attorney General & 3 Others,** Civil Application No. 96 of 2016.

Mr. Matojo was of submission that **the Expansive Interpretation Doctrine** postulates a legal theory that the Courts of law should interpret the laws expansively or widely in a manner that expands and promotes enjoyment of legal rights by citizens rather than in a manner that deprives, narrows down or curtails or restricts enjoyment of legal rights by citizens except where there is expressly provision of law to the contrary. The Expansive Interpretation Doctrine demands and dictates that where there are dual interpretations (two) or multiple interpretations of the similar provision of law, the Court should embrace, adopt or opt for the interpretation which promotes enjoyment of legal and constitutional rights and which expands frontiers of legal and constitutional rights and the Court should dismiss or refuse to adopt strictive interpretation that deprives, curtails, restricts or narrow down enjoyment of legal and constitutional rights. To buttress such averment, Mr. Matojo cited the Court of Appeal in the case of **Bulyanhulu Gold Mine (T) Ltd v. Nicodemes Kajungu**

(supra) with regards to **the Expansive Interpretation Doctrine** at page 8 of unreported printed ruling in which the Court had these to say:

> We are constrained to emphasis at this stage that *a statute should not, in the absence of express provisions, be construed so that it deprives people of their accrued rights,* and that in fact it is the duty of the Court to give sensible meaning with a *view of promoting the enjoyment of such rights instead of narrowing them down. In other words, we are duty bound to interpret the law accommodatingly with a view of expanding its frontiers rather than narrowing frontiers,* the purpose being to see to it that the procedure is reasonable, fair and just. That way, we think, we will have invested the provisions with sound reasoning and content. [Emphasis added]

The afore quotation from **Bulyanhulu Gold Mine v. Nicodemes Kajungu Case** *(supra)* was quoted with approval by the Full Bench of the Court of Appeal of Tanzania in landmark case of **Tanzania Teachers Union v. Chief Secretary & 3 Others** *(supra)* in its ruling dated 31st May, 2017, p. 32.

However, I don't associate myself with the expansivism school of thought. As submitted by Mr. Matojo, in **Bulyanhulu Gold Mine v. Nicodemes Kajungu Case** there were two possible interpretations in respect of *Section 57 of Labour Institutions Act, Cap. 300 and Section 5 (1)*

(c) of Appellate Jurisdiction Act, Cap. 141. The first interpretation was that appeal from decision of High Court (Labour Division) requires leave to appeal to the Court of Appeal. Whereas, the second interpretation was that the Appellant is entitled automatic right of appeal without requirement of leave of the Court. It is also true that the Court of Appeal embraced and opted for the wide interpretation which promotes right of appeal that confers automatic right of appeal to a party aggrieved by decision of Labour Court without any restriction relating to requirement leave to appeal thereby it dismissed narrow interpretation that imposed restriction on right of appeal. Such interpretation, however, are distinguishable to the issue at hand which calls upon for the Court to decide on the right remedy of a person aggrieved with the decision of the Deputy Registrar.

I agree and take note that the Full Bench of the Court of Appeal in **Tanzania Teachers Union v. Chief Secretary Case** *(supra)* confirmed and full associated itself with judicial decisions of High Court and Court of Appeal which ruled in favour of **the Expansive Interpretation Doctrine** that expanded frontiers of constitutional and legal rights such as **Bulyanhulu Gold Mine (T) Ltd v. Nicodemes Kajungu & 1511 Others,** Civil Application No. 37 of 2013 and **Chama cha Walimu Tanzania v.**

Attorney General, Civil Application No. 151 of 2008. Conversely, that Full Bench of the Court of Appeal in **Tanzania Teachers Union v. Chief Secretary Case** *(supra)* overruled judicial decisions of High Court and Court of Appeal which ruled in favour of **the Restrictive Interpretation Doctrine** which restricted or curtailed or narrowed down frontiers of constitutional and legal rights such as (1) **Tanzania Breweries Limited v. Leo Kobelo**, Civil Appeal No. 17 of 2016; (2) **Zayumba Abeid Hussein Akida & Others v. Tanzania Ports Authority**, Civil Appeal No. 18 of 2009, and (3) **Hussein Shabenga Jumanne S. Makanyaga & 6 Others v. Tanzania Port Authority**, Civil Appeal No. 29 of 2009.

I further take note that in the recent past, **the Expansive Interpretation Doctrine** was embraced by Court of Appeal in **Dangote Industries Ltd Tanzania v. Warnercom (T) Ltd,** Civil Appeal No. 13 of 2021 in its judgment delivered on 17th day of February, 2022. In the said **Dangote Industries v. Warnercom Case**, Court of Appeal refused invitation to interpret narrowly the provisions of *Section 5 (1) (c) of the Appellate Jurisdiction Act, Cap. 141 and Section 72 (2) of the Civil Procedure Act (supra)* to strict or deprive right of appeal a party aggrieved by decision of High Court. In the circumstance two possible interpretations of the law,

the Court of Appeal in **Dangote Industries v. Warnercom Case** (supra) dismissed narrow or restrictive interpretation *in lieu* thereof opted for wide or expansive interpretation of law that that promotes enjoyment of statutory and constitutional right namely right of appeal. The Court of Appeal in **Dangote Industries v. Warnercom Case** *(supra)* at page 8 of unreported printed ruling expressed the following view:

> In our considered opinion therefore, as the provision of *section 70 (2) of the CPC* clearly and unambiguously provides for an automatic right of appeal against an ex-parte judgement, *it is not for the Court to narrow down its scope by implying that the legislature intended that such an appeal would be conditional upon there being an attempt to set the ex parte judgment aside.* We can thus hold without any hesitation that, the right to appeal against an ex parte decree is automatic and does not depend upon there being a prior proceeding to set aside the ex parte judgment. [Emphasis added]

From the above cited legal authorities, I find the arguments of Mr. Matojo to be misplaced. Though it is true that: *One*, there is no a single legal remedy for challenging decision of Registrar or Deputy Registrar by aggrieved party which has been universally accepted by all members of the Bench and members of the Bar. *Two*, every legal remedy for challenging decision of Registrar or Deputy Registrar has got its own legal weaknesses,

strength, disadvantages and advantages as revealed these written submissions. However, the Court cannot embrace all legal remedies for challenging decision of Registrar or Deputy Registrar by aggrieved party. It must accept one proper legal remedy. The reasons are that: *First*, one legal remedy brings uniform interpretation and application of laws in the Country. *Second*, it ensures legal certainty. It is the requirement of justice that law must be clear, consistent, unambiguous and predictable in order to be fair and just. *Third*, one legal remedy helps to avoid conflicting decisions by the same Court.

PART II : AMENABILITY OF DECISION OF DEPUTY REGISTRAR TO REVISION.

Mr. Matojo conceded from the outset that the provisions of the Employment and Labour Relations Act, Cap. 366 and the provisions of the Labour Institutions Act, Cap. 300 do not expressly vest in the High Court (Labour Division) and the Judge thereof jurisdiction to revise the decision of the Deputy Registrar of the High Court (Labour Division). The said two **Labour Statutes** expressly vest in the High Court (Labour Division) and the Judge thereof jurisdiction to revise the decision of Commission for Mediation

and Arbitration (CMA) and Essential Services Committee (ESC) under *Section 94 (1) (b) (i) and (ii) of the Employment and Labour Relations Act, Cap. 366.*

(a) Statutory Justification of Horizontal Revision.

It is correct, as argued by Mr. Matojo, in **Yakobo John Masanja v. Mic Tanzania Limited** *(supra)* the Court ruled out that *Section 94 (1) (e) of the Employment and Labour Relations Act (supra)* does not clothe Labour Court with the jurisdiction to revise the decision of the Deputy Registrar.

Mr. Matojo was, however, of submission that the provisions of *Section 94 (1) (e) of the Employment and Labour Relations Act, Cap. 366 and the provisions of the Section 51 of Labour Institutions Act, Cap. 300* do vest in the High Court (Labour Division) and the Judge thereof jurisdiction to revise the decision of Deputy Registrar of the High Court (Labour Division) **by necessary legal implications**. Thus, under the provisions of *Section 51 of the* Labour Institutions Act, Cap. 300 and provisions of *Section 94 (1) (e) of the Employment and Labour Relations Act, Cap. 366 (herein ELRA)*, the said two labour statutes vest the High Court (Labour Division) with exclusive civil jurisdiction over *"any matter reserved for decision"* of Labour Court by the labour laws. *Section 51 of the Labour Institutions Act, Cap. 300* provide as quoted and reproduced *de verbo in verbum* hereunder:

Subject to the Constitution and the labour laws and over employment matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court, *the Labour Court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws. [Emphasis applied]*

Also, *Section 94 (1) (e) of the Employment and Labour Relations Act (supra)* provide as quoted *verbatim* hereunder:

(1) Subject to the Constitution of the United Republic of Tanzania,1977, *the Labour Court* shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter falling under common law, tortious liability, vicarious liability or breach of contract *and to decide-*

(a) appeals from the decisions of the Registrar made under Part IV;

(b) reviews and *revisions* of –

(i) Arbitrator's awards made under this Part;

(ii) decisions of the Essential Services Committee made under Part VII;

(c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;

(d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;

(e) any dispute reserved for decision by the Labour Court under this Act; and

(f) applications including-

(i) a declaratory order in respect of any provision of this Act; or

(ii) an injunction. [Emphasis added]

In view of Mr. Matojo, the provisions of *Section 51 of the Labour Institutions Act, Cap. 300* and the provisions of *Section 94 (1) (e) of the Employment and Labour Relations Act, Cap. 366,* vest the High Court (Labour Division) with exclusive civil jurisdiction over any matter reserved for decision of Labour Court by *"the labour laws"*. The term *"Labour Laws"* is defined by *Section 2 of Cap. 300* to mean and include all written laws which are under supervision of Minister responsible for labour matters (any matter relating to employment or labour relations) which include *Cap. 300* and *Cap. 366* and all subsidiary legislation made thereunder including *"the Labour Court Rules, 2007"* in terms of *Rule 3 of the Ministers (Assignment of Ministerial Functions) Notice, 2021 (G.N. No. 385 of 2021) and the Second Schedule thereto* read in tandem with *Section 5 (1) of the Ministers (Discharge of Ministerial Functions) Act, 1980 Cap. 299* and in terms of *Section 2 of Cap. 300 and Section 4 of Cap. 366* which define the term *"Minister"*. One of labour laws in this jurisdiction is *the Labour Court Rules, 2007 (G.N. No. 107 of 2007).*

With due respect to Mr. Matojo, the provisions of *Section 94 (1) (e) of the Employment and Labour Relations Act (supra) does not need interpolation.* In a range of decisions, the Court has had occasions to address canon of statute interpretation in various cases including the case of **Republic v. Mwesige Geoffrey Tito Bishamu**, Criminal Appeal No. 385 of 2014 (unreported), where the Court borrowed a leaf from decisions of other jurisdictions and adopted the holdings of the Supreme Court of **United States in Consumer Products Safety Commission et al. v. GTE Sylvania,** Inc. et al. 227 U.S. 102 (1980) that:

> ...the starting point for interpreting a statute is the language of the statute itself. Absenting a dearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive... the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.

In the case of **Republic v. Mwesige Geofrey and Another,** Criminal Appeal No. 355 of 2014, Court of Appeal of Tanzania (unreported), the Court upon been called to interpret the provision of the Criminal Procedure Act, it stated that:

> Indeed, it is axiomatic that when the words of a statute are unambiguous "judicial inquiry is complete" There is no need for interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation. This is all because Courts must presume that a legislature says in a statute what it means and means in a statute what is says there.

In that case the Court went on to hold that:

> Where there is an obvious lacuna or omission and/or ambiguity the Courts have a duty to fill in the gaps or clear the ambiguity. In doing so they are not embarking on a naked usurpation of the legislative function under their disguise of interpretation" ad feared by **Lord Simonds in Magor and St. Mellons Rural District Council v. Newport Corp** [1952] A.C 189, 191. It is because often, Parliament enacts provisions with general or vagus wording with a view to Courts filling gaps. This may occur deliberately or inadvertently.

Similar position was restated by the Court of appeal in the case of **Barnabas Msabi Nyamonge v. Assistant Registrar of Titles and Another,** Civil Appeal No. 178 of 2018, in interpreting the provision of *Section 22(4) of the Magistrates Courts Act [Cap 11 Revised Edition 2002],* the Court stated that:

> It is an elementary principle of statutory interpretation that the plain meaning rule is to be resorted first That is what we have done. The Court will only be entitled to employ other

principles of statutory interpretation if the plain meaning rule would lead to absurdity.

Furthermore, the Court of Appeal when called to interpret several provisions of *the Tanzania Revenue Authority Act* and *the Tax Administration Act,* in the case of **Pan African Tanzania Limited v. Commissioner General, Tanzania Revenue Authority,** Civil Appeal 172 of 2020 (unreported); had this to say on how the statutes should be interpreted:

> As we have been called upon to construe several provisions in the TRAA and TAA relating to what is in dispute, we begin with the four rules of Statutory Interpretation to wit: the literal rule; the golden rule; the mischief rule and the purposive approach. Which rule is the best? *The golden rule is that the words of a statute must prima facie be given their ordinary meaning.* It is yet another *rule of construction that when the words of a statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning* irrespective of the consequences.

