

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 & 16th 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. The Applicant's chamber summons contains the following prayers:-

- a) This Honourable Court be pleased to issue an order directing the Respondent to suspend its intended elections for the positions of Secretary General and Treasurer in its meeting scheduled to take place in Tanga on 17th of March, 2023, pending hearing and final determination of the Main Application (Labour Application No. 18/2022) that is pending before this Honourable Court.*
- b) The costs of this Application be borne by the Respondent.*
- c) This Honourable Court be pleased to grant such other orders as it may deem fit, proper and just in the circumstances.*

On 15th March, 2023, I heard the parties. The Applicants were represented by Mr. Nashon Nkungu, learned Advocate and the Respondents were represented by Mr. Leonard Haule and Mr. Paschal Msafiri both learned Advocates.

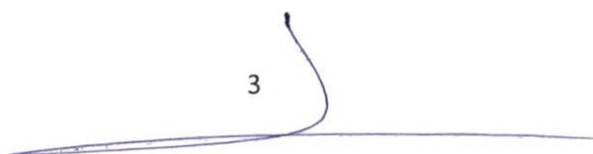
Mr. Nashon, when submitting in support of the application, adopted the Applicants' joint affidavit and stated that, this Court should grant injunctive orders to suspend the election for General Secretary and Treasury

in Tanga to be held on 17th March, 2023 pending determination of Labour Application No. 18 of 2022 before this Court. He argued that, for the application of this nature to be granted, three conditions must be proved as was stated in the case of **Attilio vs. Mbowe, (1969)** HCD 284. The conditions are; **one**, there must be serious question to be tried. **Two**, Court's interference is necessary to protect Plaintiff's from injury and **three**, on balance of probability, there are greater hardship to be suffered if the injunctive orders are not granted.

It was his submissions on the first test that, there is a serious question to be tried by this Court as procedures were not followed in terminating the Applicants. He thought that, charges and conviction should not be the basis for their dismissal. He said that, this was contrary to section 37(5) of the Employment and Labour Relations Act, Cap. 366.

On the second test, the two positions the Applicants occupied, that is, Treasury and Secretary General respectively are priceless. There is no amount of money to compensate such posts as they were illegally suspended and the vacancy may be filled at any time, thus he prayed Court's interference.

3



On the balance of convenience test, he was of the view that, the Applicant will suffer greater hardship and mischief as compared to the Respondent as there are other people in acting positions and therefore, they will not be affected. Supporting his submissions, he cited the case of **Giteshi Jayantilal Ladwa vs. House and Homes Limited**, Misc. Civil Application No. 97 of 2022 (unreported).

It was his further submissions that, the conduct of election will pre - empty the pending application particularly as the Respondents were aware of the order of this Court restraining disciplinary actions against the Applicant but neglected and proceeded to suspend them. He said that, in case the Court refrains from issuance of injunctive orders, the Respondents will proceed to violate the letters of the law as he is doing.

In respect of criminal case which the Applicants were charged and convicted, he stated that, the Applicants filed an appeal vide Criminal Appeal No. 129 of 2022 in the High Court of Tanzania whose decision delivered on 13th March, 2023 in which the Applicants were found not guilty. He therefore, urged this Court to take judicial notice on it and grant the orders sought for.

In reply, Mr. Haule adopted the counter affidavit to be part of his submissions. He stated thereafter that, the Applicants attached annexures D in their application which is a notice to fill vacancy of four leaders namely, Vice President, Deputy Secretary General, National Treasury and Chairman of Woman Teachers Concuss. He said therefore, there is no vacancy of secretary General to be filled. The Applicants thus applied for reliefs not sought for.

It was his further submissions that, in the case of **Atilio vs. Mbowe** (supra), all the three conditions are irrelevant and inapplicable in the instant case. As to the first test on a serious question to be tried, he submitted that, section 37(5) of Employment and Labour Relations Act, Cap. 366 is on an unfair termination. He argued that, the Applicants are not employees of the Respondent and they misconceived the provisions on a thinking that, they are employees in order to benefit from section 37(5) of Employment and Labour Relations Act.

As to irreparable loss to be suffered, he said that, the same is misconceived because there is no compensation to a person who is not an employee. Regarding the balance of convenience, he argued that, it is not true that the Applicants will suffer because they were not employees. He

stressed that are the Respondents who are likely to suffer a great loss if this Court issues injunctive orders as the Respondent is about to spend 1.6 billion to facilitate one meeting.

As to application No. 18 of 2022 to be pre-empted by failure to grant injunctive orders, he said the same is misconceived since the application requested this Court to provide proper interpretation of section 37(5) of Cap. 366. He said therefore that, there is no nexus between the intended election and Application No. 18 of 2022.

As to Court's order dated 13th December, 2022, he said the Respondents didn't violate as he was in a meeting from 10th -16th December 2022. The meeting took place out of the office and the order was received by the registry officer on 14th December, 2022, which had to wait for action officers. It was given to the Principal Officer on 17th December, 2022. He concluded therefore that, the meeting continued without knowledge of the Court's Order.

