

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

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**MISC. LABOUR APPLICATION NO. 1 OF 2022**

**MR. CHARLES RUBAKA.....APPLICANT**

**VERSUS**

**1. MINISTER FOR LABOUR, YOUTH AND CULTURE**

**2. THE ATTORNEY GENERAL**

**3. THE POST MASTER GENERAL**

**.....RESPONDENT**

**RULING**

9/6/2022 & 24/6/2022

**F.K. MANYANDA, J**

This is a ruling in respect of a preliminary objection (P.O) raised by the Respondents' Representative Mr. Allan Shija, State Attorney. The preliminary objection was initially drafted with three points namely;

1. That the application is defective and unattainable at law for suing the 3<sup>rd</sup> Respondent who does not exist in contravention of section 3(2)(b) of the Tanzania Posts Corporation Act, No. 19 of 1993;

2. That the application is incompetent for contravention of Rule 43(1) of the Labour Court Rules, GN. No. 106 of 2007; and
3. That, the application is bad in law as the Minister's decision is challenged by judicial review not by way of revision.

In this matter the Applicant, Charles Rubaka, is moving this Court for condonation by extending the time within which for him to apply for revision against a decision of the Minister for Labour in Labour Matter No. K2/U.10/RF/8904/4 of 16/6/2005.

In 2017, the Applicant filed a similar application in the Registry of this Court at Tabora. The same was struck out on 24/10/2018 for having an incurably defective jurat of attestation in the affidavit.

In his desire to assail the said decision of the Minister for Labour the Applicant decided to come to this Court for condonation of time of filing the application for revision out of time.

Before hearing of the said application, the Respondents' Counsel raised the three points of objection.

The hearing of the preliminary objection. was, with leave of this court argued by way of written submissions. Mr. Allan Shija drafted and filed



the written submission in support of the preliminary objection. while the Applicant drafted and filed his submission personally.

Mr. Allan Shija submitted in support of ground one only and chose to drop grounds two and three.

In respect of ground one, the State Attorney's concern is about the effect of suing a non-existing person as the 3<sup>rd</sup> Respondent. He argued that under section 3(2)(b) of the Tanzania Posts Corporation Act, No. 19 of 1993, it is the Tanzania Posts Corporation which is a body corporate capable suing or been sued in its name not the Postmaster General. He cited the case of **Tanzania National Parks Authority vs Amon Kagwa Katunzi** [2014] LCCD 47 where this court nullified an application for been brought against a non-existing person.

The Applicant admitted this defect and that by suing the Postmaster General as a 3<sup>rd</sup> Respondent, he sued a non-existing person hence his application is in violation of the law. He prayed for exemption of costs.

As it can be seen from the submissions by the parties. The State Attorney pointed at a correct position of the law that the body corporate under the Tanzania Posts Corporation Act, No. 19 of 1993 [Cap. 303 R. E. 2022] is the Tanzania Posts Corporation which is established under section 3(2)(b).

it reads as follows;

*"3 (2) The Corporation shall be a body corporate and shall*

*a) have perpetual succession and a common seal*

*b) in its corporate name, be capable of suing and being sued".*

It is trite law that there are two types of persons recognized by the law namely natural persons and legal or corporate persons.

In this matter, the Tanzania Posts Corporation established under section 3(2)(b) of the Tanzania Posts Corporation Act, is a legal or body Corporate person capable of suing or been sued. The Applicant sued a non-existing person.

The Applicant concedes to this fact.

This court finds that the defect is a serious irregularity incapable of been cured under the oxygen principle. Hence this application is incurably defective, it stands to be nullified.

On this position of law, this Court Hon. Mipawa, Judge as he then was, said in **Tanzania National Parks Authority vs Amon Kagwa Katunzi's case (supra)** as follows;-

*"From that above, it is clearly true that the name used by employee to prosecute the case was against a non-existing entity, hence the whole of the CMA proceedings and award becomes a nullity thus application for revision is merited and successful to that extent".*

In the circumstances I find that the application in this matter is incompetent and unmaintainable.

Consequently, I do hereby struck out this application for been defective as explained above. I make no order as to costs because this is a labour matter and there is no evidence that it is frivolous or vexatious. Order accordingly.

Dated at Kigoma this 24<sup>th</sup> day of June, 2022.



  
**F.K. MANYANDA**

**JUDGE**