From the foregoing, it is the findings of this Court that the phrase *any dispute reserved for decision by the Labour Court under this Act* under the provisions of *Section 94 (1) (e) of ERLA (supra)* refers to the disputes which the Labour Law has stated that will be heard and determined by the Labour Court. It includes disputes of organizational under Part V and disputes

emanating from collective bargaining. For avoidance of doubt, *Section 64, 65 and 67 of the ERLA (supra)* provides:

> 64 (1) Any registered trade union may notify an employer in the prescribed form that it seeks to exercise a right conferred under this Part.
>
> (2) Within 30 days of the receipt of a notice under subsection (1), the employer shall meet with the trade union to conclude a collective agreement granting the right and regulating the manner in which the right is to be exercised.
>
> (3) Where there is no agreement or the employer fails to meet with the trade union within 30 days, the union may refer the dispute to the Commission for mediation.
>
> *(4) Where the mediation fails to resolve the dispute, the trade union may refer the dispute to the Labour Court which shall make appropriate orders.*
>
> *(5) Any dispute over the interpretation or application of an order made under this section shall be referred to the Labour Court for decision.*
>
> 65.-(1) Where a trade union materially breaches the terms and conditions for the exercise of organisational rights, the employer
>
> (a) may refer the issue to the Commission for mediation;
>
> (b) if the mediation fails to resolve the issue, may apply to the Labour Court to-
>
> (i) terminate any of the organisational rights granted to the trade union under a collective agreement; or
>
> (ii) withdraw an order made under section 64.

(2) A Labour Court making a decision under this section may make any appropriate order including—
(a) requiring the union to take measures to ensure compliance with the conditions for the exercise of a right;
(b) suspending the exercise of a right for a period of time;
(c) terminating the organisational rights contained in a collective agreement or order made under section 64.

67.-(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit shall be entitled to be recognised as the exclusive bargaining agent of the employees in that unit.
(2) An employer or employers' association may not recognise a trade union as an exclusive bargaining agent unless the trade union is registered and represents the majority of the employees in the bargaining unit.
(3) A registered trade union may notify the employer or employers' association in the prescribed form that it shall seek recognition as the exclusive bargaining agent within an appropriate bargaining unit.
(4) Within thirty days of the notice prescribed in subsection (3), an employer shall meet to conclude a collective agreement recognising the trade union.
(5) Where there is no agreement or the employer fails to meet with the trade union within the thirty days, the union may refer the dispute to the Commission for mediation, and the period of thirty days may be extended by agreement.

(6) If the mediation fails to resolve the dispute, the trade union or the employer may refer the dispute to the Labour Court for decision.

(7) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(8) In determining the appropriateness of a bargaining unit, the Labour Court shall-

(a) consider the following:

(i) the wishes of the parties;

(ii) the bargaining history of the parties;

(iii) the extent of union organization among the employees of the employer or employers;

(iv) the employee similarity of interest;

(v) the organisational structure of the employer or employers;

(vi) the different functions and processes of the employer or employers and the degree of integration;

(vii) the geographic location of the employer or the employers;

(b) promote orderly and effective collective bargaining with a minimum of fragmentation of an employer's organisational structure.

(9) Any dispute over the interpretation or application of an order made under this section shall be referred to the authority or the Court which made the order for interpretation and other necessary orders.

(10) Any order made pursuant to this section shall be enforced like any other order issued by the labour Court.

11) Nothing in this section precludes registered trade unions, employers and registered employers' associations from establishing their own collective bargaining arrangements by collective agreement.

Rule 28 (1) of the Labour Court Rules, 2007 (supra) provide as reproduced hereunder:

The *Court* may, on its own motion or on application by any party or interested person, *call for the record of any proceedings which have been decided by any responsible person or body implementing the provisions of the Acts* and in which no appeal lies or has been taken thereto, and if such responsible person or body appears-

(a) to have exercised jurisdiction not vested in it by law; or

(b) to have failed to exercise jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity; or

(d) that there has been an error material to the merits of the subject matter before such responsible person or body involving injustice,

(e) the Court may revise the proceedings and make such order as it deems fit:

Provided that, any party to the proceedings or otherwise likely-to be adversely affected by such revision shall be given an opportunity to be heard.

It was the view of Mr. Matojo that the provisions of *Rule 28 (1) of the Labour Court Rules, 2007 (G.N. No. 107 of 2007)* exclusively vests and

reserves the revision of any decision or proceedings of any responsible person (individual person) who, or responsible body (institution) which implements the provisions of *"the Acts"* (labour statutes) for the decision of High Court (Labour Division).

In other words, it was the view of Mr. Matojo that the jurisdiction to revise decisions or proceedings of any officer, public authority or institution established under Labour Laws vests in High Court (Labour Division) by virtue of *Rule 28 (1) of the Labour Court Rules, 2007 (supra).* He called upon the Court to take notice that the provisions of *Rule 2 (2) of the Labour Court Rules, 2007 (supra)* defines the word *"the Acts"* to mean *the Labour Institutions Act, 2004 and the Employment and Labour Relations Act, 2004 (supra).*

Much as I may agree with Mr. Matojo, I had time to address on the intention of the legislature on the *inter alia* provisions of *Section 77 (9), 94 (1) (c) and 67 of the ELRA (supra)* in the case of **Sylivester S. Mboje v. CRDB Bank PLC,** Labour Review No. 07 of 2023, High Court of Tanzania Labour Division at Dar es Salaam (unreported). I noted *inter alia* that:

> *The Written Laws (Miscellaneous Amendments) (No. 2) Act No. 3 of 2020 via Section 67 which added paragraph (b) to*

Section 50 (2) recognizes the Deputy Registrar as part of the High Court; and so, it excludes him/her as a person or body but rather a Court.

I went on to observe that:

Rule 27 (1) and (2) of the Labour Court Rules (supra) deals with review from Courts decisions (Review of Judgement in Chambers). Unlike the review of responsible body or person performing a reviewable function, a review of the Courts Judgement must follow the procedure outlined under *Rule 27 (4) and (5), (6), (7), (8) and (9).*

I must add here; as I did in the case of **National Bank of Commerce Ltd v. Z.S. Mkondya and 6 Others**, Labour Revision No. 96 of 2023, High Court of Tanzania Labour Division at Dar es Salaam (unreported), that the decision of this Court can only be challenged by way of Review in terms of *Rule 27 (7) and (8) of the Labour Court Rules (supra).* There is nowhere under *Rule 28 (1) and (2) of the Labour Court Rules (supra)* that empowers the Court to revise the decision of the Deputy Registrar of this Court.

Rule 28 (supra) is a generic rule covering revisions of the judgements of the Responsible bodies by this Court. In the case of **Sylivester S. Mboje** *(supra),* I enlightened the Mr. and I repeat myself here that the Responsible body or person includes the Minister and Essential Service Committee. Reference may be made to the case of **Tanzania Union of Industrial and**

Commercial Workers (TUICO) v. The Attorney General, Minister for Labour and Youth Development and Managing Director Tanzania China Friendship Textiles Co. Limited, Miscellaneous Application No. 1 of 2008, High Court of Tanzania Labour Division at Dar es Salaam (unreported).

I further agree with Mr. Matojo that the Deputy Registrar of the High Court (Labour Division) is a person who purports to implement the provisions of *"the Acts"* (the labour statutes) under provisions of *Section 54 (b) of the Labour Institutions Act, Cap. 300* and provisions of *Section 87 (4), 89 (2), 91 (3) and 95 (4) of the Employment and Labour Relations Act, Cap. 366* as well as provisions of *Rule 48 (3) and 49 (1) and (2) of Labour Court Rules, 2007* through hearing and determination of application for execution and application for stay of execution of decrees issued or passed by labour institutions and labour offices established by labour statutes especially decrees passed by Labour Court, Arbitral Awards issued by CMA, decisions made by Labour Commissioner and Essential Services Committee. However, the Deputy Registrar of High Court (Labour Division) despite of being a person who implements the provisions of *"the Acts"* (labour statutes) under provisions of *Section 54 (a) of the Labour Institutions Act, Cap. 300*, by

default, he is not amenable to revision by High Court (Labour Division) constituted by Judge of High Court under *Rule 28 (1) of the Labour Court Rules, 2007.*

As I noted, the *Written Laws (miscellaneous Amendments) (No. 2) Act No. 3 of 2020, via Section 67 which added paragraph (b) to Section 50 (2)* recognizes the Deputy Registrar as part of the High Court. It excludes him/her as a person or body but a Court. Therefore his/her decision are subject to review by the High Court Labour Judge under the provisions of *Rule 27 (7) and (8) of the Labour Court Rules (supra).* Unlike the review of the Responsible body or person performing a reviewable function, the review of the Court's decision must comply with the procedure outlined under *Rule 27 (4), (5), (6), (7), (8) and (9) (supra).*

Therefore, Judge of the High Court (Labour Division) enjoys jurisdiction to review the decision or proceedings of the Deputy Registrar on application by any party to the proceedings where the Deputy Registrar implements the provisions of Labour Statutes (the Acts) in which no appeal lies or no appeal has been taken if such Deputy Registrar appears to have taken or made erroneous or wrong action or decision on the following five (5) circumstances: (a) where there is a manifest error or any mathematical or

clerical error on the face of the record which resulted in miscarriage of justice. (b) where the decision was attained by fraud. (c) where a party was wrongly deprived of the opportunity to be heard. (d) where there is discovery of new important matter or evidence. (e) where there is any other reasonable ground to the satisfaction of the Judge of Labour Court.

It must be taken into account that: *One*, the power of revision is exercised by the Court superior to the Court which decided the case but the power of review is exercised by the very Court which passed the decree or order. By virtue of *Section 67 which added paragraph (b) to Section 50 (2)* of the *Written Laws (miscellaneous Amendments) (No. 2) Act No. 3 of 2020,* the Deputy Registrar is part of the High Court. As such his decision is not amenable to revision. *Two*, the power of revision is conferred on the High Court only, which is not so in the case of review. Any Court can review its Judgement. *Three*, the grounds on which the powers of revision and review can be exercised are different. The ground for revision relates to jurisdiction, such as; want of jurisdiction, failure to exercise a jurisdiction, or illegal or irregular exercise of jurisdiction, while the ground of review are predicated under *Section 78 and Order XLII Rule 1 and 3 of the Civil Procedure Code [Cap 33 Revised Edition 2019]. Four,* in revision, the High Court can of its

own accord, call for the case but for review an application has to be made by the aggrieved party. *Five,* no appeal lies from an order made in the exercise of revisional jurisdiction, but the order granting review is appealable.

(b) Implied Recognition of Horizontal Revision by Court of Appeal.

I do agree with Mr. Matojo that there are several judicial decisions of the Court of Appeal entertained appeals or revisions from decision of Labour Court in exercise of revisionary jurisdiction over decision of Deputy Registrar without question the legality of jurisdiction of Judge to exercise revisionary jurisdiction over decision of Deputy Registrar.

It can be argued that by necessary legal implications the Court of Appeal recognised revision as appropriate legal remedy available under the law for a party aggrieved by decision of Deputy Registrar of Labour Court. However, in such cases, there was no express issue raised as to whether revision was appropriate remedy. Therefore, the move by Court of Appeal to entertain appeal from decision of Labour Court in exercise of revisionary jurisdiction over decision of Deputy Registrar by necessary legal implications cannot be termed that the Court of Appeal recognises that decision of Deputy

Registrar of Labour Court is amenable to revision exercisable by Judge of the High Court (Labour Division). In **Mary Mbelle v. Akiba Commercial Bank Ltd,** Civil Appeal No. 302 of 2020, the Court of Appeal entertained appeal from decision of High Court (Labour Division) delivered by my learned Sister Nyerere, J in exercise of revisionary jurisdiction over decision of Deputy Registrar which emanated from decision of Deputy Registrar Lyimo in **Mary Mbelle v. Akiba Commercial Bank Ltd**, Execution No. 389 of 2015.

I'am aware, as submitted by Mr. Matojo, the Court of Appeal through its judicial decision made indication that it is possible for aggrieved party to challenge the decision of Deputy Registrar before the Judge of High Court. In **Tanzania National Roads Agency (Tanroads) v. Prismo, The Partneship Between Prismo Universal Italiana S.P.A and Badr East African Enterprises Ltd,** Civil Appeal No. 241 of 2019 the Court of Appeal in its own words at p. 9 of unreported printed ruling had this to say:

> We agree with Mr. Rashid's contention that *if the Respondent intended to challenge the order of the Deputy Registrar, then he ought to have challenged it through a different forum before a Judge of the High Court* and not through a preliminary objection before the Court.

Though the Court of Appeal gave greenlight to aggrieved parties to challenge the decision of Deputy Registrar before the Judge of High Court in **Tanzania National Roads Agency (Tanroads) Case** *(supra),* it did not categorically state that such decision can be challenged by way of revision.

(c) Revision was Impliedly Embraced in Masanja v. Mic Tanzania Ltd Case (supra).

I further agree with Mr. Matojo that in **Yakobo John Masanja v. Mic Tanzania Limited** (supra), I embraced review as appropriate legal remedy and noted the fact that Review and Revision come much closer to the possible and appropriate legal remedy available under labour law for challenging decisions of the Deputy Registrar of the Labour Court. At p. 22 of unreported printed ruling, I stressed that:

> Out of the eight avenues, *Review and Revision come close to the possible remedy* on challenging decisions of the Honourable Registrar of the Labour Court. However, I find reference and appeal not coming up at all in Labour Law Statutes.

