

IN THE HIGH COURT OF TANZANIA

(HIGH COURT LABOUR DIVISION)

AT MWANZA

LABOUR REVISION NO. 8 OF 2023

(Originating from CMA/MUS/39/47/2020 at Nyamagana, Mwanza)

**WALTER OWAWA AGALLA (The Administrator of
the Estate of the late Baraka Agalla Owawa)APPLICANT**

VERSUS

CHAMA CHA WALIMU TANZANIA..... RESPONDENT

JUDGMENT

Date of Last Order: 05/05/2023

Date of Ruling: 26/05/2023

Kamana, J:

Walter Owawa Agalla, the applicant, in the capacity of the administratrix of the estate of the late Baraka Agalla Owawa, knocked at the doors of this Court seeking revision of the decision of the Commission for Mediation and Arbitration (CMA) sitting at Nyamagana, Mwanza which in his opinion was entered in favour of Chama cha Walimu Tanzania, the respondent. Briefly, on 4th March, 2020, the late Owawa instituted two labour disputes before the CMA at Musoma which were registered as CMA/MUS/39/2020 and CMA/MUS/47/2020. The said disputes were transferred from Musoma to Mwanza and consolidated as CMA.MUS/39/47/2020 which is now the subject of this application.

When the application was called on for a hearing, Mr. Dennis Kahangwa, learned Counsel for the respondent raised a preliminary objection to the effect that this Court has no jurisdiction to entertain the application as the labour disputes that led to the labour dispute CMA/MUS/38/47/2020 were registered at Musoma. As practice dictates, this Court resorted to hearing the preliminary objection to determine its merits.

Submitting in support of the preliminary objection, Mr. Kahangwa contended that the labour disputes that led to this application were consolidated as CMA/MUS/38/47 of 2020 as the cause of action arose in Musoma. He averred that the two labour disputes were transferred from Musoma to Mwanza following the applicant's prayer that a hearing be conducted at Mwanza as there were no other arbitrators other than the one who entered ex parte decision which was set aside by the High Court (Musoma Sub-Registry). With the presence of the High Court (Musoma Sub-Registry), the learned Counsel opined that this Court is precluded from entertaining matters that arose in Musoma. He summed up his arguments by inviting this Court to dismiss the application without costs.

Responding, Mwalimu Ezekiah Tom Oluoch, the personal representative of the applicant, prefaced his submission by questioning the locus of Mr. Kahangwa to appear in this matter without filing the

notice of representation as per section 56(c) of the Labour Institutions Act and Rule 43(1) of the Labour Court Rules, 2007 (GN NO. 106 of 2007). He argued that a notice of representation is a prerequisite for an advocate to appear and address the court in labour disputes. Since there was no notice of representation, Mwalimu Oluoch contended that Mr. Kahangwa had no legs to appear and address the Court. Bolstering his argument, he cited the case of **Sahara Media Group Ltd v. Dino Donald Mgunda**, Misc. Labour Application No. 32 of 2021.

Concerning the preliminary objection, Mwalimu Oluoch contended that CMA/MUS/39/47/2000 was never registered at the CMA Musoma. He contended that labour disputes CMA/MUS/39/2000 and CMA/MUS/47/2000 were transferred from the CMA Musoma to the CMA Mwanza where they were consolidated as labour dispute CMA/MUS/39/47/2000. He reasoned that by such consolidation, labour dispute CMA/MUS/39/47/2000 was registered in Mwanza hence this Court has jurisdiction to entertain the application. He averred that for the Court to determine what happened, there is a need to look for evidence. In that case, the preliminary objection fails the test set by the case **of Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd** [1969] EA 696.

