

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

MISC. CIVIL APPLICATION NO. 28 OF 2023

*(arising from civil case No. 5 2023 in the High Court of
Tanzania, Dodoma Sub-Registry at Dodoma)*

JOSEPH MISALABA MASOLWA

& 19 OTHERS..... APPLICANT

VERSUS

LEAH ULAYA..... 1st RESPONDENT

MAGANGA M. JOSEPHAT.....2ND RESPONDENT

CHAMA CHA WALIMU TANZANIA (CWT).....3RD RESPONDENT

RULING

18/7/2023

HASSAN, J.:

This application has been brought under section 68 (c) and (e) and Order XXXVII Rule 1 (a) and (b) of the Civil Procedure Code. [Cap. 33 R. E 2019]. The applicants are seeking for an interim order restraining the respondents, their employee, servants, agents and or assignees and whomsoever is appointed or instructed by the respondents in any manner, from calling and, or holding general elections for the purposes of obtaining regional representatives to the national executive committee to replace and fill the applicant's purported vacancies and, or position pending



hearing and determination of the main suit which is pending before this court. That is, Civil Case No. 5 of 2023.

The application was made under certificate of urgency marked as **"certificate of most extreme urgency"** escorted by affidavit deponed by all 20 applicants. Contesting to the application, the respondents filed a counter affidavit deponed by the 1st and 2nd respondents which was accompanied with a notice of preliminary objection (P.O).

When the application was called on for hearing on 14th July, 2023, the applicants were represented by a team of advocates, including Mr. George Vadasto, Mr. Justus Magezi and Mr. Steven Msechu, all learned advocates. Whereas, on the other side, the respondents had the services of Mr. Leonard Haule, also learned advocate. Hearing proceeded orally.

As customarily fixed, hearing started with the preliminary objection fronted by the respondents. Thus, the sole point of objection raised is to the effect that, **"this honourable court has no jurisdiction to entertain this application for being a labour matter."** For that, the learned advocate for respondents prayed the same be dismissed with costs.

In supporting the objection, Mr. Haule submitted that the Civil application No. 28 of 2023 originates from Civil Case No. 5 of 2023, of which at paragraph 4 of Civil Case No. 5 of 2023 the applicants indicates

the 3rd respondent as the registered Trade Union. He explained that in the application, all applicants are members of the Tanzania Teacher Union (TTU) which is a trade Union as it can be evidenced by annexure P1, through which, all applicants have revealed their membership registration number.

Mr. Haule went on to submit, that the 1st and 2nd respondent are the leaders of the Tanzania Teacher Union (TTU) as for them, being the president and the General Secretary respectively. Annexure CWT3 can be referred to. Therefore, these two are leaders of the Tanzania Teacher Union (TTU).

He added that the 3rd respondent is a Trade Union (an Organization). The Trade Unions are established and governed by the Employment and Labour Relation Act, [Cap. 366 R. E 2019]. At part 4 of the Act provides for the Trade Union, Employers Association and Federation. He averred that the Employment and Labour relation Act, and labour Institution Act, R. E 2019 are the labour Laws. Therefore, any dispute involving a Trade Union must be filed to the Organ which is responsible to deal with Labour matters. Such organs are:

1. The commission for established under part III of the Labour Institution Act, R. E 2018.

2. The Labour Court which is established under part VII of the Labour Institution Act, R. E 2019.

Advocate Haule went further that, part VIII of the Employment and Labour Relation Act provides for the dispute resolution, whereby, CMA deals with Mediation under section 86 of the Employment and Labour Relation Act, and Arbitration is under section 88 of the same Act. Also, the labour Court or Labour Division of the High Court deals with adjudication under section 94 of the Employment and Labour Relation Act. He cemented that, this application No. 28 of 2023 together with Civil Case No. 5 of 2023 are purely are Labour matters.

Mr. Haule enlightened that, all the parties to this application and the Civil case No. 5 of 2023 are belong to Tanzania Teachers Union. Therefore, he argued, that in the circumstance, the applicants had two options, either to file this matter to the CMA or to the Labour Division of the High Court. Therefore, this Court has no jurisdiction to entertain this matter since it is a Labour matters.