Indeed, at p. 39 of unreported printed ruling, I further expressly the following view:

> *Though I would not regard reference or revision approach as necessarily irrelevant as the result may be the same,* it is in my humble view that the review remedy before the Labour Judge has a valuable part to play in protecting the interests of labour justice particularly in promoting economy and social justice by avoiding delays, discouraging costs and duplications of powers. [Emphasis added]

(i) Inherent Constitutional Jurisdiction.

I do agree with Mr. Matojo on the following points. One, in parliamentary election petition proceedings, a party aggrieved by decision of Registrar or Deputy Registrar can challenge it under *Rule 9 (3) of the National Elections (Election Petitions) Rules, 2020 (G.N. No. 782 of 2020)* as judicially considered by my brethren Mgeta, J in **Bakema Said Rashid v. Nashon S/O William Bidyanguze,** Election Reference No 1 of 2020. *Two*, in taxation of bill of costs proceedings, a party aggrieved by decision of Registrar or Deputy Registrar can challenge it under *Rule 7 of the Advocate Remuneration Order, 2015 (G.N. No. 263 of 2015)* as judicially considered by my brethren Mruma, J. in **Vodacom Tanzania Limited v. Cats Net Limited,** Misc. Civil Application No. 687 of 2020 and **Sogea Satom Company v. Barclays Bank Tanzania & 2 Others** *(supra). Three*, in total absence of express provision or implied provision of law which openly provides legal remedy for, and the procedure on how to challenge decision

of Registrar or Deputy Registrar of High Court, still the High Court would have jurisdiction over disputes arising out of decisions of Registrar or Deputy Registrar of High Court on simple ground that where the law is silent with regards to Court with jurisdiction to entertain certain matter, automatically the High Court is bestowed with jurisdiction to entertain such matter which the law is silent in terms of *Article 108 (2) of the Constitution* as judicially considered by Masabo, J in **GBP Tanzania Limited v. Assaa Simba Haroon,** Civil Case No. 55 of 2021.

In **Yakobo John Masanja v. Mic Tanzania Limited** (supra), by way of *obiter dicta,* I held that the High Court (Labour Division) derives legal legitimacy to review decision of Deputy Registrar from provisions of *Article 108 (2) of the Constitution* through which confers upon High Court inherent jurisdiction to prevent miscarriage of justice or to correct grave errors committed by it or its officer.

(ii) Legal Remedies under Constitution.

I second the argument by Mr. Matojo that *Article 13(6) (a) of the Constitution*, in addition to right of appeal, provides for *"right to any other legal remedy"*. The clause *"other legal remedy"* certainly includes *"Revision"* and other legal remedies of similar nature such as "Review" or "Reference"

against the decisions of Registrar or Deputy Registrar of High Court available for a party aggrieved party. For the reasons stated in **Jacob Masanja case** *(supra),* save for the error of the rule cited, the legal basis for review can also be found in *Article 13 (6) (a) of the Constitution (supra)* itself. *Article 13 (6) (a) of the Constitution (supra)* provides as reproduced *verbatim* hereunder:

> 13 (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:
>
> (a) when the rights and duties of any person are being determined by the Court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or *other legal remedy* against the decision of the Court or of the other agency concerned.

(d) Quantitative Approach.

I may agree with Mr. Matojo that arithmetically, the number of judicial decisions which embraced revision is higher 3 times or more than the number that embraced review or any other horizontal legal remedy such as reference, or suit. I may further agree with the random sampling by Mr. Matojo which indicates by June, 2023 there were thirty-three (33) decisions of High Court which embraced and accepted revision as appropriate legal remedy for aggrieved party to challenge the decision of Deputy Registrar but

there were only five (5) decisions of the High Court which embraced and accepted review as appropriate legal remedy for aggrieved party to challenge the decision of Deputy Registrar and there were more than 2 decisions which dismissed review.

I may further agree with the legal research conducted by Mr. Matojo by June, 2023 through random sampling which indicates there are eleven (11) decisions of the High Court which embraced and accepted appeal but there two (2) decisions which dismissed appeal. Whereas there were nine (9) decisions that embraced reference and nine (9) decisions which dismissed Reference. Also, there were only two (2) decision that embraced Registrarial review by Registrar but also there were two (2) decision which dismissed Registrarial review.

Again, there was only one (1) decision that embraced suit whereas there was only one (1) decision too which dismissed suit. Furthermore, there are only two (2) decisions that embraced Registrarial suit, whereas there is only one (1) decision which dismissed Registrarial suit.

Regardless of such research indication, this comprehensive study sheds light on the interpretation of various provisions of the law and

regulations, in as far as, the remedy available against the decision of the Deputy Registrar of the Labour Court. The overriding consideration must be resorted to the position of the law on the aftermath of *Section 67 which added paragraph (b) to Section 50 (2)* of the *Written Laws (miscellaneous Amendments) (No. 2) Act No. 3 of 2020* that recognized Deputy Registrar of the Labour Court as part of the Court. As I pointed out earlier, revision is exercised by the Court superior to the Court which decided the case but the power of review is exercised by the very Court which passed the decree or order. As such, the decision of the Deputy Registrar who is part of the Labour Court cannot be challenged by way of Revision before the same Court.

(e) Rule Against Change at Common Law.

I do appreciate the substantive research done by Mr. Matojo. Indeed, I agree that there is the rule of common law obtaining in Mainland Tanzania laid through case law which has existed in this jurisdiction in labour litigation over decade; that a person who is aggrieved by decision of Deputy Registrar of Labour Court should pursue revision in the High Court (Labour Division) presided over by Judge of Labour Court. This rule of common law can be traced as far as in 2009 in case of **Capitol Decoration and Building Works v. Edward Rugayaza,** Revision 239 of 2008 whose ruling was

delivered on 6th March, 2009 wherein the Labour Court revised and set aside decision of the Deputy Registrar in exercise of executional jurisdiction. The same rule emerged again in 2011 in the case of **Mary Mwaifunga v. TPC Ltd,** Execution File No. 186 of 2010 wherein Labour Court revised and set aside decision of Deputy Registrar in exercise of executional jurisdiction.

I also understand that a Judge ought not to depart from the position of his brethren or sister unless there are good reasons so to do. The rationale behind maintaining the uniformity of precedent is among others to enhance uniformity of decisions on resembling issues. However, in the event of two conflicting decisions of the superior Court of record, the subordinate Courts have four leeways: *One*, to distinguish facts of the case. *Two*, to follow decision of the full bench. *Three*, not to follow the decision given per incurium. *Four*, to follow the ratio decidendi which appears to it to state the law most accurately and elaborately.

I further agree that under **the Presumption against Change in the Common Law**, it is an established legal principle that a statutory provision should not be interpreted in a manner that change or abolish the existing common law principle unless the legislative intent to do so is plainly manifested or rather the legislation states so expressly, clearly

and in unambiguous manner and this proposition finds legal basis in the following decisions: **Black-Clawson International Ltd v. Papierwerke Waldhof-Aschaffenburg AG** [1975] AC 591; **National Assistance Board v. Wilkinson** [1952] 2 QB 648; **John Keith Clitheroe v. Susan Jane Bond** [2021] EWHC 1102 (Ch); **Holmes v. Securities Investor Protection Corporation,** 503 U.S. 258 (1992) (US Supreme Court); **Black-Clawson International Limited v. Papierwerke Waldhof-Aschaffenburg Aktiengesellschaft** [1975] AC 591.

Under common law the Courts and public bodies that implement or enforce laws are enjoined to adopt statutory interpretation approach which encourages continuity rather than that which changes existing law including common law. This position of law was well stated by **C. R. A. C. Crabbe** in his book titled **"Legislative Drafting: Vol. 1" 4; Cavendish Publishing Limited: London,** from pages 164 to 165. At 164 and 165 wherein he stated as provided hereinbelow:

> In interpretation an Act of Parliament the Court should choose interpretation that which encourage continuity rather than change in existing law...Where a change is intended then this must be expressed in clear words.

So, in absence of provision of constitution or legislation that expressly changes the existing position of the law including existing rule of common law, the Court should not interpret the law in a manner that changes the existing position of law with net legal effect of changing or altering the existing legal status, rights and obligations. The Court should prefer to adopt interpretation which encourages continuity of existing law rather than which changes or alters the existing law or legal status, rights and obligations. The rationale behind this is easy to tell, the change of existing law or position of law or legal status, rights or obligations is likely to have adverse consequences on people than the benefits that may be derived therefrom. That is why the law bars retrospective operation of substantive laws which affect substantive legal rights.

However, in this case, as stated earlier, there has been a change of the law through *Section 67 which added paragraph (b) to Section 50 (2)* of the *Written Laws (miscellaneous Amendments) (No. 2) Act No. 3 of 2020* that recognized Deputy Registrar of the Labour Court as part of the Court. As such, the Court cannot continue to apply the blindly in sheer violation of the current position which the legislation states so expressly, clearly and in unambiguous manner.

The move in **Yakobo John Masanja v. Mic Tanzania Limited** (supra) in **Iron Steel Limited v. Martin Kumalija** (*supra*) to change the existing rule of common law in Tanzania by abolishing right of aggrieved party in execution proceedings to pursue labour revision before Judge of High Court (Labour Division) is not contrary to settled principle of common law namely **the Rule against the Change of Common Law**. It is meant to enforce the current position of the law and to abide by the elementary principle of the law taught in the course of legal method that the decision of the Court cannot be challenged by way of Revision before the same Court.

I therefore don't support the supposition by Mr. Matojo that the move in **Yakobo John Masanja v. Mic Tanzania Limited** (*supra*) and in **Iron Steel Limited v. Martin Kumalija** (*supra*) to change or abolish the existing rule of common law in Tanzania relating to right of party aggrieved by decision of Deputy Registrar to pursue revision before Labour Court presided over by Judge has adverse consequences on litigants than the benefits that may be derived therefrom if the former position of law would have retained by the Court by recognizing both review and revision as appropriate legal remedies for the said aggrieved parties. The reasons are two: *One*, the move is aimed to enhance the current position of the law.

Two, it states the law most accurately and elaborately that decision of the same Court cannot be challenged by way of revision to the same Court.

PART III: HORIZONTAL REVISION AND PECULAIR FEATURES OF LABOUR LAWS.

(a) General Overview.

My learned Sister Mteule, J in the case of **Iron Steel Limited v. Martin Kumalija** (*supra*) held that jurisdiction to revise or entertain revision against the decision of Deputy Registrar of Labour Court vests exclusively in the Court of Appeal of Tanzania. The good Madam Justice Mteule in **Iron Steel Limited v. Martin Kumalija (supra)** advanced four arguments to rationalize her legal stance and one of such arguments is that revisional power is absolutely exercised vertically only by superior Court over subordinate Court without any exception and that revisionary power cannot be exercised horizontally. The good Madam Justice Mteule in **Iron Steel Limited v. Martin Kumalija** set forth argument that High Court (Labour Division) cannot revise its own decision by exercising revisionary power over decision of Deputy Registrar of High Court (Labour Division) which is purely decision of High Court (Labour Division) itself as Deputy Registrar forms part and parcel of High Court (Labour Division) under *Section 50 (2) (b) of the*

Labour Institutions Act, Cap. 300 as amended by *Section 67 (a) and of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020 (Act No. 3 of 2020).*

As matter of general rule, revisional jurisdiction should be exercised vertically and not horizontally as revision lies against the decision of a Court subordinate to the immediate superior Court which exercise revisionary jurisdiction. However, I agree with Mr. Matojo that there is no general rule without exception at common law as the old legal adage goes that "*every general rule admits its own exception*". But I don't agree with Mr. Matojo that the Labour Revision under **Rule 28 (1) of the Labour Court Rules, 2007** is exception to **the Vertical Exercise of Revisionary Jurisdiction Rule. The reason behind is the same.** Rule 28 (1) (supra) expressly provides that labour revision lie against public officer (person) or public body (institution) that implements labour laws but the Deputy Registrar is not among of those public officers or body. The Deputy Registrar though implementing the labour laws under *Section 54 (b) of the Labour Institutions Act, Cap. 300* and provisions of *Section 87 (4), 89 (2), 91 (3) 95 (4) of the Employment and Labour Relations Act, Cap. 366*, he/she is still part of the

Labour Court under *Section 67 which added paragraph (b) to Section 50 (2)* of the *Written Laws (miscellaneous Amendments) (No. 2) Act No. 3 of 2020.*

(b) Peculiar and Unique Labour Procedure and Practice.

The classical or traditional conventional or ordinary rules of practice and procedure under *Section 30, 31 and 32 of the Magistrates' Courts Act, Cap. 11, Section 79 of CPC, Cap. 33 (supra)* and *Section 4 (2) and (3) of the Appellate Jurisdiction Act, Cap. 141* under which revision is exercised by superior over subordinate Court and lies against the decision of subordinate Court. For example, with regards to revision under conventional and ordinary civil practice and procedure, provisions of **Section 79 (1) of the Civil Procedure Code, Cap. 33** provides as quoted verbatim hereunder:

> *The High Court may call for the record of any case which has been decided by any Court subordinate* to it and in which no appeal lies thereto, and if such subordinate Court appears ...[Emphasis added].

I understand that the provisions of *Rule 28 (1) of the Labour Court Rules, 2007* provide as reproduced *verbatim* hereunder:

> *The Court* may, on its own motion or on application by any party or interested person, *call for the record of any proceedings which have been decided by any responsible person or body* implementing the provisions of the Acts and

in which no appeal lies or has been taken thereto, and if such responsible person or body appears-

From the dint of provisions of laws cited immediately hereinabove, it is clear that under classical, traditional, conventional or ordinary civil procedure and practice under *Cap. 33, Cap. 11 and Cap. 141* revision is exercised by superior Court over *any responsible person or body* implementing the provisions of the Acts and in which no appeal lies or has been taken thereto, and if such responsible person or body appears such as CMA, Labour Commissioner, Wage Board, Essential Service Committee, among others.