Mwalimu Oluoch submitted further that if the Court will determine that it has no jurisdiction, the recourse is not to dismiss it but to invoke Order VII Rule 10(1) and (2) of the Civil Procedure Code, Cap. 33 [RE.2019] and transfer the same to the High Court (Musoma Sub-Registry). In substantiating his arguments, he invited the Court to consider the case of **Godwin Biswalo and Others v. The Board of Trustees of Saint Augustine University of Tanzania and Another**, Civil Appeal No. 18 of 2014. He summed up by contending that this Court has powers to direct the CMA Mwanza to correct the labour dispute number to confer this Court with the jurisdiction.

Rejoining, Mr. Kahangwa contended that the applicant is under the duty to transfer his application from this Sub-Registry to the Musoma Sub-Registry. He further contended that the duty to amend the labour dispute registration number lies with the applicant. The legal mind opined that the CMA Mwanza has no powers to confer jurisdiction on the High Court (Mwanza Sub-Registry).

In determining the merits of the preliminary objection, I think it is pertinent to firstly address the issue raised by Mwalimu Oluoch as to the locus of Mr. Kahangwa to appear before the Court in the absence of the notice of representation. According to section 56 of the Labour Institutions

Act, an advocate is amongst the persons who may appear on behalf of the parties. The section reads:

'56. In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by—

(a) an official of a registered trade union or employers' organisation;

(b) a personal representative of the party's own choice;

*(c) **an advocate.**' (Emphasis added).*

Further, the provisions of Rule 43(1) of the Labour Courts Rules, 2007 provide a precondition for the persons itemized in section 56 to file a notice of representation before appearing in the Labour Court to inform the Registrar about their representation. The Rule reads:

'43. -(1) A representative who acts on behalf of any party in any proceedings shall, by a written notice, advise the Registrar and all other parties of the following particulars-

(a) the name of the representative;

(b) the postal address and place of employment or business; and any available fax number, e-mail and telephone number.'

Deducing from the provisions of section 56 of the Labour Institutions Act, the requirement of notice of representation as a prerequisite for an advocate or any representative is not provided for. Such a requirement seems to be provided for under Rule 43(1) of the Labour Court Rules, 2007.

That being the case, it is my considered view that such requirements do not apply to advocates who appeared in any proceedings before the Labour Court. I hold so while I am mindful of the provisions of section 40 of the Advocates Act, Cap.341 [RE.2019] which stipulate that the advocate with a practicing certificate has a right to appear before the High Court or in any subordinate court and perform any of the functions performed by any member of the bar or solicitor in England. For ease of reference, I reproduce the said section as follows:

***'40.** Every advocate who has in force a practising certificate may practise as an advocate in the High Court or in any court subordinate thereto constituted under the Magistrates' Courts Act and may perform any of the functions which, in*

England, may be performed by a member of the Bar as such or by solicitor of the Supreme Court of Judicature as such.'

That being the position of the principal legislation, I am not prepared to observe the provisions of Rule 43(1) of the Labour Court Rules, 2007 which in effect cannot supersede the provisions of section 40 of the Advocates Act, Cap. 341.

I have thoroughly gone through the case of **Sahara Media Group Ltd v. Dino Donald Mgunda** (Supra) as cited by Mwalimu Oluoch. Much as I respect the decision of that case and other decisions referred therein so far as notice of representation is concerned, I am not persuaded by such a decision. Provided Mr. Kahangwa, learned Counsel has a practicing certificate, the Court cannot close the door on him. In this regard, I am persuaded by the observation of this Court in the case of **Rajab Said v. Tanzania Breweries Ltd (TBL)**, Revision Application No. 82 of 2021 where it was observed:

*'... I am inclined to agree with Mr. Kamazima that the case of **Joyce Mapunda** (Supra) referred to this Court by Mr. Mushi is distinguishable from the facts of this application since the same involved a personal*

representative who was not an advocate. In this case Mr. Kamazima who swore the affidavit in support of this application and appeared for the applicant is an advocate of the High Court of Tanzania and Courts subordinate thereto. By virtue of being an advocate Mr. Kamazima has a right to appear and represent parties in this Court, whereas the personal representative does not have a right to appear in Court to represent parties unless there is a notice of representation filed in Court authorizing him/her to represent a party in a case.'

