

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LABOUR APPLICATION NO. 2 OF 2016

*(Originating from Labour Dispute Number: CMA/M/77/2014 of the Commission for
Mediation and Arbitration for Kilimanjaro at Moshi)*

TANZANIA SOCIAL SERVICE WORKERS

UNION (TASIWU).....APPLICANT

VERSUS

CHUI SECURITY CO. LTD..... RESPONDENT

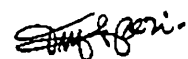
Last Order: 29th June, 2022

Date of Ruling: 23rd Sept, 2022

RULING

MWENEMPAZI, J.

This matter concerns organizational rights where the applicant (TASIWU) being a registered trade union has brought the application following rejection by the respondent Chui Security Co. Ltd to remit amount of money worthy 2% of the employee's salary to the applicant as their

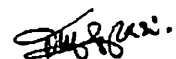


contributions in the trade union. Briefly, the applicant's prayer before this court are as follows:

- a) That, this Honourable court be pleased to order the employer to pay the association the fee of its members along with a penalty of 5% per day.
- b) That, this court be pleased to order the employer to continue remitting to the association its members' contributions at the end of each month.
- c) That, the association be allowed to continue with its activities as usual.

Briefly, the total amount claimed by the association is **Tshs. 8,580,000/=** which includes 2% monthly fee for eleven (11) members for eight (8) years that is Tshs. 3,432,000/= and 5% penalty on daily basis for eight (8) years which amounts to Tshs. 5,148,000/=.

On 17th May, 2022 when the matter was set for hearing Mr. Manase Gidion and Mr. Festo Kyaruzi, who are Personal Representatives, representing the respondent, appeared and notified this court that they were informed that the officer of the applicant had been bereaved so they prayed to proceed



with hearing by way of written submission. Leave was granted for parties to proceed by way of written submission and parties were ordered to file their submissions in the following order; The applicant was given until 7th June, 2022 whereas the respondent had up to 21st June, 2022. Rejoinder if any was to be filed by 28th June, 2022 and mention for necessary orders on 29th June 2022. Parties filed their submissions timely and the effort is highly appreciated.

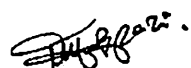
Applicant's submission was prepared by Mr. Manase G. Maunguru who is a Regional Secretary of TASIWU while the respondent's submission was prepared by Mr. Joseph Ngowi.

Submitting for the applicant's complaint, it was Mr. Maunguru's submission that Tanzania Social Services Industry Workers Union (TASIWU) was complaining about the employer Chui Security Co. Ltd not implementing and refusing to submit the 2% contributions of its members contrary to the requirements of the labour law.

Submitting further Mr. Mwaunguru stated that TASIWU, had recruited its members who are employees of Chui Security Co. Ltd (Chui Security) in accordance with the law of Employment and Labour Relations Act No. 6 of

2004 (the ELRA) under the provision of section 9(1) (a) (b). He stated further that TASIWU had recruited its members by filling out a prescribed form TUF 6 as required under section 60(1) (a) (b) (2) of the ELRA and thereafter informed the employer Chui Security via a letter dated 23/10/2013 notifying the employer about the presence of members of TASIWU in their workplace enclosed with form TUF. 6 and directed the employer to submit its members' contributions on 30/11/2013 which she did not. That after informing the employer and following her silence, the applicant instituted a complaint at the Commission for Mediation and Arbitration (CMA) where the respondent was served but did not appear. That consequently the CMA advised the applicant to file the dispute in this court in accordance with the provision of section 64(4) of the ELRA.

In his further submission Mr. Mwaunguru stated that for an employee to become a valid member of the association he was required by then to fill out a prescribed form TUF 6. He stated further that at the time the applicant had about eleven (11) members who had joined in November 2013 and until November 2022 (sic) it will be 8 years and 8 months. He



explained further that the employer was required to remit 2% of deductions from the employee's monthly salary.

Concluding his submission Mr. Mwaunguru prayed for this court to order the respondent to pay the applicant its member's fees including 5% penalty on daily basis. Also, he prayed for this court to order that respondent to continue remitting to the applicant its members contribution every month and that the applicant be allowed to continue with its activities as usual. He stated that the total amount claimed is Tshs. 8, 580,000/=.

Responding to the submission Mr. Ngowi cited and quoted the provision of section 61(1) – (6) of the ELRA, Cap 366 R.E. 2019 and stated that based on the cited provisions, it was clear that the applicant did not have any members at the respondent's premises because there is no prescribed form served to the respondent management for purpose of authorising deductions of trade union dues from employee's salary. He submitted further that the applicant had colluded with one supervisor names Samwel and pretended to have served the documents on him. It was his further submission that the supervisor Samwel is not a management staff. That

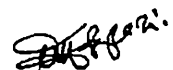
documents are received at the office by the reception officer or Zonal manager. That, it is noted by the respondent that supervisor Samwel was interested in the transaction because he was one of the fake members of TASIWU.

It was his further submission that had TASIWU followed procedure of recruitment of Trade Union members the respondent could not have reason for failure or refusal to deduct 2% from their salary because by doing so the respondent does not suffer any financial burden.

He went on submitting that although the law allows workers to unite or to join into trade unions but that right ought to be exercised according to law and the procedure must be followed. He stated that a trade union wishing to recruit members must first introduce itself to the employer's management and get recognition as bargaining agent of employees. He argued that in the present case the alleged recruitment was conducted secretly in an undisclosed location without knowledge of the employer. He contended that even if the alleged (members of TASIWU) works of respondent had filled the forms (TUF 6) as alleged but those forms were never submitted to the respondent's office. That the applicant did not

prove service of those forms to the respondent's office and that the letter dated 23/10/2013 was never served to the respondent's office and that the applicant did not show any dispatch book to prove its service to the respondent.