(c) Judicial Recognition of Peculiar Labour Procedure and Practice.

The contemporary labour procedural law in force in Tanzania since the 2007 is unique and peculiar procedural law with unique and peculiar legal features which deviate it from classical, traditional, conventional and ordinary procedural laws under the Civil Procedure Code, Magistrate Courts Act and Appellate Jurisdiction Act and subsidiary legislation made thereunder. Both Mlyambina, J in **Yakobo John Masanja v. Mic Tanzania Limited** (*supra*) and Rweyemamu, J in **Morogoro Canvas Mills (1998)**

Ltd v. Jacob Mwansumbi (*infra*) concede the fact that labour procedural law in force in Tanzania exhibits unique and peculiar legal features which are sharply different from conventional procedural laws under the Civil Procedure Code, and other conventional procedural laws. Mlyambian, J in **Yakobo John Masanja v. Mic Tanzania Limited** (*supra*) cited with approval the case **Hubert Lyatuu v. Tanesco,** Labour Revision No. 90 of 2018 (unreported) which subscribed to the legal stance that labour laws have peculiar and unique features which are radically different from conventional laws that regulate normal civil suits.

In **Yakobo John Masanja v. Mic Tanzania Limited** (supra)**,** I discussed fourteen (14) unique and peculiar features of labour procedural law of Tanzania and among such unique and peculiar features is supervisory powers of the Judges of High Court (Labour Division) over all person or body performing functions under the labour laws but I never mentioned Deputy Registrar as contended by Mr. Matojo. In **Yakobo John Masanja v. Mic Tanzania Limited**, *(supra)* in my own words at page 31 of printed ruling I stated:

> Nineth, it is also within the ambit of the law that *the Labour Court Judges have the general supervisory powers to all*

person or body performing functions under the labour laws including the Deputy Registrars or a Registrar as a peculiar feature. Therefore, any person aggrieved by the decision of the Deputy Registrar can seek the refuge to the Labour Court Judge through review and not appeal to the Court of Appeal as per normal or ordinary civil suit. [Emphasis added]

In **Yakobo John Masanja v. Mic Tanzania Limited**, (*supra*) at page 31 of printed ruling I further said the following

"Under the labour laws, matters which are not normal or common are made common. Special laws with special procedures and established special institutions have been established with special methods of resolution of labour disputes such as Conciliation, Mediation, Arbitration and where necessary adjudication ...*Judges have been vested with powers to review the decisions of the Deputy Registrar which is not normal in ordinary suit where the reviewing body is the same person formerly made such decision.* Or in case of death, retirement or incapacitation of any kind, review may be done by another fellow Judge with competent jurisdiction. On the other hand, the same Judge is vested with power to revise the decisions of the inferior or subordinate bodies such as the award of the Commission for Mediation and Arbitration (CMA).

In **Yakobo John Masanja v. Mic Tanzania Limited** *(supra),* I conceded that the fact that even Review under labour law is unique and

peculiar as same is not normal review known in ordinary suits under conventional civil procedure and practice. I asserted that in ordinary suits under conventional civil procedure and practice the reviewing authority is the similar judicial officer who formerly made decision which is subject to review save in circumstance of death, retirement, mental or physical infirmity or incapacitation or impediment of similar nature like transfer where review is heard and determined by another judicial officer of similar rank and jurisdiction.

I have never and as of now, I don't pronounce myself that the Judge of Labour Court is vested with jurisdiction to revise the decisions of the subordinate judicial officer namely Deputy Registrar of Labour Court under *Rule 28 of the Labour Court Rules, 2007* as part and parcel of peculiar and unconventional labour procedure and practice.

PART IV: THE STATUS OF DECISION OF DEPUTY REGISTRAR.

As a general rule, there are several judicial decisions which take a legal stance that Registrar or Deputy Registrar is part and parcel of the High Court thereby judicial decision delivered by Registrar or Deputy Registrar is decision of High Court thereby the High Court cannot revise its own decision.

This legal stance, *inter alia*, was taken by the High Court in the following cases: **Yakobo John Masanja v. Mic Tanzania Limited,** Labour Revision Application No. 385 of 2022 (as per Mlyambina, J); **Sogea Satom Company v. Barclays Bank Tanzania and 2 Others**, Misc. Civil Reference No. 15 of 2021 (Mruma, J); **Iron Steel Limited v. Martin Kumalija and 117 Others,** Labour Revision No. 169 of 2022 (Mteule, J); **Nuldin Mohamed Chingo v. Salum Said Mfiwe and Another**, Civil Reference No. 6 of 2022 (Kisanya, J); **Duncan Shilly Nkya & another v. Oysterbay Hospital Co. Ltd,** Reference 26 of 2022 (Hemedi, J).

Also, there are specific labour cases such as **Iron Steel Limited v. Martin Kumalija** (supra) and **Yakobo John Masanja v. Mic Tanzania Limited** (*supra*) which specifically take a legal stance that the Deputy Registrar of the Labour Court is part and parcel of the High Court (Labour Division) thereby judicial decision made by Deputy Registrar is decision of High Court (Labour Division) thereby the decision of the Deputy Registrar of Labour Court is the decision of the High Court(Labour Division), consequently the High Court (Labour Division) cannot revise its own decision.

Before amendment of Section 50 (2) and 54 of the Labour Institutions Act, Cap. 300 the position of law was expounded by the Court of Appeal in

the case of **Serenity on the Like Ltd Vs Dorcus Martin Nyanda, Civil Revision No. 1 of 2019** that decision of Deputy Registrar of Labour Court **is not** the decision of High Court (Court Labour) as the Deputy Registrar does not feature in composition of High Court (Labour Division). *After amendment of Section 50 (2) and 54 of the Labour Institutions Act, Cap. 300,* there is no decision of the High Court that expressly held that Registrar or Deputy Registrar is not part and parcel of the High Court and his decision is not decision of High Court.

Mr. Matojo has argued that there are several judicial decisions which by necessary legal implications or impliedly held that Registrar or Deputy Registrar of Labour Court is not part and parcel of the High Court (Labour Division) and his decision is not decision of High Court (Labour Division). It was his view that such judicial move by Judges of High Court (Labour Division) to entertain revisions, reviews, references and suits which challenged the legal validity of the decisions of the Deputy Registrars through which such decisions were confirmed, varied or set aside by Judges of Labour Court by necessary legal implications such judicial move means that Deputy Registrar of Labour Court is not part and parcel of the High Court (Labour Division) and his decision is not decision of High Court.

I do agree with Mr. Matojo that there are several cases which were instituted after amendment of *Section 52 (2) and 54 of Cap. 300* in which Judges of Hight (Labour Division) confirmed, varied or set aside the decisions of Deputy Registrars through applications for revision, review and reference or granted extension of time to challenge the decisions of Deputy Registrars of Labour Court by way of revision and such cases, *inter alia*, include the following: **Freco Equipment Limited v. Neema Omari Mkila**, Revision No. 282 of 2022 (Mganga, J); **National Bank of Commerce Ltd v. Kilulu Kisongo,** Revision No. 274 of 2021 (Maghimbi, J); **UAP Insurance (T) Limited v. Yuda Shayo & 6 Others**, Revision Application No. 433 of 2021 (Mganga, J); **Deposit Insurance Board (Liquidator of Fbme Bank Limited) v. Vinayachandran Pathaya Thingal,** Misc. Labour Application No. 384 of 2021 (Mganga, J); **Malmo Development Co. Ltd v. the Labour Commissioner & Another,** Revision Application No. 288 of 2021 (Mganga, J); **Mufindi Tea And Coffee Limited v. Valerian Joseph Assey,** Misc. Labour Revision No. 4 of 2022 (Utamwa, J as he then was).

Indeed, it is correct that the labour cases enumerated hereinabove were instituted in Labour Court either in 2021 or 2022 after amendment of *Section 52 (2) and 54 of Cap. 300 vide the Written Laws (Miscellaneous*

Amendments) (No. 2) Act, 2020 (Act No. 3 of 2020) as the same passed by National Assembly on 18th May, 2020 and assented on 15th June, 2020, ultimately came into full force of law on 19th June, 2020 upon publication of the same in *the Government Gazette, Issue No. 25, Vol. 101* dated 19th June, 2020.

However, I don't agree with the supposition by Mr. Matojo that these judicial decisions by necessary legal implications or impliedly held that Deputy Registrar of Labour Court is not part and parcel of the High Court (Labour Division) and his/her decision is not decision of High Court (Labour Division) thereby amenable to revision. The reason is simple. In such cases, the Court was not called upon to determine on the remedy available for whoever aggrieved with the decision of the deputy registrar in execution proceedings.

I also agree that the Deputy Registrar does not form part and parcel of **"the Quorate Composition"** a judicial quorate body composed of Judge and two assessors or Judge alone in application proceedings that determines labour disputes which is one of components of the whole judicial labour institution (Labour Court) and it is constituted or established under the provisions of *Section 50 (3) and (4) (supra)*. The Deputy Registrar is part of

"*the Institutional Composition*" of the High Court (Labour Division) made up of unincorporated bodies or structures which are integrated or organized together to carry out judicial, administrative and technical functions of Labour Court as a whole institution such as Judicial Quorum (Judicial Sitting), Registry Office, Labour Court Tripartite User Committee and Labour Zonal Centres and Court Administration Office.

However, when the Deputy Registrar of the Labour Court is exercising his/her judicial function on execution proceedings under the provisions of *Section 54 (b) of the Labour Institutions Act (supra)* and the provisions of *Section 87 (4), 89 (2), 91 (3) 95 (4) of the ELRA (supra),* such decisions are subject to review by the Judge of the High Court Labour Division. That is the peculiar nature of the Labour Court.

PART V: INSTITUTIONAL COMPOSITION BEFORE AMENDMENT.

The staff that comprises **the Institutional Composition"** of the High Court (Labour Division), *inter alia*, include judicial staff namely Judge In-Charge and Head of Labour Court, all Judges In-Charge of Labour Court Zonal Centres, all judges of Labour Court, all deputy registrars, judges' assistants and include Administrative Staff namely Deputy Registrar and Labour Court administrators as well as Technical staff such as Accountants,

IT Experts, Court Clerks, Registry Officers, Receptionists, record management officers and supporting staff such as security guards and cleaners. The **Institutional Composition** of the High Court (Labour Division) is provided under *Section 50 (1) and (2) of the Labour Institutions Act (supra).*

The provisions of *Section 50 (1) and (2) of the Labour Institutions Act (supra)* as existed before enactment of *Act No. 3 of 2020* provide as reproduced *verbatim* hereunder:

> 50 (1) There shall be established a Labour Division of the High Court.
>
> (2) The Labour Division of the High Court shall consist of-
>
> (a) such number of *Judges* as the Chief Justice may consider necessary, one of whom shall be designated by Chief Justice as *Judge In-Charge who shall head the Labour Court* and shall designate any *Judge to be in charge of any Court zonal centre;*
>
> (b) *two panels of assessors* appointed in terms of section 53.

It is pertinent to take notice that "**the Institutional Composition**" of the High Court (Labour Division) is divided into two categories namely **the**

Full Institutional Composition and **the Minimum Institutional Composition** of the High Court (Labour Division). While the provisions of *Section 50 (1) of Cap. 300 (supra)* provide for "*the Full Institutional Composition"* of the High Court (Labour Division) for purpose of smooth, full and effective operation of the labour Court in performance of its judicial, administrative and technical functions at maximum level of excellent performance contemplated by labour laws and constitution. Whereas the provisions of *Section 50 (2) of Cap. 300* provide *"the Minimum Institutional Composition"* of the High Court (Labour Division) for it to operate and performs its central function namely dispensation of labour justice through hearing and determination of labour disputes at least at minimal level where it would be materially or economically impracticable or inconvenient to constitute the full institutional composition of High Court (Labour Division).

(a) Full Institutional Composition.

The provisions of *Section 50 (1) of the Labour Institutions Act, Cap. 300* declares Labour Court to be division of the High Court thereby *Section 50 (1) of Cap. 300 (supra)* subjects Labour Court to all laws that regulate affairs of the High Court including laws that prescribe institutional composition of High Court.

Once a Court is declared to be division or registry or sub-registry of the High Court by legislation automatically such division or registry or sub-registry of the High Court must be composed of judicial officers, non-judicial officers and any staff prescribed by *the Judiciary Administration Act, 2011* particularly *Section 4, 11, 28 and 34* thereof and prescribed by *the Constitution of United Republic of Tanzania, 1977* particularly *Article 109 (1)* thereof namely Judge-In-Charge, Judges, Deputy Registrars, Assistant Registrars, Judges' Assistants, Court Clerks, Court Administrators and Registry Officers, Accountants, IT Experts among others

The intention of Parliament to enact *Section 50 (1) of Cap. 300 (supra)* was to provide for full institutional composition of the High Court (Labour Division) to enable it to operate smoothly, fully and effectively and at maximum level of delivery of excellent services to clients of justice services like all divisions and registries of the High Court that existed before its existence.

