

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LABOUR DIVISION – ARUSHA SUB REGISTRY]

AT ARUSHA

REVISION APPLICATION NO. 11 OF 2021

(Originating from CMA/MUS/165/2020)

PASCAL BANDIHO..... APPLICANT

VERSUS

JANDU PLUMBERS LTD.....RESPONDENT

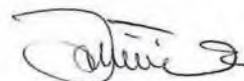
RULING

26th May & 9th June, 2022

TIGANGA, J.

In this application, the respondent raised three main points of Preliminary objection challenging the competence of the application at hand. The preliminary objection points are contained in the Notice of opposition filed by him as follows:

- (i) He requested this Court to find and dismiss the application for being time barred
- (ii) That, the application is incompetent for non-citation of enabling relevant provision of the law
- (iii) The application is incompetent as this honorable court has no territorial jurisdiction to entertain the matter.



He asked the application to be dismissed with costs for lack of merit, and make any other order or relief as this honourable court may deem fit to grant. At the hearing which was done by way of written submissions, the 1st and 2nd points of objection were dropped, only the 3rd point of objection was argued.

In the submission in chief, the counsel for the respondent submitted that, the objection raised is challenging the jurisdiction of this court on the ground that the original labour dispute from which this application for revision emanates was filed and determined by the Commission for Mediation and Arbitration for Musoma. However, instead of filing revision before Musoma High Court (Labour Division), the applicant filed the same before this Court, he posed and asked the issue as to whether the High Court Arusha registry has jurisdiction to entertain the matter.

The counsel submitted by reminding the court that the jurisdiction of the court to entertain any matter is so basic that no court should entertain any case before it without first satisfying itself that it has requisite jurisdiction to do so.

The counsel reminded the court that, the High Court Registries (Amendment) Rules, 2021 (GN 630 of 2021) under which this Registry of the High Court is established, establishes High Court Arusha Registry to

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entertain and determine the matter within territorial jurisdiction of Arusha and Manyara Regions. While under paragraph 16 at the same rule, the High Court Registry Musoma is established to exercise territorial jurisdiction within Mara Region.

The counsel was of the view that, since the original labour Dispute was filed and determined by CMA – Musoma, then revision proceedings in respect of the award were supposed to be filed to the High Court Musoma (Labour Division) and if the applicant wanted the same to be transferred, then he was supposed to apply for transfer of the matter to Arusha High Court Labour Division. On that aspect, I was referred to the persuasive authority of the High Court Labour Division Mwanza in the case of **North Mara Gold mine Limited Vs. Michael Magege**, Labour Revision No. 91 of 2021, in which the court found that it was not proper for the CMA Mwanza to entertain the matter which originated from Musoma without the same being transferred by Musoma CMA where the matter started.

In reply by the counsel for the respondent has not disputed the fact that the award subject of the application for revision resulted from the employment dispute which was filed and determined by CMA at Musoma in Mara Region.

He has also not disputed the fact that in Mara Region there is a Registry of the High Court (Labour Division). What the counsel contends is that, the High court of Tanzania is one, with a constitutional and statutory conferred jurisdiction which is unlimited both territorially and pecuniary. He submitted that, Arusha and Musoma both are Registries of the High Court which are established by the High Court Registry Rules (Supra) the rules which cannot override the provision of the constitution and statutory law.

In his view, the rules are subsidiary legislation therefore it cannot take away the powers conferred to the Labour Court which have been conferred by the statute. He submitted that, registries are designed to facilitate administrative operations and not to take away the statutory powers of the High Court.

In his opinion the choice of registries is for matter of convenience they are not related to any contravention of the law. He submitted that if cases of **Shyam Thanki & Others vs New Palace Hotel** (1972) HCD No. 92 and **North Mara Gold Mine Ltd vs Michael Magege (Supra)** are not applicable in this case no law has been violated.

