

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

THE DISTRICT REGISTRY DODOMA

AT DODOMA

MISC. LABOUR APPLICATION NO. 17 OF 2022

(Originating from Labour application No. 18 of 2022)

DEUS GRACEWELL SEIF1st APPLICANT

ABUBAKAR SALUM ALAWI2nd APPLICANT

VERSUS

CHAMA CHA WALIMU TANZANIA (CWT)..... RESPONDENT

ORDER

Date of Order: 13/12/2022

Mambi, J

This is an application filed by two applicants under Section 94 (1), (f), (II) of the Employment and Labour Relations Act , Rule 24 (3) (a) (b) (C) (d) (e) and (f) and Rules 24 (3) (a) (b) (c) and (d) Rule 25 (1) & 9 of the Labour Rules, 2007.

The applicants through their learned Counsel Mr. Nashon Nkungu in this application has prayed for an interim order. The applicant



prayed for the following orders against the respondent:

AN EX-PARTE INTERIM ORDER

- a) The Honourable Court be pleased to issue an order restraining the Respondent, its employees, servants, agents and or assignees and whomsoever is appointed or instructed by the respondent in any manner, from proposing and discussing any agenda involving Applicants' disciplinary measures in its General Meeting scheduled for 15th and 16th December, 2022 or any other date that the intended meeting shall hold, pending hearing of this Application Inter Parties.

INTER PARTIES

- a) This Honourable Court be pleased to issue an order restraining the Respondent, its employees, servants, agents and or assigned and whomsoever is appointed or instructed by the Respondent in any manner, from proposing and discussing any agenda involving Applicants' disciplinary measures in its General Meeting scheduled for 15th and 16th December, 2022 or any other date that the intended meeting shall hold, pending hearing and determination of the main application that is pending before the Honourable Court.
- b) The costs of this Application be in the cause; and
- c) This Honourbale Court be pleased to grant such other orders as it may deem fit, proper and just in the circumstances.

The applicant Counsel briefly submitted that if this court will not intervene the applicants will be highly affected by any decision to made against them taking into account the applicant has also filed

an appeal at the High Court. He referred the decision of the Court in JITESH JAYANTILA LADWA vs HOUSE AND HOMES LIMITED & 5 Others, Misc Civil Application No.97 of 2022.

More specifically, the applicant has prayed to this court to issue an interim injunctive order (*ex-parte*) order restraining the Respondent, its employees, servants, agents and or assigned and whomsoever is appointed or instructed by the Respondent in any manner, from proposing and discussing any agenda involving Applicants' disciplinary measures in its General Meeting scheduled for 15th and 16th December, 2022 pending hearing and determination of the main application that is pending before the Honourable Court.

The applicant through the learned Counsel his learned Counsel prayed this application be heard *ex-parte* before hearing *inter parte* urgently due to its extreme urgency as the respondent is in the process of convening the meeting and one of the agenda in that meeting is to dismiss the applicants from their positions.

I have considerably gone through the chamber application supported by affidavit filled by the applicants and other records. I have noted that the applicants have already filed the main application in this court that is Labour application No.18 of 2022. Indeed the applicants have also filed an appeal to the High Court Dar Es Salaam Registry in Appeal No.129 of 2022. Indeed the records show that the respondent is aware about an application filed in this court and an appeal filed at the High Court in Dar Es Salaam

In this regard, if anything related to the applicants' prayers is made against them at this stage, it will definitely affect the application and appeal filed by the applicants. Additionally, if the respondent will convene any meeting with an agenda or resolution to suspend or dismiss the applicants from their position the applicants will be highly jeopardized and will cause injustice against them. In that regard and for justice to be done and seen to have been done, parties have to address the Court *inter-parties*.

Now that if the respondent will proceed with any act that relates to the applicants, it will defeat justice to the applicants. In my view I find the court interference is necessary to protect the applicants from being suspended or dismissed or any decision to be made by the respondent that may be irreparable before their legal rights are established.

It is a settled principle that when the other party is intending to file a suit, or has filed the suit/application (like our case) or in exercise of a right of appeal, or a person has failed the main suit that is awaiting for determination, the court is judiciously enjoined under the provisions of the laws to see to it that intended suit or the appeal, or application if successful, is not rendered nugatory. Where any party is likely to exercise an unrestricted rights, it is the duty of the court in ordinary cases to make such orders for staying any action intended to affect any interest in dispute that involve the suit that is intended or has already been filed in the court waiting for determination if successful, from being nugatory.

It is trite law that where in any suit it is proved that any right of the party in suit is in danger of being interfered while there is pending

matter, the court may by order grant an interim injunction or temporary injunction to restrain such act or make such other order for the purpose of staying and preventing any decision that is likely to affect the party as the court thinks fit, until the disposal of the suit or until further order.

With this approach in mind and basing on the application supported by affidavit, I agree with the applicants that, if this court will not grant the intended interim order, there is no doubt that the applicants will be inconvenienced greatly. In my view, therefore, balance of convenience tilts in favor of the applicants. This can be reflected from **TANZANIA FISHING PROCESSORS LTD. VERSUS CHRISTOPHER LUHANYILA, CIVIL APPLICATION NO. 13 OF 2003 (UNREPORTED)** where the Court of Appeal had this to say:-

“A balance of convenience to me, is struck when this Court gives an order that would not put either party in jeopardy. The applicant would not be allowed to be in a position of flourishing in his business, as if there is no court order against him. At the same time the applicant should not be exposed to the peril of having to do an uphill task of recovering his monies. On the other hand the respondent should not be the one denied to start afresh because of a stay of execution. There is also a need to protect him from undue anxiety when he will carve his pound of flesh. There has to be a way of making the applicant serious in prosecuting the appeal and should not be allowed to play cat and mouse with the respondent.”

I have carefully considered all points and reasons advanced by the applicants and I don't see the reason as to why the prayer should not be granted interim injunction for the justice to be seen that it has been done pending the determination of the main application.

That said and in the circumstance, I am persuaded that the intervention of this court by way of ordering an interim order is prudent pending inter-parte hearing.

In this regard, the court orders any intended agenda on the meeting that will discuss or make the decision against the applicants be restrained pending determination of the main application and inter-parties hearing or determination of this application. This means that the letters with Ref No.CWT.004/MNZ/VK/VOL.1/2 and Ref .No. CWT.004/667/20 both dated 05/12/22 written to the applicants (DEUS G.SEIF & ABBUBAKAR ALAWI) both tilted **YA: WITO WA KUFIKA MBELE YA KIKAO CHA MKUTANO MKUU WA TAIFA WA CWT TAREHE 15-16 DISEMBA 2022** are also suspended and will not be valid according to this order.

Consequently, I allow the application and grant interim injunction order and order that *status quo* on the positions of the applicants be maintained pending the result of *inter-parties* hearing of this application. This court thus makes an order that restrain the Respondent, its employees, servants, agents and or assigned and whomsoever is appointed or instructed by the Respondent in any manner, from proposing and discussing any agenda involving Applicants' disciplinary measures in its intended General Meeting scheduled for 15th and 16th December, 2022 or any other date that the intended meeting shall hold, pending hearing and determination of the main application that is pending before this Court.

The matter has been scheduled for *inter-parties* hearing after Court on 28th February 2023.

It is so ordered.



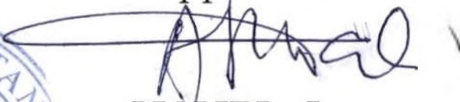

MAMBI, J

JUDGE

13.12.2022

Ruling delivered this day of 13th of December , 2022 before the applicant.




MAMBI, J

JUDGE

13.12.2022