

**IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

MISC.LABOUR APPLICATION NO. 2 OF 2023

DEUS GRACEWELL SEIF

ABUBAKAR SALUM ALLAWI.....APPLICANTS

VERSUS

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

(Arising from the High Court of Tanzania, Labour Division-Dodoma)

In

Labour Application No.18 of 2022.

.....
RULING

15th March, 2023

MDEMU, J:.

This labour application preferred under certificate of urgency, is by way of notice of application and chamber summons in terms of the provisions of sections 94 of the Employment and Labour Relations Act, Cap.366 and Rules 25(1) and (9) of the Labour Court Rules, GN. No.106 of 2007. The said application which is supported by a joint affidavit of the Applicants requests this court to suspend elections of the Secretary General and treasury to be held at Tanga on 17th March, 2023 pending final determination of Miscellaneous Labour Application No.18/2022.

On receipt of the application, the Respondent Tanzania Teachers Union (TTU) filed a notice of preliminary objection on the following two grounds of objection:

*a) That, the Applicants have no **locus standi** to challenge or interfere with the affairs of the Respondent as they are no longer members of the Respondent having been dismissed on 16th of December, 2022 as per annexure "A" attached herewith.*

*b) That, the Applicants' application contravenes the law in terms of the constitution of Tanzania Teachers Union (TTU) made under section 46(1) (e) and section 47 (1) of the Employment and Labour Relations Act, Cap.366 RE. 2019 and registered by the Registrar, the Applicants are not the Employees of the Respondent **ipso facto** the Court lacks jurisdiction to entertain this matter.*

On 15th March, 2023, at 10.00 hours, I heard the parties on the preliminary objections where the Applicants were represented by Mr. Nashon Nkungu, learned Advocate and the Respondent were represented by Mr. Leonard Haule and Paschal Msafriri all learned Advocates.

Mr. Haule submitting on the first preliminary objection stated that, the Applicants have no *locus standi* to challenge or interferes with the affairs of the Respondent because they are not members of the Respondent as they were suspended on 19th December, 2022 as shown in annexture "A" to the notice of preliminary objection which are the minutes of the general meeting.

He said that, the general meeting, according to article 23.1(d) (iii) and (v) of the TTU Constitution, is the authority and mandated to nominate and suspend the Applicants from their positions and membership. The rights which were exercised. He said therefore that, since the Applicants were suspended, have no interests or any rights to file a case or claim anything from the Respondent. In supporting his argument, he cited the case of **Registered Trustees of SOS Childrens' Villages Tanzania vs. Igenge Charles and 9 Others, Civil Application No. 426/08 of 2018** (unreported).

It was his further submissions that, the issue of *locus standi* is a matter of jurisdiction. The Court cannot deal with persons who has no rights or interests. On this, he cited the case of **Peter Mpalazi vs. Christian Mbaraka**, Civil Appeal No. 153 of 2019 (unreported).

Submitting on the second preliminary objection, Mr. Haule argued that, according to article 30 of the Respondent's Constitution, Applicants are not employees of the Tanzania Teachers Union (TTU) because all employees of are recruited by Executive Committee which has also the right to fire them. It was his submissions further that, the Applicants are appointed and suspended by general meeting. He added further that, the Applicants being the General Secretary and Treasury respectively, are also members of the Recruitment Committee. He said therefore, the recruiting person cannot recruit for himself. On that account, he said, the Applicants are not employees of the Union. He thus asked me to sustain the two preliminary objections.

In reply, Mr. Nkungu submitted among other things that, the objections do not qualify to be preliminary objections because are not on pure points of law. He pointed out also that, the Respondent has not filed counter affidavit at all and he argued that, if one has not filed the counter affidavit or written statement of defence, then has no capacity to rely or submit on matters of facts.

Submitting on the preliminary objections he said that, the same appear to be one, but he argued separately as was for Mr. Haule for the Respondent.

As to *locus standi*, he argued that, *locus standi* of the Applicants is traced in Miscellaneous Application No. 18 of 2022 and the order issued by this Court on 13th December, 2022 maintaining *status quo* regarding Applicants' membership. He argued that, it is the issue of membership which is challenged in the main application which is yet to be determined. Supporting his argument, he cited the case of **Mukisa Biscuit Company Limited vs. West End Distributors Ltd** (1969) 1 EA 669 and the case of **Sugar Board of Tanzania vs. 21st Century Food and Packaging and Two Others**, Civil Application No. 49 of 2005 (unreported) stating that, preliminary objection must be argued without reference to evidence as the Respondent did by referring to the minutes of general meeting and the TTU Constitution.

Mr. Nkungu argued further that, there is a principle in common law to the effect that, if you come to equity, you must be come with clean hands. In this, he said that, the Respondent's act of not obeying Court's order is what lead to the present application. It was his argument further that, the TTU Constitution is not law of the Country, it cannot therefore be part of attachment in the preliminary objection and that, the Court cannot take judicial notice in terms of section 59 of the Evidence Act, Cap. 6. He argued further that, the rest, as per the Respondent's Constitution, is evidence which

can be accommodated by filing a counter affidavit, which is also the case as to whether the Applicants are employees of the Respondent or not.

Submitting on the second point of objection, again he said, the same is not a point of law as section 46 (1) (e) of Employment and Labour Relations Act, Cap. 366 is on registration of trade unions and on requirement of the law for a trade union to have a Constitution. He said therefore, the same is misplaced. It was his submissions that, the Respondent's Constitution does not qualify to be a written law under section 4 of the Interpretation of Laws Act, Cap. 1. To buttress on this, he cited the case of **Jitesh Jayantial Ladwa vs. House and Homes Limited and 5 Others**, Civil Application No. 97 of 2022.