I have compassionately passed through and considered the arguments by both parties, I am in agreement with the counsel for the respondent

that, the High Court of Tanzania is one as established by the Article 10-8 of the Constitution of the United Republic of Tanzania 1977 as amended from time to time.

It is also the law that under the High Court, there are divisions and Registries, some established with exclusive jurisdiction to determine certain special cases for which they are established.

One of the division so established is the High Court Labour Division which is also known as Labour Court as established by section 50 (i) of the Labour Institutions Act, [Cap 300 R.E 2019]. When it was established, it had exclusive jurisdiction to all labour disputes and it had jurisdiction in Tanzania mainland. By its establishment, Judges of the Division were to travel all over Tanzania Mainland to adjudicate labour disputes in the zonal centers which were established by GN. No. 209 of 2010 as the sub registries of Labour Court.

In the year 2018, His Lordship the Chief Justice of the United Republic of Tanzania in terms of section 502(a) of the Labour Institutions Act, [Cap 300 R.E 2019] and for purpose of achieving better, effective, and efficient administration of justice as envisaged under section 24 and 25 of the Judiciary Administration Act, 2011, designated all Judges of the High Court to be Judges of the High Court Labour Division.

Also His Lordship, the Chief Justice designated all Judges in charge of the High Court zones, to be the Judges in charge of the *Zonal Centers* of the Labour Division of the High Court in their respective zones. This was done by the Chief Justice Notice titled "Labour Division Judges and Deputy Registrars Designation Notice" dated 30th April 2018.

This means that, each zone of the High Court, by the authority of that directive, has powers and jurisdiction to deal with matters arising in its respective zones or area of jurisdiction.

It should be noted that, the main aim of establishing High Court Registries in various Region or Zones is for convenience of the parties, and other stake holders. It primarily aims at increasing access to justice by taking the court service closer to the people.

Now in ascertaining whether this court has jurisdiction or not, I find it apposite to have a look on the High Court Registry Rules as amended (supra). As earlier on pointed out that the Rules established High Court Arusha sub registry to have and exercise jurisdiction within Arusha and Manyara Regions. This means that, this court has and can exercise jurisdiction on matters which originate from the two regions that is Manyara and Arusha region. It can not exercise jurisdiction on matters which originates from outside these two regions. This also means all

matters arising from the CMA Mara should can not be entertained by this Court, but must be filed before the Musoma High Court Zonal Center which has been established to entertain all matter arising within its territorial jurisdiction which is Mara Region.

In this case, the applicant did not tell the court why he decided to commence the matter at Musoma if at all it was convenient for him to file the same in Arusha. Matters of jurisdiction, are not matters of convenience of an individual, but there are other legal factors such as a place where the cause of action arose, and the inconveniences involved in this court calling the original record from the CMA at Musoma where the original dispute was filed, heard and determined.

In my strong view, laws and directives are put in place to be complied with, in this matter we have the law in place that is GN. 209 of 2010 establishing the zonal centers, we have the directive of the Chief Justice which by necessary implications confines the jurisdiction of the zonal centers to matters arising within the area of their respective jurisdictions. Allowing parties to file cases wherever they wish on the pretext of convenience will defeat the purpose for which the sub registries or Zones centers were established.

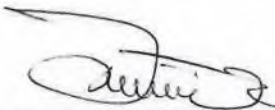
The applicant should not only base on his convenience, he should also consider the convenience of the other party and this court as well as the CMA at Musoma in processing the record and transmitting it to the High Court Arusha Zonal Center. That said, I find the preliminary objection to have merits, this court in terms of GN. 209/2010 which established the Musoma Zonal Center to deal with all matters of Mara Region, while also established this Zonal center to deal with matters arising from Arusha and Manyara Regions takes away the jurisdiction of this court in the matter at hand.

On that base, this application is therefore dismissed for being filed in the wrong registry of the High Court Labour Division Zonal center.

It is accordingly ordered.

DATED at **ARUSHA**, this 09th day of June, 2022.




J.C. TIGANGA
JUDGE