The said intention of Parliament is found in deliberative contribution of Hon. Dr. Masumbuko Lamwai (the then Member of Parliament) which is embodied in **Hansard of National Assembly of the 3rd Sitting, 15th**

Session of the 8th Parliament held on 15th April, 2004 at page 41 where he is quoted as reproduced *verbatim* hereunder:

> Nilikuwa nafikiri kwamba, ikiwa itabidi basi, wakati wa Kamati nita-introduce schedule of amendment ili neno "Labour Court" liweze kuondolewa liwekwe "Labour Division of the High Court". Pamoja na hayo, ninafikiria kile kifungu cha 50 kinatakiwa kipunguzwe, *ukishasema: "Labour Division of the High Court", huna haja ya kusema itakuwa na Jaji wa High Court tena maana yake Jaji wa High Court tayari atakuwepo. It is the High Court.* Kwa hiyo, kutakuwa na haja ya ku-recast section 50 ili iweze kuendana na hayo mabadiliko ambayo nimeyapendekeza.

Furthermore, the said intention of Parliament is found in Speech of the then Minister for Labour, Youth Development and Sports, **Alhaj Prof. Juma Kapuya**, during the second reading of the Labour Institutions Bill, 2003 which is embodied in ***Hansard of National Assembly of the 3rd Sitting, 15th Session of the 8th Parliament*** held on 15th April, 2004 at page 31 where the Deputy Minister is quoted as reproduced *verbatim* hereunder:

> Sehemu ya saba, inahusu vifungu 50 mpaka 58 ya Muswada ambayo *inaelezea kuanzishwa kwa Kitengo cha Mahakama ya Kazi kuwa mojawapo ya Idara za Mahakama Kuu zilizo katika Muundo wa Mahakama Kuu kwa ajili ya kutoa maamuzi ya migogoro ya kikazi.* Hivyo, kifungu 50 hadi 55 vinaelezea mamlaka na masuala yatakayoshughulikiwa na Mahakama hiyo, uteuzi wa wasajili, sheria ndogo za Mahakama hiyo, namna ya

kuwakilishwa katika Mahakama hiyo, rufaa na mambo ya kisheria, ambayo yanaweza kukatiwa rufaa kupelekwa katika Mahakama hiyo.

Mr. Masumbuko Lamwai proposed for Labour Court to be conferred status of the Division of High Court in *Section 50 (1) of the Labour Institutions Bill, 2003*. Consequently, Mr. Lamwai proposed for complete deletion of Section 50 (2) of the said Bill on ground that once a Court is declared by principal legislation to be division of the High Court automatically it becomes the High Court thereby it is needless and redundant to provide that such High Court would be composed of the Judge. Principally, Mr. Lamwai meant that it was unnecessary and verbosity to prescribe minimum institutional composition of Labour under *Section 50 (2) of the said Bill* in the circumstance where *Section 50 (1) of the said Bill* confers Labour Court the status of the division of the High Court on ground once labour Court is conferred the status of High Court in law implies that such Court is made up of full institutional composition of High Court prescribed by relevant provisions of legislation and constitution as the same would be composed of the Judge In-Charge, Judges of High Court, Deputy Registrars, Judges' Assistants, Court Clerks, Registry Officers, Court Administrators and other judicial officers or non-judicial officers that comprise any division or registry

of High Court. The proposal by Dr. Masumbuko Lamwai in *Section 51 (1) of the Bill* with regards to Full Institutional Composition of Labour Cour was accepted by the Government without any reservation through the response of then Deputy Minister for Labour, **Hon. Mudhihir M. Mudhihir** on behalf of the Government found at page 55 and 56 of **the *Hansard of National Assembly*** for ***the 3rd Sitting, 15th Session of the 8th Parliament*** held on 15th April, 2004.

The then Minister for Labour Affairs, **Alhaj Prof. Juma Kapuya** in Speech during the second reading of the Labour Institutions Bill, 2003 informed the National Assembly that the purpose of the Bill in *Section 50* thereof was to establish Labour Division of High Court as one of departments (registries) of High Court with institutional composition of the High Court for purpose of resolving labour disputes. The then Minister for Labour, **Alhaj Prof. Juma Kapuya** in his Speech during the second reading of the Labour Institutions Bill, 2003 used the phrase **"Muundo wa Mahakama Kuu"** (Composition of High Court) instead of the phrase **"Akidi ya Mahakama Kuu"** (Quorum of High Court). Now, it is clear that it **was not** intention of Parliament to provide for Quorate Composition (Judicial Quorum) of the High Court (Labour Division) in *Section 50 (1) and (2) of the Labour Institutions*

Act, Cap. 300 rather it was intention of Parliament to provide for Institutional Composition of the High Court (Labour Division) both full and minimum institutional composition of Labour Court. If it was intention of Parliament to provide the Judicial Quorum of Labour Court, then both the then Minister for Labour Affairs and Legislature would have employed precise Swahili Phrase **"Akidi ya Mahakama"** (Quorum of the Court) in *Section 50 (2) of Cap. 300* instead of Swahili Phrase **"Muundo wa Mahakama"** (Composition of the Court).

By enacting provisions of *Section 50 (1) of the Labour Institutions Act, Cap. 300,* it was intention of Parliament that High Court (Labour Division) should have full institutional composition which is similar to that of all other Divisions of the High Court like High Court (Land Division) and High Court (Commercial Division) by subjecting High Court (Labour Division) to provisions of *Article 109 (1) of the Constitution and provisions of the Judiciary Administration Act, 2011* particularly *Section 4, 11, 28 and 34* thereof and subsidiary legislation made thereunder. The provisions of *Section 50 (1) of the Labour Institutions Act, Cap. 300* by declaring Labour Court to be division of High Court such provisions intended to provide Full Institutional Composition of High Court (Labour Division) as whole labour

institution made up of all judicial staff (judicial officers), administrative staff, Technical Staff and Supporting Staff in terms of *the Constitution and the Judiciary Administration Act, 2011.*

The provisions of *Section 50 (1) of the Labour Institutions Act, Cap. 300 (supra)* by declaring Labour Court to be Division of High Court such provisions intended to provide full Institutional Composition of Labour Court as whole labour institution made up of the following:

(i) Judicial staff (judicial officers) namely Judge-In-Charge and Head of the Labour Court, all Judges-In-Charge of the Labour Court Zonal Centres, judges of labour Court and, Deputy Registrars, Assistant Registrars and Judges' Assistants.

(ii) Administrative staff such as Deputy Registrar-In-Charge, Deputy Registrar, Human Resources Officers and Court Administrators.

(iii) Technical and Supporting Staff such as IT Experts, Record Managers, and Accountants, Court Clerk, Receptionists and typists.

(b) Minimum Institutional Composition

The provisions of *Section 50 (2) of the Cap. 300* provide the minimum institutional composition of the High Court (Labour Division) without which Labour Court cannot perform its judicial, administrative and technical functions contemplated under labour laws and under constitution. The provisions of *Section 50 (2) of the Labour Institutions Act, Cap. 300* when is

read in tandem with provisions of *the High Court of the United Republic of Tanzania (Labour Division) (Zonal Centres) (Establishment) Rules, 2010 (G.N. No. 157 of 2010)* prescribe the following statutory **"Minimum Institutional Composition"** of the High Court (Labour Division):

(a) Judge In-Charge and Head of Labour Court

(b) All Judges In-Charge of Labour Court Zonal Centres

(c)All Judges of Labour Court and its Zonal Centres.

(d) All Deputy Registrars

(e) two panels of assessors

Whereas the intention of Parliament to enact *Section 50 (2) of the Cap. 300 (supra)* was to provide for **the Minimum Institutional Composition** of the High Court (Labour Division) for it to operate at a minimum level necessary of which every division or registry of High Court is expected to operate to delivery services to the public. The Parliament, in prescribing the Minimum Institutional Composition of the High Court (Labour Division) under *Section 50 (2) of Cap. 300 (supra)* contemplated the circumstances where it would be impracticable or inconvenient to constitute the full institutional composition of High Court (Labour Division) contemplated under provisions of the *Judiciary Administration Act, Cap. 237, Section 50 (1) of the Labour Institutions Act, Cap. 300 and Article 109 (1) of the Constitution (supra)*

especially during early days when High Court (Labour Division) was at rudimentary stage of growth with insufficient human resources.

The wisdom of Parliament to make provisions for Minimum Institutional Composition in contemplation of the circumstances where it would be impracticable or inconvenient to constitute the full institutional composition of High Court (Labour Division) envisaged under provisions of Constitution and relevant legislation was far fetched rather was a naked reality in social economic environment of Tanzania as revealed by Ally Kileo in his recently published on labour law. **Ally Kileo** in his labour treatise titled ***"Comprehensive Issues of Employment and Labour Law: Practice for Modern Business in Tanzania*** *(2023), pp. 373"* on operation of labour at its rudimentary stage had this to say:

> When it started functioning on 5th January, 2007 in Mainland Tanzania, the Labour Court had only one *Registry* based in Dar es Salaam. It used to reach the up-country regions of Tanzania through circuit sessions or on ad hoc basis.

The said intention of Parliament behind minimum institutional composition can be extracted from the response of the then Deputy Minister for Labour, Youth Development and Sports, **Hon. Mudhihir M. Mudhihir**

to the contribution of **Dr. Masumbuko Lamwai** (Member of Parliament then) which is embodied in **Hansard of National Assembly** of **the 3rd Sitting, 15th Session** of **the 8th Parliament** held on 15th April, 2004 at page 55 and 56 where the Deputy Minister is quoted as reproduced *verbatim* hereunder:

> Mheshimiwa Dr. Masumbuko Lamwai, kwanza tunamshukuru sana kwa mchango wake na katika kifungu cha 20(4) na kifungu cha 50. *Nataka tumhakikishie kwamba tumezizingatia, isipokuwa katika kifungu cha 50(2) kimebakia kama kilivyo sasa kwa sababu moja, pale (a) kifungu kinaongelea uteuzi wa Jaji Mfawidhi wa Mahakama hiyo. Kukitoa kabisa tunapata tena tatizo la namna ya kumpata huyu Jaji Mfawidhi. Lakini (b) kinazungumzia uteuzi wa Majaji wengine kulingana na kupanuka kwa shughuli za Mahakama kama tunavyojua nchi yetu ni kubwa kwa hiyo tungependa Kanda za Mahakama Kuu nazo, ifikie wakati ziweze kufanya kazi hizo hizo. Tukiondosha kabisa fungu la pili, maana yake uteuzi huu nao unakwama. Lakini na (c) kimeongelea kuhusu Washauri wa Mahakama.* Hiyo ikiondoshwa, Washauri hawa nao ambao wanawakilisha maslahi ya Wadau watakuwa wamekosekana. Hofu yetu kuu ni hiyo kwamba tunaweza tukafanya Mahakama katika ngazi za Kanda kule zikashindwa kusaidia katika hili ambalo tunaamini litasaidia kuharakisha kesi.

Mr. Masumbuko Lamwai proposed for Full Institutional Composition of the High Court in *Section 50 (1) of the Labour Institutions Bill, 2003.* Conversely, he proposed for complete deletion of Minimum Institutional Composition in *Section 50 (2) of the said Bill* on grounds stated herein above.

However, then Deputy Minister for Labour, **Hon. Mudhihir M. Mudhihir** in his response set forth argument on behalf of Government that minimum institutional composition of Labour Court in *Section 50 (2) of the said Bill* was very important for Labour Court to performs its functions properly and expeditiously as *Section 50 (2) of the said Bill* provided for appointment of the Judge In-Charge of Labour Court, Judges of Labour Court and Labour Court Zonal Centres and Court assessors who represent interest of labour stakeholders otherwise the labour Court would be unable to operate especially at level of Labour Court Zonal Centres to be located in up-country outside Dar es Salaam City.

Now, it is clear that it was not intention of legislature that **"the Minimum Institutional Composition"** of Labour Court in *Section 50 (2) of Cap. 300* should perform judicial function as a single entity or a single body made up of or composed of all judicial officers and Court assessors enumerated in *Section 50 (2) of the Act*. Rather it was intention of legislature that **"the Minimum Institutional Composition"** would provide or create minimum positions of judicial officers and assessors for purpose of proper and smooth operation of Labour Court at least at minimum. The provisions of *Section 50 (2) of Labaour Institutions Act, Cap. 300* was amended by

Section 67 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020 with effect including Deputy Registrars in the composition of the Labour Court. After the said amendment, now recent version of provisions of *Section 50 (2) of Labaour Institutions Act, Cap. 300* read as follow:

> The Labour Division of the High Court shall consist of-
>
> (a)such number of *Judges* as the Chief Justice may consider necessary, one of whom shall be designated by Chief Justice as *Judge In-Charge who shall head the Labour Court* and shall designate any *Judge to be in charge of any Court zonal centre;*
>
> (b)such number of *Deputy Registrars* as the Chief Justice may consider necessary; and
>
> (c) *two panels of assessors* appointed in terms of *section 53.*

Section 50 (2) (a), (b) and (c) of Cap. 300 as amended by Act No. 3 of 2020 gives the institutional composition of the High Court Labour Division. The provisions of *Section 50 (3) and (4) of Cap. 300 (supra)* which provide for Quorate Composition or Judicial Quorum (Judicial Sitting) of the Labour Court were not amended by Parliament to include Deputy Registrar in Judicial Quorum of Labour Court as the same remain intact to date. The Parliament did not amend *Section 50 (3) and (4) of Cap. 300 (supra)*

deliberately as it was intention of the Parliament that Judicial Quorum of the Labour Court should continue to be composed exclusively by Judge and Assessors in total exclusion of the Deputy Registrar of Labour Court.