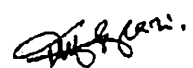
Stressing on following the procedure, Mr. Ngowi submitted that the provision of section 64 of the ELRA were not observed by the applicant at the time of referring the dispute to this honorable court. That the respondent was never summoned to attend any mediation at the CMA. He argued that the person whom the applicant alleged to have served the summons, Samwel, was not the right person because his duty was to arrange guards into their security posts and not to receive any company documents. He thus submitted that the matter was not mediated or arbitrated at the CMA. That there was no certificate of non-settlement to indicate when mediation was held and when it failed. He contended that if there was any mediation held then the same was conducted secretly between the applicant and the mediator for purpose of benefiting the applicant unlawfully. It was his submission that there could have not been



a proper mediation in absence of the other party hence the applicant's move to this court was contrary to law.

Submitting on the amount claimed Mr. Ngowi stated that although the applicant submitted that there were 11 members of TASIWU at the respondent's premises and claimed deductions from November 2013 until November 2022, the respondent never knew of the existence of any member of TASIWU at his premises. He also submitted that the applicant was working on assumptions, speculations and exaggerations because it was still June and not yet November 2022. On the method used in calculations, he submitted that the applicant's representative had engaged himself into mathematical calculations based on hypothetical story and that the claim of Tshs. 8,580,000/= was baseless.

Furthering his submission Mr. Ngowi stated that the applicant did not prove whether those 11 members of TASIWU were still working with the respondent until presently and that they will be at work until November 2022. He submitted that according to the respondent those employees had left their job long ago. Therefore even the penalty of 5% was based on assumptions, speculation and exaggeration. He thus concluded that the



applicant's claims had no colour of merit. Citing Rule 51(2) of the Labour Court Rules, 2007 GN. No. 106 of 2007, Mr. Ngowi prayed for this court to dismiss the case with cost.

In the rejoinder submission Mr. Mwaunguru reiterated his submission in chief and insisted that for an employee to be a valid member he must fill out a prescribed form TUF 6 whereas their members did comply.

In considering this application, the issues for determination are whether there was compliance with the law relating to organizational rights and how they are to be exercised. The ELRA provides for the rights of a registered trade union to exercise organizational rights in the employer's premises and this is particularity provided for under section 60 of the law. The applicant submitted that it recruited eleven members from the respondent in accordance with the law as provided for under section 60 (1) (a), (b) and 2 of the ELRA and informed the respondent through a letter dated 23/10/2-13 and a copy of the said letter was enclosed as exhibit 1. The law under this cited section provides;

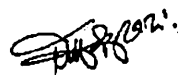
Section 60. -(1) Any authorized representative of a registered trade union shall be entitled to enter the employer's premises in order to: -

(a) Recruit members;

(b) Communicate with members;

(2) A registered trade union may establish a field branch at any workplace where ten or more of its members are employed.

Based on the provisions above the law does allow a registered trade union to recruit its members in a manner as stated above. The applicant submitted that they recruited the members by advising the members to fill out the forms and later on the respondent was also informed through a letter. Looking at Exhibit 1, it is a letter addressed to the director of Chui Security titled, "YAH: UJULISHO WA USAJILI WA WANACHAMA NA UTEKELEZAJI WA MALIPO YA ADA ZA WANACHAMA." The letter informed the respondent's management that the applicant had recruited members in its premises and also directed the respondent to remit members' contributions by deducting 2% from their monthly salaries. The letter also enclosed forms (TUF 6) belonging to the eleven members recruited. It is on record that the said letter to the respondent was given to one of its employees by the name of Samwel. The respondent on the other hand



denies to have been informed of the presence of the trade union in his premises and also claims to have never received any notification from the respondent because the person whom the applicant claims to have given the letter was not a management staff. At this juncture the issue is whether there is proof that the respondent was dully served.

The position of the law with respect to the procedure to be followed when exercising organizational rights is provided for under section 64 of the ELRA which states;

- (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.*

As it can be clearly noted from the provision above the trade union is required to notify the employer via a prescribed form and later the two are

supposed to meet and agree on the manner in which the right is to be exercised.

Now coming back to the present case, based on the above provision the applicant has not provided proof of service as required under section 64(1) above cited. If the procedure provided in the above provision was followed then there would not have been a problem because if the respondent had been duly informed then they would have met with the applicant and agree on the way forward. The applicant has not provided any proof that he served the respondent or proof of a meeting held with the employer as required under subsection (2) above.

It is undisputed fact that, one Samwel Nnko was an employee of Chui Security Co. Ltd. What is in issue is whether he was the right person authorised to receive correspondence. The respondent denied that Samwel was not authorised to do so. In the circumstances, the applicant ought to provide proof that they indeed served the respondent. Given the fact that there was no proof of receipt or acknowledgment from the respondent that they received the said letter, it is hard to conclude that the respondent was informed in accordance with the requirement of the law. The letter that has

been referred to as Exhibit 1 does not bare any acknowledgment like a stamp that the same was received. Lack of proof of service leaves me with no other reason to believe that the respondent was duly informed. I am therefore inclined to conclude that the respondent was not informed and consequently since there was non-compliance with the law on the procedure for exercising organizational rights then in the circumstance the applicant's claim fails.

This one irregularity is in my view sufficient to crumble the entire application. Therefore, the application is dismissed for lacking merit. It is so ordered.




T. MWENEMPAZI

JUDGE

23RD SEPTEMBER, 2022