

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(KIGOMA DISTRICT REGISTRY)**

**AT KIGOMA**

**(LABOUR DIVISION)**

**LABOUR REVISION NO. 5 OF 2019**

(Arising from the Award of the Commission for Mediation and Arbitration for Kigoma in  
Labour Dispute No. CMA/KG/DISP/35/2018)

**KANISA LA ANGLIKANA UJIJI.....APPLICANT**

**VERSUS**

**ABEL S/O SAMSON HEGUYE .....RESPONDENT**

**J U D G M E N T**

18/10/2019 & 14/11/2019

**I.C. MUGETA, J.**

In law there are two type of persons who can sue or be sued. These are the natural and legal (artificial) persons. The artificial persons includes companies and the Registered Trustees. They can also be referred to as incorporated bodies. In the case of the **Registered Trustees of the Catholic Diocese of Arusha Vs. The board of Trustees of Simanjiro Pastoral Education Trust**, Civil Case No. 3/1998, High Court, Arusha (unreported), his Lordship Justice Rutakangwa (as he then was) had this to say on the right of artificial bodies to sue and be sued:-

***"No other body of unincorporated trustees can sue or be sued in any court of law as they have no legal personality"***

Legal persons are incorporated under different laws. In case of Trustees, their incorporation is governed by the Trustees' Incorporation Act [Cap. 318 R.E. 2002]. The requirement for incorporation as a body corporate is stipulated under section 2(1) of the Act while the capacity to sue or be sued is provided for under section 8 (1) (b) of the same Act. The nature of the dispute in this case has necessitated the foregoing introduction.

Before the commission for Mediation and arbitration, the respondent sued the applicant for unlawful termination. On that account he prayed for:-

- (i) A month's salary in lieu of notice;*
- (ii) Three years arrears of unpaid leave;*
- (iii) Severance allowance*  
*Twenty seven (27) months salary as remaining part of the contract;*
- (iv) Twelve months salary as compensation for unlawful termination of the contract.*

The respondent was successful in most of the claims. The applicant was aggrieved by the decision hence this revision application which is premised on three major grievances, namely:-

- (i) The award of the commission for Mediation and Arbitration was improperly procured as the respondent had instituted a complaint against a party which lacks legal personality.*

- (ii) The award of the Commission for Mediation and Arbitration was improperly procured for failure to properly evaluate the evidence brought in favour of the employer.*
- (iii) The Commission for Mediation and Arbitration for Kigoma unlawfully delivered a decision basing on extraneous matters.*

On the hearing date, Michael Mwangate, learned counsel appeared for the applicant. He was assisted by Kelvin Kayaga, learned advocate. The respondent was present in person but his case was argued by Cleophas Butahe, who is TUGHE Regional Secretary.

In this judgment I shall consider the first ground of complaint only as I am satisfied it is capable to sufficiently dispose of this case.

Counsel for the applicant submitted that the respondent sued a party who has no legal personality because as a church, the applicant is dully registered with a fully registered board of trustees. Therefore, for the respondent to obtain an executable award/decreed, he ought to have sued the registered trustees of the church who are the owners of the church and its properties.

The respondent's representative, in reply, submitted that the issue of locus standi was not raised before the commission and it was not decided upon, therefore, this court is precluded from considering it.

Indeed, this issue was neither raised nor considered and decided upon by the CMA. However, since it contains matters of law, it can be raised and considered at first appeal level. This is because, if indeed, the applicant is

not incorporated, the award cannot be executed and the authority in the **Registered Trustees of the Catholic Diocese of Arusha** (supra) cited by counsel for the applicant applies: That unincorporated body cannot be sued.

A similar situation was considered by this court in the case of **Afisa Tawala Mkuu Hospitali ya Ndala vs Eunice Meshaki Shimba**, Revision No. 17/2015, High Court, (Labour Division), Tabora (unreported) where Mashaka, J. held:-

***"...It was improper for the respondent to institute a dispute against Afisa Tawala Mkuu of Ndala Hospitali who cannot be sued. The Registered Trustees have separate legal powers distinct from the Afisa Tawala"***

My learned Sister further held:-

***"... the respondent sued a wrong party thus the CMA award is not executable in the eyes of the law".***

I full subscribe to the above holdings by Mashaka, J. which are highly persuasive in this matter.

The applicant is a religious institution. Religious organizations are required by law to be registered as societies under the Societies Act [Cap.337 R.E. 2002]. The requirement is under section 12(1) of the said Act. The procedure is well described under the Societies (Application for Registration) Rules, GN. 119/1958. Upon being issued with a certificate of registration, the organizations are required under section 2 of the Trustees

Incorporation Act [Cap. 318 R.E. 2002] to be incorporated and be issued with a certificate of incorporation stipulating its name which under section 5 of the same Act shall include the words "**Registered Trustees**". Once the certificate is issued, the religious organization or association is deemed to have been incorporated, therefore, can sue or be sued in its incorporation name only.

I wish to make it clear here that under our laws there are two regimes which govern operation of local societies. The first one concerns registration under the Societies Act where a certificate of registration is issued and the second one concerns incorporation under the Trustees Incorporation Act where a certificate of incorporation is issued. The first regime is managed by the Ministry of Home Affairs while the second one is supervised by the Ministry of Constitution and Legal affairs. Societies, as legal persons, are therefore sued and can sue in their incorporation names not registered names. It follows, therefore, that the Anglican Church or its branch cannot be sued in its registered name as the registered name cannot give it a legal personality. I accordingly hold that the respondent sued a legally non-existent entity. This is an error which cannot be allowed to stand much as I sympathize for the resources already spent on prosecuting this case. To avoid situation like this, it is advisable that those entrusted with the administration of justice should always ensure that when artificial persons sue or are being sued they do so in their incorporation names. This can be achieved by demand for certificates of incorporation not registration certificates before the trial commences.

This said and done, I find merits in the application. Consequently, I invoke the revision powers of this court under section 91 (4) (a) and (b) of the Employment and Labour Relations Act No. 6/2004 and rule 28 (1) (e) of the Labour Court Rules G.N. 106/2007 to quash the decision and set aside the proceedings of the CMA for being a nullity. This being a labour matter, I give no orders as to costs.



*I.C. Mugeta*  
**I.C. Mugeta**

**Judge**

**14/11/2019**

Delivered before Leonard Fedia (Pastor) for the applicant and the respondent in person.

**Sgd: I.C. Mugeta**

**Judge**

**14/11/2019**