It appears to me that the Parliament embraced on basis of the Doctrine Legal Omniscience of Legislature, the decision of the Court of Appeal in the case of **Serenity on the Like Ltd v. Dorcus Martin Nyanda, Civil Revision No. 1 of 2019** made on 11th day of April, 2019 which held that Deputy Registrar does not feature in composition of the High Court (Labour Division). The decision of the Court of Appeal in **Serenity on the Like Ltd v. Dorcus Martin Nyanda** (*supra*) was made about 1 year, 1 months and 6 days before the National Assembly passed Act No. 3 of 2020 on 18th May, 2020.

Under **the Doctrine of Legal Omniscience of Legislature**, it is a settled principle of law that legislature or parliamentis presumed to know all existing laws when enacting legislation. Legislature or parliament when enacting legislation is presumed to know all existing laws including constitution, principal legislation, subsidiary legislation, received laws, case law (binding judicial precedents), customary law, Islamic law and international law. In Tanzania, **the Doctrine of Legal Omniscience of**

Legislature appears to have been embraced by Full Bench of Court of Appeal in **Tanzania Teachers Union v. Chief Secretary & 3 Others** (*supra*) wherein the Court of Appeal at page 21 of the unreported printed ruling appears to have cited with approval the book authored by N.S. Bindra in 1987 titled **"Interpretation of Statutes"** at page 207 as reproduced *verbatim* hereunder:

> The legislative language will be interpreted *on the assumption that Legislature was aware of existing statutes,* rules of statutory construction, *and judicial decisions* and if a change occurs in legislative language a change was intended in legislative results.

Pierre-André Côté *et al* in their book titled: ***The interpretation of legislation in Canada 7th Edn., the Law Book Company (P) Ltd; Allahabad,*** at page **403** thereof had this to say on this concept of **Legal Omniscience of Parliament**:

> *Legislator is deemed to be aware of existing legal rules and principles, and therefore, it is presumed to have no intention of inciting unnecessary exceptions, then, it is submitted that Parliamentary Mr. who draft the bills for Parliament should know and understand the existing law.*

Also, the Doctrine of Legal Omniscience of Legislature is elucidated by **V. C. R. A. C. Crabbe** in his book titled **'Legislative Drafting: Vol.**

1"[2] from page **164** to **165**. Furthermore, this concept of Legal Omniscience of Legislature was recognized and applied by Court of Appeal of Ontario in Canada in the case of **Welleslay Hospital v. Lawson** [1978] 1 S.C.R. 893 and by Supreme Court of Virginia State in USA in the case of **Charles v. Commonwealth** 270 Va. 14 (Va. 2005) and **Waterman v. Halverson,** 261 Va. 203, 207 wherein it was held that the legislature is presumed to know the law when enacting legislation.

I do agree with Mr. Matojo that it is a strong irrebuttable presumption of law that the legislature knows all existing laws when enacting legislation and this presumption is invoked if there are two statutes that are in conflict on the same subject or if there are two or more provisions of the same statutes that are in conflict or where there is contention as to whether legislature overturned the binding *ratio decidendi* enunciated in a certain case by superior Court of record, the conflict or the contention is resolved by invoking this presumption namely the Doctrine of Legal Omniscience of Legislature. So, applying this concept of Legal Omniscience of Legislature, then it can be safely said that as matter of law the legislature did not amend or repeal the provisions of *Section 50 (3) and (4) of Cap. 300* deliberately not out of ignorance or inadvertence

or forgetfulness rather it is out of deliberate design as the Parliament is presumed to know all existing law including case law. However, I still maintain that it was an overlook to amend or repeal the provisions of *Section 50 (3) and (4) of Cap. 300 (supra)* and forget to bring it in line with *Sub-Section (2) (c) of Section 50 of Cap. 300 (supra)*.

I understand that in law, the Parliament cannot forget or overlook to amend or repeal the provisions of existing law when enacting or amending legislation. So, any provision of law that happened to be in the legislation, it is there as results of deliberate decision of Parliament and it is not there as result of being overlooked or forgotten to be amended or repealed by Parliament. However, the intention of the Parliament cannot be ironed out by reading the provisions of the law in piecemeal. The intention of the Parliament in *Section 50 (3) and (4) of Cap. 300* must be read in line with *Sub-Section (2) (c) of Section 50 of Cap. 300 (supra)*. Now, I can safely say without fear of contradiction that provisions *of Section 50 (3) and (4) of Cap. 300 (supra)* were retained by Parliament in legislation not by deliberate design rather than by inadvertence.

The fundamental rule of interpretation requires that legislation should be read as a harmonious whole whereby several parts of legislation are

interpreted within their wider statutory context in a way that promotes purpose of law within wider precedential, statutory, constitutional and jurisprudential contexts and framework. The meaning of one statutory provision may be derived from other provision of the same or different principal legislation by looking the relationship of one provision and the other provision in relation to whole principal legislation or the whole legal framework or all laws of the land by inferring the purposes of principal legislation from the principal legislation as a whole, and from overall structure of principal legislation within wider precedential, statutory, constitutional and jurisprudential contexts and framework. **"The Harmonisation Principle" mandatorily** requires the Court to view the wider context of the whole principal legislation into which the law is embodied and exist within wider precedential, statutory, constitutional and jurisprudential framework.

In United States of America, **Scalia, J** (as he then was) in the case of **United Savings Ass'n v. Timbers of Inwood Forest Associates,** 484 U.S. 365, 371 (1988) on "Harmonisation Principle" expressed the view quoted *verbatim* hereunder:

Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme — because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.

Again in 1850, Chief Justice of United State, **Mr. Taney** in the case of **United States v. Boisdoré's Heirs**, 49 U.S. (8 How.) 113, 122 (1850) elucidated the rule as provided hereinbelow:

> In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.

The Court of Appeal in the case of **National Bank of Commerce v. Commissioner General Tanzania Revenue Authority,** Civil Appeal No 52 of 2018 observed that the law is divided into parts, divisions and sub-divisions, each is further divided into sections, subsections, paragraphs *et cetera*, catering for various aspects of the regime in question and every provision under these provisions must be given legal effect. The Court of Appeal in the case of ***National Bank of Commerce*** *(supra)* at page 16 and 17 of the printed judgement approved a legal proposition that legislation are to be read as a whole in context, and, if possible the Court should give effect

to every word of the legislation thereby the Court is bound to give consistent, harmonious, and sensible effect to all of the parts of a statute to the extent possible.

Further, the Court of appeal in the case *of* **Bulyanhulu Gold Mines Limited v. Commissioner General (TRA),** Consolidated Civil Appeals No. 89 & 90 of 2015 (unreported) held that the most common rule of interpretation is that every part of a statute must be understood in a harmonious manner by reading and construing every part of it together and in the same case at page 20, the Court warned that legislation must be read as a whole and it is dangerous to read it in piecemeal.

PART VI: QUORATE COMPOSITION OF LABOUR COURT.

(a) Components of Labour Court.

There are five constituent components that are organized together to form judicila labour institution known as Labour Court as briefly described immediately hereunder.

First, as one of the components of judicial labour institution, **the Registry Office** of Labour Court is established under *Section 50 (1) and (2) (b) and 54 (a) of the Labour Institution Act, Cap. 300 (supra)* read *in tandem*

with *Rule 3 of the Labour Cour Zonal Centres Establishment Rules, 2010(G.N. No. 157 of 2010).* **The Registry Office** of Labour Court is headed by Deputy Registrar In-Charge. The Registry Office is supposed to be composed of the Deputy Registrar In-Charge, Deputy Registrars, Assistant Registrar (if any) and Registry Officers. Registry Office performs registral functions and administrative functions of judicial nature. Registral functions which Registry Office should perform, *inter alia*, include management of the Court registry, to receive, accept, file, transmit Court documents and custody and maintenance of Court records or documents, transfer labour case from one labour Court registry to another registry, assign labour dispute a case number, and to grant permission to any person to produce copy from Court record or document in terms of *Section 50 (1) and (2) (b) and 54 (a) and (c) of Cap. 300, Rule 3, 4 (2) and (4), 7 and 8 of the Labour Court Rules, 2007 and Rule 3 of the Labour Court Zonal Centres Establishment Rules, 2010* (supra). Administrative Functions of judicial nature which Registry Office should perform, *inter alia*, include preparation of annual calendar of the High Court, to draw Court orders, to draw decrees, to sign warrant, orders, decrees, notices and Court processes, certification of electronic recording, to certify Court documents or Court record, and supervise

performance of functions of Labour Court in terms of *Section 28 (6), (8) and (9) of the Judiciary Administration Act, Cap. 237, Rule 3 and 4 of the Labour Court Rules, 2007, Rule 4 (2), (3) and (4) of the Labour Court Zonal Centres Establishment Rules, 2010 (supra), Rule 7 (2) and 9 of the High Court Registry Rules, 2005.*

Second, the **Court Administration Office** of Labour Court which is established under *Section 11 (1) of the Judiciary Administration Act, Cap. 237* read *in tandem* with *Section 50 (1) of the Labour Institution Act, Cap. 300.* Court Administration Office is headed by the Labour Court Administrator. Court Administration Office is composed of the Labour Court Administrator, Court Administrators and human resource officers. The Court Administration Office performs administrative functions of Labour Court under *Section 11 of the Judiciary Administration Act, Cap. 237.* The said administrative functions of Labour Court performed by Court Administration Office under *Section 11 (2) and (3) of the Judiciary Administration Act, Cap. 237, inter alia*, include preparation quarterly reports on the judiciary administration, advise the Court on matters relating to finances, procurement and manage funds allocated to the labour Court.

Third, **the Labour Court Tripartite Users Committee** which is established by *Rule 4 (1) of the Labour Cour Zonal Centres Establishment Rules, 2010 (supra)*. The Labour Court Tripartite Users Committee is composed of Judge of Labour Court, Deputy Registrar, State Attorney In-Charge, Advocate representing Tanganyika Law Society, Representative of Employers Organisation and Representative of Trade Union Organisation. The function of the Labour Court Tripartite Users Committee is to advise Labour Court and Labour Court Zone Centre on all matters pertaining to administration of labour justices. The Labour Court Tripartite Users Committee is headed by Judge of Labour Court as its chairperson.

Fourth, **Labour Court Zonal Centre** which is established under *Section 50 (2) (a) of the Labour Institution Act, Cap. 300* read *in tandem* with *Rule 5 of the Labour Court Rules, 2007 and Rule 2 (1) and (2) of the Labour Cour Zonal Centres Establishment Rules, 2010*. Labour Court Zonal Centre is headed by Judge In-Charge of Labour Court Zonal Centre in terms of *Section 50 (2) (a) of Cap. 300*. The Functions of Labour Court Zonal Centre is to perform all administrative, technical and judicial functions of High Court (Labour Division) at regional level as required by *Rule 5 of the Labour Cour Rules, 2007 and Rule 4 (1) of the Labour Cour Zonal Centres Establishment*

Rules, 2010. Labour Court Zonal Centre should be composed of Judge In-Charge of Labour Court Zonal Centre, Judges of Labour Court, Deputy Registrars, Judges' Assistants, Court administrators, registry officers and other administrative, technical and supporting staff just like any sub-registry of High Court.

Fifth, last but not least **the Judicial Quorum** or **Judicial Sitting** of Labour Court is quorate judicial body established under *Section 50 (3) of the Labour Institution Act, Cap. 300* read in tandem with *Article 108 (1) and 109 (1) of the Constitution and Section 5 of the Judicature and Application of Laws Act, Cap. 358* to perform purely judicial functions namely hearing and determination of labour disputes or labour cases. The Judicial Quorum of Labour Court is the judicial body vested with jurisdiction by *Section 50 (4) of the Labour Institution Act, Cap. 300* to hear and determine all labour disputes or labour cases which High Court (Labour Division) has jurisdiction over them. Also, the Judicial Quorum of Labour Court is the judicial body vested with jurisdiction by *Section 89 (2) and 91 (3) of the Employment and Labour Relations Act, Cap. 366* to hear and determine application for execution and application for stay of execution of arbitral awards (decrees) issued by CMA. The Judicial Quorum is composed of *single Judge of Labour*

Court (the Solo Bench) sitting with *two assessors* or single Judge of Labour Court alone where the law dispenses with the requirement of sitting with assessors in terms of *Section 50 (4) of the Labour Institution Act, Cap. 300.* The Judicial Quorum is headed by *Presiding Judge* of Labour Court who may be either Judge in-charge of High Court (Labour Division) or Judge Chairman under the provisions of *Section 53 (2) and (3) of the Labour Institutions Act, Cap. 300* or Puisne Judge (Ordinary Judge) of Labour Court in terms of *Section 50 (3) and (4) of the Labour Institution Act, Cap. 300* read in tandem with *Section 5 of Judicature and Application Laws Act, Cap. 358 and Article 108 (1) and 109 (1) of the Constitution (supra).*

(b) Doctrine of Ultra Vires.

Mr. Matojo did raise another interesting weak argument. He was of the view that since the High Court (Labour Division) is properly constituted where it is composed of *the Judge sitting with two assessors in terms of Section 50 (3) of Cap. 300 (supra),* and the judicial decision of the High Court (Labour Division) is legally valid only where is either made by *the Judge sitting with two assessors* or it is made by *Judge* alone where the law dispenses with the requirement of sitting with assessors as dictated by *Section 50 (4) of the Labour Institutions Act, Cap. 300 (supra),* indispensably, it goes without

saying that any exercise of judicial powers of Labour Court by Deputy Registrar is *null et void ab initio* and violates the **Doctrine of Ultra Vires**. Though it is old legal usage and tradition in Tanzania for the Deputy Registrars of Labour Court to execute decree. However, such executional jurisdiction by the Deputy Registrars of Labour Court to execute decrees was acquired through legal usage and tradition obtaining in Tanzania but such executional jurisdiction was not and it is not acquired under the law thereby it is unlawful exercise of public power.