In rejoinder, Mr. Haule stated that, the objections qualify to be preliminary objections as they are on pure points of law. He also admitted that, the Respondent has not filed counter affidavit but commented that, non filing cannot make the preliminary objection invalid as the same are two different components.

On the issue of coming to Court with clean hands, he said that, are the Applicants who came to Court without clean hands. On issue of Respondent's Constitution being registered under the Employment and Labour Relations

Act, Cap. 366, he said that, it is a legal document. He thus distinguished the case of **Registered Trustees of SOS Village** (supra) and that of **Jitesh Jayantilal** (supra).

From submissions of the parties, on the two preliminary objections, much as they are two, the argument centres on the issue of *locus stand*. I am saying so because, the basis of the objection in the two points is that, as the Applicants herein were suspended both in their positions as Secretary General and Treasurer respectively and as members of the TTU, then according to the objections, makes them to have no *locus stand* to interfere with the affairs of the Union. Taking from the submissions of Mr. Haule, learned Advocate of the Respondents, one can not have a *locus stand* given his non membership in the TTU as per Katiba ya Chama cha Walimu Tanzania (CWT).

Before I go to the *locus stand* in its generic terms as submitted by the parties, let me briefly resolve the contents of the 2nd preliminary objection.

The objection reads:-

That, the Applicant's application contravenes the law in terms of the Constitution of Tanzania Teachers Union (TTU) made under section 46 (1) (e) and section 47(1) of the Employment and

*Labour Relations Act, Cap. 366 RE 2019 and registered by the Registrar, the Applicants are not Employees of the Respondent **ipso facto** the Court lacks jurisdiction to entertain this matter.*

As stated, the contention that the Applicants are not employees of the TTU, will be resolved in the question of *locus standi*. Since the issue is not on whether or not TTU is a registered Union and since there is nothing in application No. 2 of 2023 on whether or not TTU is a registered one, the provisions of section 46 (1) (e) and 47 (1) of the Employment and Labour Relations Act, Cap. 366 on requirement for registration as a trade union and the constitution requirements of the Union has been misplaced in this preliminary objection. It suffices to observe want of merits in the 2nd preliminary objection which is hereby dismissed.

Now to *locus standi* submissions of the parties, as heard from Mr. Haule for the Respondents and Mr. Nashon Nkundu for the Applicants, revolves around whether or not the Applicants are members of Tanzania Teachers Union (TTU) and that they were suspended from both membership and their positions. How can one come to conclusion that, the Applicants are members or not, the issue may be precisely litigated when determining

Labour Application No. 18 of 2022 pending before this Court. In that labour application, the Applicants, among other things, asked this Court to:-

That, this Honourable Court be pleased to declare that the Respondent's act of suspending the Applicants through resolutions reached in its meeting held on 15th to 17th September, 2022, pending confirmation of their dismissal from service contravenes the provisions of Section 37(5) of the Employment and Labour Relations Act, Cap. 366 [R.E 2019].

In their prayer, the Applicants are challenging legality of their suspensions. In the statement of legal issues, particularly at paragraphs 4.1 and 4.2 of the affidavit, the Applicants are challenging the Respondents acts; disciplinary action being taken on the basis of criminal allegations which have not been concluded and that, criminal actions, even when proved, may not be the basis of eligibility in membership or leaders of the union.

Taking those into account, as noted, parties resorted to minutes of the general meeting dated 16th -17th of December, 2022, suspending the Applicants in their positions and also as members of the union. As submitted by Mr. Nashon Nkungu, which I entirely agree, this is evidence which is intended to prove that the Applicants were suspended in a meeting. The

Applicants are also challenging reasons of their suspension. Whether or not that is valid, this is not a proper forum. This also goes with submissions of Mr. Haule regarding cessation of membership of the Applicants basing on *Katiba ya Chama cha Walimu Tanzania, Toleo la sita la Mwaka*, 2014 and also that, as per that constitution of TTU, the Applicants are not employees of the union. Well, in my opinion, these are matters of facts.

Hearing from what parties submitted, is as if they were submitting on, **One**, legality of the meeting suspending the Applicants, **Two**, legality of membership of the Applicants in the union, **Three**, whether or not it was proper to suspend the Applicants on unconcluded criminal charges and **Four**, whether proved or otherwise, such criminal charges may be the basis of illegibility to membership of TTU or positions whether appointed or to the contrary. As it is, the objections have been argued on making reference to evidence. In **Sugar Board of Tanzania vs. 21st Century Food & Packaging and 2 Others, Civil Application No. 49 of 2005** (unreported) at page 3, the Court of Appeal stated that:-

The grounds stated in the preliminary objection have caused me considerable anxiety. A preliminary objection is in the nature of a legal objection not based on the merits or facts

of the case, but on stated legal, procedural or technical grounds. Such an objection must be argued without, reference to evidence. The fundamental requirement is that, any alleged irregularity, defect or default must be apparent on the face of the notice of motion so that the objector does not condescend to affidavits or other documents accompanying the motion to support the objection.

From the above position and basing on the principles stated in **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd** (supra) 1 EA 696, the objection is not on a pure point of Law. Infact, one cannot raise objection to circumvent jurisdiction of the Court to examine facts for the purposes of determining substantive justice. This is what the raised preliminary objections meant.

That said, both preliminary objections have no merits and they are accordingly dismissed. Mr. Nkundu prayed for costs. However, this being a labour matter, I refrain from prescribing any.

It is so ordered.



Gerson J. Mdemu
JUDGE
15/03/2023

DATED at DODOMA this 15th day of March, 2023



Gerson J. Mdemu
JUDGE
15/03 /2023