Indeed, the learned Counsel is properly before this Court.

I would have decided otherwise if the Labour Institutions Act, as principal legislation, would have contained the provisions which categorically override the provisions of section 40 of the Advocates Act. Since there are no such provisions, the provisions of Rule 43(1) of the Labour Court Rules, 2007 when read together with the provisions of section 40 of the Advocates Act, the former provisions are impotent so far as the rights of an advocate to appear before the Labour Court are concerned.

Reverting to the preliminary objection, it is undisputed that the CMA, when it comes to arbitration, has the power to determine when and where the arbitration should take place. However, in the exercise of such power, the CMA is supposed to observe that labour disputes must be heard and determined at the place where the dispute arose unless where there is more than one dispute arose in two or more different places whereby prudence and practice require them to be consolidated. In such circumstances, the consolidated labour disputes are supposed to be registered and given a new identity that reflects the CMA to which the disputes were transferred.

In the circumstances of this case where the labour disputes arose in Musoma, the CMA was supposed to determine the disputes at Musoma by assigning another arbitrator from any region. Considering that by retaining the same registration numbers issued by the CMA Musoma, the consolidated labour dispute CMA/MUS/39/47/2020 should not be taken as registered by the CMA Mwanza. In other words, mere consolidation of the suits in their whatever forms does not mean that there is a new registration as it is trite law that when a suit is transferred from one registry to another, it changes its identity. **See: Mushuti Food Supply Ltd v. CRDB Bank Ltd and Others**, Civil Appeal No. 79 of 2013; and

Ujenzi Secondary School v. Suraiya Bofu and Another, Revision Application No. 850 of 2018.

However, the labour dispute CMA/MUS/39/2020 and labour dispute CMA/MUS/47/2020 upon being transferred to CMA Mwanza did not change their identities as registered in the CMA Musoma. What was done was to retain the identities and consolidate them as the labour dispute CMA/MUS.39/47/2020. This means that the CMA Mwanza heard and determined the labour dispute registered in Musoma.

That being the case, it goes without saying that this Court lacks jurisdiction to entertain this application as the matter that led to this application was supposed to be heard by the CMA Musoma and not the CMA Mwanza. In other words, the CMA Mwanza had no jurisdiction to entertain the labour disputes registered in the CMA Musoma.

I am aware that Mwalimu Oluoch beseeched this Court that in the event it finds that it lacks jurisdiction, it should proceed to transfer the application to the High Court (Musoma Sub-Registry). Respectfully, I distance myself from doing that as I am not sure if the High Court (Musoma Sub-Registry) has jurisdiction to determine the application arising from the labour disputes that were determined in the CMA Mwanza though registered in the CMA Musoma. I am further aware that Mwalimu Oluoch, alternatively, implored this Court to remit the file to the CMA

Mwanza for correction of the registration number of the consolidated labour dispute. I am not prepared to do that as it amounts to soliciting jurisdiction to entertain this application and oblivion of the principle that jurisdiction is statutorily created.

Having concluded that the CMA Mwanza had no jurisdiction to entertain the labour disputes registered in Musoma which in effect made this Court lack jurisdiction to determine the application, I invoke revisionary powers of the Court to nullify and quash the whole proceedings and award issued by the CMA Mwanza in consolidated labour dispute CMA/MUS/39/47/2020 for want of jurisdiction. Consequently, any party is at liberty, within ninety days from the date of this judgment, to pursue his right in a proper forum from where he was before the transfer of the labour disputes CMA/MUS/39/2020 and CMA/MUS/47/2020 to the CMA Mwanza.

Order accordingly. Right to Appeal Explained.

DATED at MWANZA this 26th day of May, 2023.



KS KAMANA

JUDGE