The legal proposition that public power is acquired through law and law only was enunciated by Lord Comden, CJ (as he then was) in one of the oldest and celebrated case of **John Entick v. Nathan Carrington & Others** [1765] 19 **Howell's Stare Trials**, 1029. From this monumental judgment, it was developed a legal principle that forms necessary and important component of jurisprudence in common law jurisdictions, that is; *"a state shall do nothing except what it has been permitted by law and a citizen shall do everything except what he has been prohibited by the law"*. Also, the legal stance taken by **Lord Comden, CJ** in **Entick v. Carrington Case** was affirmed by **Lord Denning** in the famous case of **Barnard v. National Dock Labour Board** [1953] 1 All E.R 1113 one of

the most cited cases in East Africa on this subject matter.

Mr. Matojo went on to argue that; even if one would argue that such powers of Deputy Registrar to hear and determine application for execution and application for stay of execution are impliedly conferred by law on Deputy Registrar yet this legal stance is bound to be misconceived in law simply because the Court is inclined to adopt principle of administrative law to the effect that public power conferred on public authority must be express and it cannot be implied as it was held in the case of **Choitram & others v. Mystery Model Hair Saloon** [1972] 1 EA 525. In the same vein, it was the argument of Mr. Matojo that the Deputy Registrar of Labour Court can neither acquire power to hear and determine application for execution nor application for stay execution nor exercise any judicial power of Labour Court by his legal status or legal tradition and usage obtaining in Tanzania or he cannot acquire such power *ab immemorabili,* (by right of prescription) just like **Rt. Hon. Lord Chancellor of the Great Britain** who used to be Presiding Officer (Lord Speaker) of the House of Lords *ab immemorabili,* or by right of prescription, the right extending beyond the reach of memory in time before enactment of **the Constitutional Reform Act 2005** in Great Britain as the concept of *ab*

immemorabili, (by right of prescription) does not have place in public law domain in Tanzania as it is the case in England.

Therefore, it was the strong submission by Mr. Matojo that any move by Deputy Registrar of Labour Court to hear and determine application for execution of decree and application for stay execution or any exercise of judicial power of labour Court means nothing but exceeding or overstepping the boundaries or limits of his powers something which is contrary to **Doctrine of Ultra Vires** which in Tanzania, inter alia, is embodied in the case **Sheikh Muhammad Nassor Abdalla v. RPC & Others** [1985] TLR 1 (as per Mapigano, J) and also in the case of **Juma Yusuph v. Ministerof Home Affairs** [1990] TLR 80 (as per Kyando, J).

With due respect to Mr. Matojo, I agree that the doctrine of *Ultra Vires* provides that public power sought to be exercised by any person or entity must have been conferred upon that person or entity by law.

Indeed, it is not permissiblefor any public authority or officer or any person to exercise power where there is no a provision of law of the land bestowing such public power upon it or him. Most importantly, it is basic element of **Doctrine of Ultra Vires** that public power is acquired through

law and law only and not through usage, custom, tradition or status or otherwise. However, the executional function of the Deputy Registrar is conferred by the law under *Order XLIII Rule 1(e) (g) (h) (i); the Judicial Administration Act, the Labour Institutions Act (supra), the ELRA (supra) and the Labour Rules.*

Section 54 (b) of the Labaour Institutions Act, Cap. 300 as amended by provision of Section 68 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020 vests the Deputy Registrar of Labour Court with jurisdiction to hear and determine application of execution of arbitral award issued by CMA. The provisions of *Section 54 of the Labaour Institutions Act, Cap. 300 as amended by provision of Section 68 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020* provide as reproduced *verbatim* hereunder:

> *There shall be Deputy Registrars who shall exercise powers and perform such duties as are conferred under-*
>
> *(a) section 28(8) of the Judiciary Administration Act;*
>
> *(b) Order XLIII of the Civil Procedure Code; and*
>
> *(c) rules made by the Chief Justice under section 55.*

The provisions of *Section 54 (b) of the Labaour Institutions Act, Cap. 300 as amended by provision of Section 68 of the Written Laws*

(Miscellaneous Amendments) (No. 2) Act, 2020 by all necessary legal implications confer the Deputy Registrar of Labour Court with Executional Jurisdiction. I join hand with the Jurisdictional Registrarialists who hold a legal position that the provisions of *Section 54 (b) of Cap. 300 (as amended)* confer upon Deputy Registrar of Labour Court jurisdiction to exercise all powers prescribed by *Order XLIII of the Civil Procedure Code, Cap. 33* and one of such powers is execution of decrees provided by Rule (1) (g) thereof. Mkwizu, J in **Finca Microfinance Bank v. Vedastus Chundu** (*supra*) held that *Section 54 (b) of the Labaour Institutions Act, Cap. 300 as amended by Section 68 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020* vests the Deputy Registrar of Labour Court with executional jurisdiction to hear and determine application of execution of arbitral award issued by CMA. Indeed, there is no any inconsistence with Rules of Internal Conflicts of Law, no excess of Executional Jurisdiction limits and it is within the executional Jurisdiction of Deputy Registrar.

Nevertheless, I understand that there is a legal quagmire that lies in composition of Labour Court in exercise of its executional jurisdiction. The provisions of *Section 89 (2) of the Employment and Labour Relations Act (supra)* provide as reproduced *de verbo in verbum* hereunder:

An *arbitration award* made under this Act may be *served and executed in the Labour Court as* if it were a decree of a Court of law.

Again, provisions of *Rule 49 (2) of the Labour Court Rules, 2007 (supra)* provide as reproduced *verbatim* hereinbelow:

The decree holder, interested party, beneficiary or otherwise may apply formally to the Court for the execution of the decision or award of the Commission or such other responsible person or body as a decree of the Court.

Furthermore, provisions of *Rule 2 (2) of the Labour Court Rules, 2007 (supra)* defines the term Court as follows:

Court" means the Labour Court.

As said earlier, it is indisputable legal fact that the jurisdiction to hear and determine application for execution of arbitral award (decree) issued by CMA exclusively vests in Labour Court *cum* High Court (Labour Division) under provisions of *Section 89 (2) of the Employment and Labour Relations Act, Cap. 360 and provisions of Rule 2 (2) and 49 (1) and (2) of the Labour Court Rules, 2007*. However, the legal controversy surrounds composition or constitution of Labour Court in exercise of its executional jurisdiction.

The Court (Jurisdictional Registrarialists) puts a legal proposition that Labour Court in exercise of its execution jurisdiction over arbitral award issued by CMA should be presided over by the Deputy Registrar of Labour Court. Jurisdictional Registrarialists offer three reasons to justify the said legal proposition. *First, Section 54 (b) of the Labaour Institutions Act, Cap. 300 as amended by Section 68 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2020* vests the Deputy Registrar of Labour Court with jurisdiction to hear and determine application of execution of arbitral award issued by CMA. The said *Section 54 (b) of Cap. 300* permits the Deputy Registrars to exercise powers provided under *Rule 1 of Order XLIII of the Civil Procedure Code, Cap. 33* and one of such powers is execution of decrees provided by *Rule (1) (g)* of the said *Order XLIII* and this position was taken in **Finca Microfinance Bank case** *(supra).*

Second, even before amendment of *Section 54 (b) of Cap. 300 vide Section 68 of Act No. 3 of 2020* and even before **Serenity on the Like Ltd v. Dorcus Martin Nyanda** *(supra*), there were several labour cases in which the Labour Court took a legal stance that jurisdiction to hear and determine application for execution vests in Registrar and Deputy Registrar of Labour is derived from *Rule 48 (3) of the Labour Court Rules, 2007 (supra)*

read in tandem with *Order XXI and Rule 1(g) of the Civil Procedure Code, Cap. 33 (supra)*. The labour cases which took the said legal stance before amendment of *Section 54 of Cap. 300 vide Section 68 of Act No. 3 of 2020, inter alia*, include the following: **George Mapunda & Wema Abdalla v. Dawasco**, Misc. Revision No. 1 of 2014 (Rweyemamu, J); **China Communication Construction Company Limited v. Boaz Matoba & 298 Others**, Revision No. 04 of 2014, (Nyerere, J); **Pendo William v. Bernard Kitange and Yusra Said,** Revision No. 62 of 2013 (Nyerere, J) Part II [2015] LCCD No. 121 from page 37 to 38; **Capitol Decoration & Building Works v. Edward Rugayaza**, Labour Execution Application No. 418 of 2008 (Rweyemamu, J).

The three labour cases immediately cited hereinabove held that the Registrar of Labour Court like any other Registrars of the High Court enjoys jurisdiction to hear and determine application for execution of decrees (arbitral award) issued by CMA and such jurisdiction is derived from provisions of *Order XXI and Rule (1) (f) to (k) of Order XLIII of the Civil Procedure Code, Cap. 33 (supra) read in tandem with Rule 48 (3) of the Labour Court Rules GN 106/2007.*

Third, Jurisdictional Registrarialists put forward argument that the amendment of *Section 50 (2) of Cap. 300* vide provisions of *Section 67 of Act No. 3 of 2020* had the effect of formally recognizing Deputy Registrar of Labour Court as part and parcel of the composition of the High Court (Labour Division), thereby the Deputy Registrar constitutes Labour Court as contemplated by *Section 89 (2) of Cap. 366* for purpose of presiding over execution proceedings. Deputy Registrar being part and parcel of Labour Court under *Section 50 (2) of Cap. 300 as amended by Section 67 of Act No. 3 of 2020* enjoys jurisdiction to hear and determine application for execution of arbitral award issued by CMA as held in **Iron Steel Limited v. Martin Kumalija and 117 Others** (supra).

It is important to note that Court of Appeal in **Serenity on the Like Ltd v. Dorcus Martin Nyanda** (supra) held that the Deputy Registrar of Labour Court does not feature in the composition of Labour Court under *Section 50 (2) and (3) of Cap. 300.* But it can be distinguished to the fact that it was delivered before amendment of *Section 50 (2) of Cap. 300 vide Section 67 of Act No. 3 of 2020* thereby *ratio decidendi* enunciated therein is no longer a good law as it was overturned by Legislature through *Section 67 and 68 of Act No. 3 of 2020.*

There was also an argument set forth by **Mr. Matojo Mushumba Cosatta** who is Advocate of High Court and representative of the Applicant in this labour case. He contend that the provisions of *Section 54 (a) and (b) of the Labour Institutions Act, Cap. 300 (supra) and provisions of Rule 1 (g) of Order XLIII of the Civil Procedure Code, Cap. 33 (supra)* are unconstitutional to the extent the same confer on the Deputy Registrar of Labour Court power to hear and determine applications for execution of decree which the High Court (Labour Division) has jurisdiction over them as such power are purely judicial functions that vests exclusively in the Judge of High Court (Labour Division). Thus, the judicial functions of the High Court (Labour Division) vest exclusively in the Judges of High Court (Labour Division) under *Article 109 (1) of the Constitution read in tandem with Section 5 of the Judicature and Application of Laws Act, Cap. 358 as well as provisions of Section 50 (1), (2) and (3) and (4) of the Labour Institutions Act, Cap. 300.*

Again, with due respect to Mr. Matojo, I hasten to entertain discussion and analysis of constitutionality of the provisions of the law in this labour matter. Such duty can be discharged if properly moved in a constitutional petition before the High Court Main Registry. In any case, the provisions of

the law must be read conjunctively in a broader context of the whole principal legislation and the jurisprudential development therein.

PART VII: THE LEX SPECIALIS DOCTRINE.

The provisions of *Section 54 (b) of Cap. 300 confer on the Deputy Registrar of Labour Court under Rule 1 (g) of Order XLIII of the Civil Procedure Code, Cap. 33* jurisdiction to execute decree (arbitral award) issued by CMA. Both provisions of *Rule 1 (g) of Order XLIII of Cap. 33 (supra)* and provisions of *Section 54 (b) of Cap. 300 (supra)* are not general provisions of law. They have to be read together with the provisions of *Section 89 (2) of the ELRA (supra)* and provisions of *Section 50 (3) and (4) of the Labour Institutions Act, Cap. 300 (supra)* as well as provisions of *Rule 2 (2) and 49 (1) and (2) of the Labour Court Rules, 2007 (supra)* which are specific provisions of the law that regulate the question of judicial authority with jurisdiction to execute the decree (arbitral award) issued by CMA.