Regarding Applicants' clearance in criminal charges; he argued that, this has not featured in the Applicant's joint affidavit and therefore is submissions at the bar which is not evidence. He cited the case of **R vs.**

Sumuni @ Aweda, Criminal Appeal No. 65/023 of 2020 (unreported) to support his argument.

In addition to what Mr. Haule submitted, Mr. Msafiri, learned Advocate argued that, TTU elections are the same as other elections in the country and therefore whoever is dissatisfied have to challenge by petition before Courts of Law. He therefore noted that, the Applicant has to use such avenue and nothing more. He therefore, prayed this application to be dismissed with costs.

In rejoinder, Mr. Nashon stated that, Mr. Haule didn't touch the conditions to be met in injunctive application and that, the issue that some members are at Tanga and billions of money will be spent, are not pleaded. They are submissions at the bar. He also stated that Labour Application No. 18/2022 is not on interpretation of section 37(5) of Cap. 366. On the issue of contempt of Court, his view was that, the excuse of registry officer waiting for principal officer, do not make sense as there is no proof by way of affidavit.

Given submissions from the parties and as guided by the pleadings and authorities, the question for determination is whether there is substance in the application warranting the granting of injunctive orders sought for. As

submitted by the parties and gathered from pleadings, injunctive orders sought for are on suspension of election to be conducted by the Respondents on 17th of March, 2023 at Tanga. The election is intended to fill in vacant posts of the General Secretary and Treasurer of the Respondent TTU. The two vacancies were created following acts of the Respondent to suspend membership of the two Applicants to the Union and their nominated posts of the Secretary General and Treasurer for the 1st and 2nd Applicants respectively. The Applicants are challenging this suspension.

Grounds fronted by the Applicants to bank on in granting injunctive orders sought for are in paragraphs 5, 6, 7 and 8 of the Applicants' joint affidavit. Briefly, in those paragraphs, the Respondents suspended the two Applicants from membership to the Union and nominated positions due to criminal charges in Economic Case No. 39 of 2021. According to the Applicants, the move violated constitution of the Respondents which prohibits disciplinary action of its members relying on criminal convictions and sentences. They thus challenged such acts of the Respondents in Labour Application No. 18 of 2022. While the application is yet to be disposed by this Court, the Applicants sought injunctive orders so that vacant

positions left by them should not be filled through the planned 17th of March, 2023, Respondent's election.

In principle, for the Court to exercise its powers to the granting of injunctive orders, counsel for the Applicant making reference to the case of **Atilio vs Mbowe** (supra), which I entirely associate with him; the following must be proved by the two Applicants as the underlying conditions: **One**, that there must exist a serious question to be tried, **Two**, Court's interference is inevitable to protect the Applicants herein from sufferings and injuries and **Three**, on balance of convenience, the Applicants are likely to suffer greater loss as compared to the Respondents herein. Are the three tests apparent in the instant application? Each is hereby determined seriatim.

Commencing with the first test, the question would be: Is there a serious or contentious matter to be tried? In the affidavit in support of the chamber summons in application No. 18 of 2022 pending before this Court, the Applicants deposed the following in paragraphs 4.1 and 4.2 of the joint affidavit to be contentious and serious matters requiring the attention of this Court:

4.1 That, the Respondent erred in law to take disciplinary action against Applicants basing on same allegations which have led to the Applicants being taken before the Resident Magistrate's Court of Dar es salaam at Kisutu, via Economic Case No. 39 of 2001, while the Applicants have not exhausted the appellate process, this is contrary to the provisions of Sections 37(5) of the Employment and Labour Relations Act, Cap. 366 R.E 2019.

4.2 That, the Respondent erred in law and fact for making a decision that, under its 2014 Constitution, a criminal conviction is a reason or ground for a member or leader in his union to lose his eligibility.

From the above set of legal issues, Application No. 18 of 2022 intends to resolve whether it was proper and justifiably mindful for the two Applicants to have their dismissal on criminal accusations pending before the Court of Law? In his submissions Mr. Nkungu asked me to take judicial notice in terms of section 59 of the Evidence Act, Cap. 6 that, Criminal Appeal No. 129 of 2022 was concluded in favour of the Applicants on 13th of March, 2023. Mr. Haule thought indulgence to judicial notice is simply submissions at the bar as it was not pleaded in the Applicants joint affidavit. With due

respect to the learned counsel, decisions of Courts of law are among facts which judicial notice is taken thus requiring no proof for it has Court's seal.

In another ground, particularly on the basis of the constitution of TTU, the Applicants' would be triable matter is that, the constitution of TTU prohibits cessation of membership on the basis of criminal accusations not concluded. Whether or not the TTU constitution so stipulates, this is not a proper forum. It suffices however to underscore that, a Court vested with jurisdiction will be mandated to explore such contentious matter. It should be clear from the outset, and gathered in the application, these are issues which the Applicants sought for determination in Application No. 18 of 2022 and not interpretation of section 37 (5) of the Employment and Labour Relations Act, Cap. 366 fronted by Mr. Haule and Mr. Msafiri, Advocates for the Respondents.

