

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

AT ARUSHA

MISCELLANEOUS LABOUR APPLICATION NO. 63 OF 2020

(Originating from Labour Dispute No. CMA/ARS/ARB/03/2014)

**MASELU RYOBA ITEMBE The Administrator of the Estate of
Matekere Sabega ItembeAPPLICANT**

AND

1. M/S TANZANIA NATIONAL PARKS1ST RESPONDENT

2. THE ATTORNEY GENERAL2ND RESPONDENT

RULING

9/5/2022 & 11/7/2022

GWAE, J

This ruling emanates from a preliminary objection canvassed by Mr. Mkama Musalama, the learned State Attorney for both respondents herein, which is to the effect that;

*“The amended Application is incompetent and unmaintainable
at law for suing a Non-existing party”*

Before I start dwelling into the merits or otherwise of the PO, it is perhaps apposite to have a brief background of the matter outlined as herein under; the applicant, Maselu Ryoba Itembe suing in the capacity of an administrator

of the estate of the late Matekere Sabega Itembe (deceased). The deceased person was terminated on the 10th December 2013 from his employment by the 1st respondent. He subsequently referred his complaints to the Commission for Mediation and Arbitration of Arusha at Arusha (CMA) whose verdict was not in his favour.

Aggrieved by the award of the CMA, the deceased filed an application for revision to this court vide Labour Revision No. 86 of 2017. This court through its ruling dated 22nd July 2019 did strike out the deceased's application and directed the deceased to file a referral form before the CMA afresh joining the proper party (existing legal entity) namely; the Trustees of the Tanzania National Parks (TANAPA). Following the court order, the legal representative of the deceased filed the dispute to the CMA but in his own name. The dispute was however struck out on the 26th August 2020 on the ground that the applicant did not disclose his status in the said dispute. Thereafter, the applicant filed this application under representation of Mr. Evance Nzowa, the learned counsel. However, by joining a non-existing party as was the case in Revision Application No. 86 of 2017.

The respondents' P0 was ordered to be argued by way of written submission. supporting his objection, Mr. Mkama reiterated that the applicant had joined

a non-existing entity, not capable of suing and or being sued. He referred this court to the court's decision in Revision Application No. 86 of 2017 and decision of the Court of Appeal of Tanzania in the case of **CRDB Bank (1996) Ltd vs. George Mathew Kilindu**, Civil Appeal No. 410 of 2017 (unreported). Mr. Mkama also argued that this application is an abuse of due court process.

On the other hand, Mr. Nzowa was of the opinion that, the P0 has no merit since the parties in the Commission were the same adding that the proper order for joining a wrong or incorrect party is to correct the name instead of striking out the matter. He invited the court to the decision of the Court of Appeal of Tanzania in the case of **Mrimi vs. CocaCola Kwanza Bottlers Ltd**, Civil Application No. 123 of 2011 (unreported).

Now, I have to determine on whether the applicant has joined wrong party or not. Since I had ruled out that the one who was sued or complained was not a legal entity capable of being sued as canvassed by the respondents' counsel through Revision No. 86 of 2017. At this juncture it suffices to hold that parties to legal proceedings must be capable of suing and of being sued in order to ultimately make a decree or an award of the court or quasi-judicial body to be easily effectual as opposed to being ineffectual or involvement of

unnecessary application for joinder of the proper party during execution of the decree. This legal position has consistently been underscored in a chain of judicial decisions for example in **Lujuna Shubi Balonzi Senior vs. Registered Trustees of CCM** (1996) TLR 213 and **Oysterbay properties and another vs. Kinondoni Municipal Council and others**, (2011) 2 EA 315 –CAT).

It is my thinking therefore that my hands, in the circumstances of this application, are tied in this regard since it trite law that litigation must come to an end. No court is justified to repeat hearing and determining the matter which has been conclusively decided (See a decision of the Court of Appeal in **Yazidi Kassim t/a Yazidi Auto Electric Repairs vs. AG**, Civil Application No. 354 /04 of 2019 (unreported). Worse still, the applicant is seeking an order extending time to file an application for setting aside abatement order out of time, the order that has never been made by this court save to the order directing filing of the dispute between the parties afresh in the Commission.

It follows therefore, the applicant was / is to re-file the complaints as a legal representative/administrator of the estate of the late Matekere Sabega Itembee and not in his personal capacity as rightly observed by the learned

arbitrator. I am also of the observation that if the parties were to be as the case in Revision No. 86 of 2017 before this court and CMA, therefore the joinder of the legal representative would not arise in this application. Hence, the argument by the applicant's learned counsel in that aspect is legally unfounded. I am however alive of the principle that right of appeal is for the parties who have been in the original suit not in any other person as was correctly stressed by the Court of Appeal in **CRDB Bank PLXC (formerly CRDB (1996) Ltd vs. George Mathew Kilindu**, Civil Appeal No. 110 of 2017 (unreported). But in this application the applicant ought not to have filed the complainant in his name in the Commission and above all there was already an order directing the deceased to re-file the complaint with proper joinder of the employer.

Moreover, when I made the order on 22nd July 2019 returning the dispute to the Commission with the joinder of the existing legal entity without knowing the status of the then applicant, Maselu Ryoba Itembe, the CMA would subsequently not have any power whatsoever to comment or overrule the order of this court dated 22nd day of July 2019 notwithstanding whether it was inadvertently made or otherwise. The Commission has **no** statutory

revisional, appellate or supervisory power whatsoever over the decree or order of this court.


Consequently, the respondents' PO is sustained accordingly and for interest of expeditious dispensation of justice, I herein under make the following orders;

1. This application is struck out for joining non- existing party
2. The applicant is directed to re-file the dispute under the capacity of an administrator of the estate of the late Matekere Sabega Itembe, if he is still desirous to do so
3. That, the applicant is given thirty (30) days for the date of this ruling within which to submit his referral form to the Commission
4. That, each party to bear its own costs of this application

It is so ordered

Dated and delivered at Arusha this **11th July, 2022**




**M.R, GWAE,
JUDGE
11/07/2022**