I entirely agree with Mr. Matojo that, at common law, under **the Lex Specialis Doctrine**, it is a settled principle of law that where there are two laws or two provisions of the same law which regulate the similar subject matter are in conflict, by default, specific provision of law or the specific law (**lex specialis**) that regulates specific subject matter overrides or prevails

over general provision of law or general law (**lex generalis**) that regulates the matter generally. This legal proposition is embodied in several binding judicial precedents in Tanzania both of the High Court and Court of Appeal. In the case of **Mlenga Kalunde Mirobo v. the Trustees of the Tanzania National Parks & Attorney General, Labour Revision Application No. 6 of 2021** on the Lex Specialis Doctrine at page 17 of printed ruling I had this to say:

> *Further, it is the findings of this Court that; where there is a conflict between **"Specific Law"** in one hand and **"General Law"** on the other, then **"Lex Specialis Doctrine"** chips in to resolve the conflict. **"Lex Specialis Doctrine"** provides that if two laws which regulate the similar subject matter are in conflict, then **specific law** that regulates specific subject matter **(lex specialis)** overrides or prevails over **general law** that regulates the matter generally **(lex generalis)**. It should be noted that **"Lex Specialis Doctrine"** is derived from Latin Maxim: **"Lex specialis derogat legi generali"** which laterally means that **"the general does not detract from the specific."** This maxim enjoins the Courts of law to prefer specific law over general law where there is a conflict on the similar subject matter.*

There are several judicial decisions in Tanzania that embraces **the Lex Specialis Doctrine**, *inter alia*, include the following: **The Permanent Secretary (Establishment) for Home Affairs & Attorney General v. Hilal Hamed Rashid and 4 Others** [2005] TLR 121 (Court of Appeal of Tanzania); **Tanzania Teacher's Union v. Attorney General & 3 Others,** Civil Application No. 96 of 2016 (Full Bench Court of Appeal of Tanzania); **Serenity on the Lake Ltd v. Dorcus Martin Nyanda**, Civil Reference No. 1 of 2019 (Court of Appeal of Tanzania); **Security Group Ltd v. Samson Yakobo** & 10 Others, Civil Appeal No. 76 of 2016, Court of Appeal of Tanzania (unreported); and **Halima Aden v. Ali Fungo** [1997] TLR 181 (High Court).

I do understand that in the case of **Serenity on the Lake Ltd v. Dorcus Martin Nyanda,** (*supra*) on conflict between general provisions of law and specific provisions of law at page 7 and 8 of the unreported printed ruling, the Court had this to say:

> It is possible that in entertaining **Miscellaneous Labour Application No. 18 of 2018** for stay of execution, the Deputy Registrar acted on those powers stipulated under Order XLIII(i) of the Civil Procedure Code. However, under *section 91(3) of the Employment and Labour Relations Act*,

it is the Court which is vested with the power and when we come to *section 2 read together with section 50 of the Labour Institutions Act*, earlier quoted, the Registrar does not feature anywhere in the composition of the Labour Court. *We cannot go to the Civil Procedure Code as per Regulation 55 (1) [sic] while there are specific provisions in the Labour Legislation which specifically states that stay of execution has to be done by the Court.* We are therefore convinced that the Deputy Registrar not forming part of the Court had no jurisdiction to entertain and determine an application for stay of execution of a decree originating from the High Court (Labour Division) in the exercise of its revision jurisdiction. He assumed jurisdiction which he did not possess."

However, with the advent of the amendment of *Section 50 (2) of Cap. 300* vide provisions of *Section 67 of Act No. 3 of 2020* which formally recognized the Deputy Registrar of Labour Court as part and parcel of the composition of the High Court (Labour Division), I find the decision in the case of **Serenity on the Lake Ltd** *(supra),* has been rendered ineffectual.

More so, *lex specialis doctrine* is not intended to defeat the object of the law. It goes without saying, therefore, that *Section 89 (2) of the Employment and Labour Relations Act, Cap. 366, Section 50 (3) and (4) of*

the Labour Institutions Act, Cap. 300 and Rule 2 (2) and 49 (1) and (2) of the Labour Court Rules, 2007 in one hand are ***lex specialis*** which must be read conjunctively with *Rule 1 (g) of Order XLII of Civil Procedure Code, Cap. 33 and Section 54 (b) of the Labour Institution Act, Cap. 300* to give effect to the intention of the legislature. Therefore, all those provisions, if read together, vest the same jurisdiction in Deputy Registrar of Labour Court.

PART VIII: APPLICATION OF HORMONISATION PRINCIPLE ON CONTROVERSY.

The Court of Appeal in the case of **Director of Public Prosecutions v. Li Ling Ling,** Civil Appeal No. 508 of 2018 held that; it is trite principle of statutory interpretation that one provision of a written law cannot be interpreted or used to defeat the other *in lieu* thereof the written law must be read as a whole or the same be interpreted harmoniously to reconcile the conflicting sections. In this case, the Court of Appeal quoted with approval the opinion of learned author one **Justice G.P. Sigh** in his book titled **"Principles of Statutory Interpretation12th Ed., Lexis Nexis, Butterworths; Nadhwa Nagpur:"** wherein he states at page 145 as follows:

> The provisions of one section of a Statute cannot be used to defeat those of another 'unless it is impossible to effect reconciliation between them.' The same rule applies to subsections of section.

The decision of Court of Appeal in the said case of **Director of Public Prosecutions v. Li Ling Ling** was cited with approval and applied by Court of Appeal once again in the case of **Abdallah Ally Selemani t/a Ottawa Enterprises v. Tabata Petrol Station Co. Ltd & Another,** Civil Appeal No. 89 of 2017. In case of conflict, neither the provisions of one section of principal legislation can be used to defeat provisions of section of another principal legislation nor one provision of section of the principal legislation can be used to defeat another provision of section of the same principal legislation unless it is impossible to effect reconciliation between them. This legal principle also applies to subsections of sections as it was held by the Court of Appeal in the said case of **Abdallah Ally Selemani v. Tabata Petrol Station Co Ltd** *(supra).*

Since no provision can be used to defeat another provision of the same or different principal legislation where the two are in conflict, thus, the first resort by the Court in interpreting two or more conflicting provisions of in the same written law or different written laws has always been to invoke

harmonious interpretation with view to make all or both provisions to co-exist harmoniously in the legislation or the legal system and to be effective and useful as each provision was enacted by legislature to serve a certain purpose. Whenever a provision of the law appears to be in conflict with another provision in the same principal legislation or in different principal legislation, then we are enjoined by binding judicial precedents to call in aid **the Harmonization Principle** of Statutory Interpretation. **The Harmonization Principle** holds that the entire law or legislation has to be read as an integrated whole, no one particular provision of legislation or law should destroy the other but each provision should sustain the other. Harmonization Principle applies to all subsidiary legislation, principal legislation and constitution.

In the circumstance of conflicting provisions of the same constitution, the High Court of Tanzania at Dodoma in the case of **Rev. Christopher Mtikila v. Attorney General** [1995] TLR 31 as per **Lugakinga, J** (as he then was) cited with approval the case of **Muhammad Nawaz Sharif v. President of Pakistan, PLD** 1993 DC 473 and proceeded to apply the Harmonisation Principle to interpretation of constitution. Also, the High Court of Tanzania at Arusha in the case of **Munuo Ng'uni v. the Judge In-**

Charge High Court, Arusha & Attorney General, Civil Cause No. 3 of 1993 approved the legal position taken by Lugakingira, J in aforementioned case.

In United States of America, Scalia, J (as he then was) in the case of **United Savings Ass'n v. Timbers of Inwood Forest Associates,** 484 U.S. 365, 371 (1988) on "Harmonisation Principle" expressed the view quoted *verbatim* hereunder:

> *Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme — because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.*

Again in 1850, Chief Justice of United State, Mr. Taney in the case of **United States v. Boisdoré's Heirs**, 49 U.S. (8 How.) 113, 122 (1850) elucidated the rule as provided herein below:

> In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.

Further, the Court of appeal in the case *of* **Bulyanhulu Gold Mines Limited v. Commissioner General (TRA),** Consolidated Civil Appeals No. 89 & 90 of 2015 (unreported) held that the most common rule of interpretation is that every part of a statute must be understood in a harmonious manner by reading and construing every part of it together and in the same case at page 20, the Court warned that legislation must be read as a whole and it is dangerous to read it in piecemeal.

PART IX: REVISION BY COURT OF APPEAL OVER DECISIONS OF DEPUTY REGISTRAR.

I agree that the Court of Appeal has been exercising revisionary powers over the decisions of Deputy Registrars in several cases, *inter alia*, cases: Serenity on the Lake Limited versus Dorcus Martin Nyanda, Civil Revision No. 1 of 2019; **Millicom (Tanzania) M.V v. James Alan Russel Bell and Others**, Civil Revision No. 3 of 2017 and **Balozi Abubakar Ibrahim & Another v. Ms. Benandys Limited and Others**, Civil Appeal No. 6 of 2015 (unreported). However, as far as I'am aware, in none of such cases, the Court of Appeal was specifically moved to determine the proper legal remedy over the decision of the Deputy Registrar of the Labour Court.

PART X: UNCONSTITUTIONAL APPOINTMENT OF DEPUTY REGISTRAR.

Mr. Matojo has also brought a serious argument of which I refrain to act upon because this case is not a constitutional petition. He has submitted that; even if the decision of Deputy Registrar of Labour Court is the Decision of High Court; and even if he has jurisdiction to hear and determine application for execution of arbitral award issued by CMA; yet, appointments of all Deputy Registrars of Labour Court are illegal and unconstitutional.

It was his submission that while Deputy Registrars of all sub-registries, registries and divisions of the High Court (Labour Division) are required to be appointed by the Judicial Service Commissions under provisions of *Section 29 (1) (d) of the Judiciary Administration Act, 2011.* Thus, whereas all Deputy Registrars of the High Court (Labour Division) are required to be appointed by the Lord Chief Justice under *Section 50 (2) (b) of the Labour Institutions Act, Cap. 300,* the appointment of the Deputy Registrars of the High Court by the Judicial Service Commissions in general and of the Deputy Registrars of the High Court (Labour Division) by Chief Justice in particular, is inconsistent with, and repugnant to, the provisions of *Article 113 (3) of the Constitution of United Republic of Tanzania, 1977. The provisions of Article*

113 (3) of the Constitution of United Republic of Tanzania, 1977 which provide as reproduced hereunder:

> Powers of appointments, confirmation, disciplinary and removal of *Registrars of the Court of Appeal and the High Court* shall vest in the President.

It was the view of Mr. Matojo that the powers of appointment, confirmation, disciplinary and removal of all Registrars of the High Court vests in the President of United Republic of Tanzania under provisions of *Article 113 (3) of the Constitution of United Republic of Tanzania, 1977*.

According to Mr. Matojo, the power to appoint all Registrars of the High Court vests in the President under provisions of *Article 113 (3) of the Constitution* because the said provisions of the constitution employ the plural form of the word namely **"Registrars"** instead singular form of the word **"Registrar"**. The use of the plural form of the word namely **"Registrar"** in *Article 113 (3) of the Constitution* by necessary legal implications means that all species of High Court Registrar namely; Registrar, Deputy Registrars and Assistant Registrars of High Court should be appointed by President.

I agree with Mr. Matojo on three points: *One*, the Governor and Commander-in-Chief of Tanganyika Mandate Territory enjoyed power to

appoint all Registrars of His Majesty's High Court of Tanganyika under provisions of *Article 9 and 23 of the Tanganyika Order in Council, 1920. Two,* the provisions of *Article 65 (1) (a) and (2) of the Constitution of United Republic of Tanzania, 1977* as enacted on 25th April, 1977 before any constitutional amendment was effected thereto expressly vested in President the power to appoint the Registrar and the Deputy Registrar of High Court of United Republic of Tanzania. The said provisions of *Article 65 (1) (a) and (2) of the Constitution of United Republic of Tanzania, 1977* are quoted and reproduced *verbatim* hereunder:

> 65-(1) Bila ya kuhathiri masharti ya Sheria yoyote iliyotungwa na Bunge inayohusika na swala la kuajiri mahakimu na watumishi wengineo wa Mahakama, mgawano wa madaraka kwa ajiri ya swala hilo utakuwa ifuatavyo:
>
> (a) *Madaraka ya kuwaajiri watu wa kushika madaraka ya aina zilizotajwa katika ibara ndogo ya (2) ya ibara hii* (Pamoja na madaraka ya kuwadhibiti watu hao kazini na kuwapandisha vyeo) *yatakuwa mikononi mwa Rais.*
>
> (b) madaraka ya ya kuwadhibiti nidhamu ya watu hao na madaraka ya kuwaondoa kazini yatakuwa mikononi mwa Tume ya Kuajiri iliyotajwa katika Ibara ya 64 ya Katiba hii.
>
> (2) Madaraka yanayohusika na masharti ya ibara hii ni madaraka ya *Msajili na Naibu Msajili wa Mahakama Kuu* ya Jamhuri ya Muungano, madaraka ya Hakimu Mkazi na

> Hakimu wa aina nyingine yoyote, na madaraka ya aina nyingine yoyote yanayohusika na Mahakama yoyote (isipokuwa Mahakama ya Kijeshi) itkayotajwa na Sheria iliyotungwa na Bunge kwa mujibu wa masharti ya Katiba hii.

However, this case, being a labour application, is not a proper platform to discuss and make analysis on the Constitutional quagmire and legal development that necessitated to the current position in respect of appointment of the Deputy Registrar. As a lawyer of his own caliber in terms of research and thirsty of developing jurisprudence of this Country, Mr. Matojo should have resisted to advance all his weapons in a case that cannot yield milk. It could be meaningful if such legal arguments could have been advanced in a Constitutional Petition.

In the final result, I reject the call by Mr. Matojo of departing from the notable part of my very own previous decision in the case of **Yakobo John Masanja v. Mic Tanzania Limited** *(supra)* on grounds stated in, and for extent of the reasons provided herein above. As a result, the application is hereby dismissed for lack of merits. Being a labour matter, and taking into account of the industrious submission made by Mr. Matojo in this application, I award no order as to costs.

Y.J. MLYAMBINA

JUDGE

10/10/2023

Ruling delivered and dated 10th October, 2023 in the presence of Matojo Cosatta, Personal Representative of the Applicant and learned Mr. Sweetbert Eligidius for the Respondent.

Y.J. MLYAMBINA

JUDGE

10/10/2023