Again, without going to the definition as to who is an employee and whether or not the Applicants and the Respondent were in the Employer employee relationship, which is not the forum here, the fact is this, the Respondents suspended or dismissed the Applicants in membership to the union and also their appointed positions as Secretary General and Treasurer respectively. This suffices to bring an action in law, as they did, thus its

determination by this Court may not be underestimated. In fact, fronting this argument, which precisely require evidence, is resurrecting issues of *locus standi* initially determined by this Court on the objection raised by the Respondents. This is uncalled for. As alluded, dismissing the Applicants from membership of the union and positions of Secretary General and Treasurer respectively banking on criminal accusations are triable matters.

Now to the second test on the inevitability of Courts intervention to protect injuries and or suffering to the Applicants. In my view, Article 13 (3) and (6) of the Constitution of United Republic of Tanzania, 1977 confers jurisdiction to Courts of Law to protect civil rights, duties and interests and to afford those claiming such rights a fair hearing. The Applicants via Application No. 18/2022 knocked to the High Court doors to have their rights to membership of TTU and the suspended positions of Secretary General and Treasurer be protected by the Court from unwarranted suspensions by the Respondents.

Essentially, loss of membership to the union and suspension in the posts of Secretary General and Treasurer are irreparable, particularly on uncleared fear of filling the vacancies in the planned election to be held on 17th of March, 2023, by the Respondents. As the Applicants' contention is

on unfair termination in both membership to the union and the appointed positions, any move of filling the vacancies, as observed by Mr. Nkungu, intends to pre-empt jurisdiction of this Court in determination of fairness of their suspension, particularly as earlier on noted prior to this application, this Court (Mambi, J) in Miscellaneous Labour Application No. 17 of 2022 between the same parties, restrained the Respondents to take any disciplinary actions against the Applicants pending determination of Labour Application adjudicating fairness of suspension. At page six, the Court observed that: -

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 assignee and whomever 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.

Notwithstanding, the Respondent proceeded to deal with the Applicants ignoring the Court's order under pretense that the Respondents Senior Officials and the Principal Officers had no knowledge of the order for they were continuously in a meeting as from 10th through 16th of December, 2022. The Respondents' contention is that they received the Court order shelved by the Registry Officials on 17th of December, 2022 upon their return in office. In this, Mr. Haule conceded receipt of the Court order in the office of the Respondent. Argument that it was shelved waiting presence of the principal officer is a farfetched argument which may not be casually entertained by this Court. My understanding, as alluded by Mr. Nkungu, the Respondents contempered the Court's order. It cannot be capitalized in any other language for an ordinary person to conceptualize.

As alluded above, the order of this Court to maintain *status quo* was ignored by the Respondents. As the order was *ex-parte*, when the matter was scheduled for hearing inter-parties, the Respondents asked recusal of the presiding Judge. Much as according to the Recusing Judge on his Ruling on recusal delivered on 14th December, 2023, there was no sounding reasons towards recusal, for the interest of justice and fairness, the presiding Judge

opted to recuse himself from the conduct of this application. As of now, hearing of the application inter-parties is pending.

Of essence is this, had it not been contemptuous acts of the Respondents in respect of that decision of this Court, this application for injunctive orders wouldn't have been in place. Undoubtedly and without any reservation, injunctive orders under the circumstances of this case, are necessary to protect injuries to be sustained by the Applicants.

Last, is on the balance of convenience. Who, between the Applicants and the Respondents are likely to suffer in event injunctive orders prayed for are not realized? Mr. Nkundu's observation when citing the case of **Jitesh Jayantilal Ladwa vs. House and Homes Limited & 5 Others** (supra) is that, the Applicants are likely to suffer more if protection by this Court through injunctive orders are not materialized. What he added, and which I entirely agree is this, that, suffering irreparably due to loss of positions and membership to the union is not easily amenable. The Respondents' contention to suffer more than Applicants is not backed by evidence for want of facts as to how non-filling of the vacant positions will be a loss to the Union. The positions are vacant anyway. What the counsel for the Respondent submitted on the expenditure of almost 1.6 billion to be

incurred in the intended meeting and the need to reconvene another meeting in event they are restrained to hold election, is not in the counter affidavit. It is therefore submissions at the bar which is no evidence.

On that account, it is ordered that, this application is hereby allowed. Election for the position of Secretary General and Treasury of the Tanzania Teachers Union in its meeting scheduled on 17th of March, 2023 at Tanga is hereby suspended pending final determination of Labour Application No. 18 of 2022 pending before this Court. No order as to costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
16/03/2023

DATED at DODOMA this 16th day of March, 2023



Gerson J. Mdemu
JUDGE
16/03 /2023