More so, the respondents' advocate submitted further that jurisdiction is the creature of the law, thus, the parties cannot confer jurisdiction to the Court. He also pressed that, jurisdiction goes to the Root of the matter, hence, decision of any Court without jurisdiction is a

nullity. I support of his argument, learned advocate cited the case of **John Julius Martin & Another v. Republic, Criminal Appeal No. 42 Of 2020**, where at page 8 the court has this to say;

*"Under the laws of this country, any decision reached by any court without jurisdiction is a nullity, see **Maganzo Zelamoshi@ Nyanzomola** (supra). Thus, the first ground of appeal questioning the jurisdiction of the trial court succeeds. Accordingly, the proceedings of the trial court are nullified. "*

Pressing on his points, he therefore argued that, this matter being a dispute raised from the Trade Union, it falls under the jurisdiction of the High Court Labour Division and not this Court as it has been brought by the parties. Finally, Mr. Haule prayed that the application No. 28 of 2023 be dismissed by this Court.

Replying on the argument fronted by the respondents' advocate, Mr. George heatedly contested what was presented to object his application. On that, he acknowledged to have heard the rival's submission and he contended that the respondents' advocate may have misconceived the matter before the Court. As such, Mr. George held that, the matter before the court is not an employment matter, but rather, it is a membership matter. He argued that, the applicants are members of

the 3rd respondent, and they are here in their membership capacity of the 3rd respondent. Therefore, the dispute mechanism and organs stated by the counsel of respondents, such that, CMA & High Court Labour Division were established to dissolve Labour matters and not membership matters. Learned advocate George pressed that we can grasp this from the long title of the Act.

With respect to jurisdiction, Mr. George succumbed that, issue of jurisdiction is stated on section 94 (1) of Employment and Labour Relation Act, and is limited to application and interpretation of the Act itself and Employment and Labour matters only. He stressed that the case before this Court is about unlawful order to expel from membership of 3rd respondent.

Additionally, Mr. George averred that the counsel for respondents has submitted that matter involving Trade Union must be dealt with in Labour Court but he did not cite any authority for this effect. Hence, to his view, there is no any law which support his allegation. He therefore argued that, the High Court has general jurisdiction under section 2 (1) (2) of the Judicature and Interpretation of the Law Act, which entertain any Civil or Criminal matters. Therefore, he argued, the issue raised are not exclusively reserved for Labour Court, hence, matter reserved for Labour Court are stated under section 94 (1). He therefore submitted

that, literally, when one read sub section (1) of section 94, the Labour Court has no jurisdiction under the matter before this Court. Thus, he prayed the Preliminary Objection raised by the respondents' counsel to be dismissed with costs.

Adding to that, learned advocate Mr. Justus Magezi supplemented what was averred by Mr. George in response to the preliminary objection raised by respondents. On that, he appealed to distinguish the case of **John Julius Martin & Another v. Republic** (supra) from the circumstance of this case. He argued that the matter arising from **John Julius** (supra) is a Criminal matter and not a Civil matter. Mr. Justus succumbed that what was decided in that case was the issue of jurisdiction for District Court to entertain an economic crime case, hence, the respondent's counsel could have referred a case which has the same facts as one at hand.

Finally, he concluded by submitting that the law is clear that if there is a Preliminary Objection, the objector should cite the provision of the Law, of which, the objection has arisen. He pressed that learned counsel for respondents has not cited any law to that effect rather than to convince the Court to believe that whatever dispute arisen from Trade Union ought to be considered as Labour matter and be subject of Labour

Court. In his landing, he coincided with his fellow advocate George that this Preliminary Objection should be dismissed.

Re-joining his earlier submission, Mr. Leonard Haule stated that, it was submitted by applicants' advocate that he has misconceived the matter, hence, it is not an employment matter but a membership matter. On that, he contended that both applicants and Respondents are belonging to the Trade Union (TTU). He also submitted that CMA and Labour Division of the High Court are established to resolves labour matters and not membership matter.

Mr. Haule further raised a question as to what are the Labour matters and what are the membership matters. In his view, he argued that, be it, a Labour matters or membership matter, they are all a Labour matters and they fall under the Labour laws and the labour laws are the Employment and Labour relation Act and the Labour Institution Act.

About section 94 (1) of the Employment and Labour Relation Act, Mr. Haule insisted that in his view this section 94 (1) is clear that the Labour Court shall have exclusion jurisdiction over application, interpretation and implementation over the provisions of this Act and over any employment or Labour matters.

With respect to the argument raised that the respondents' advocate did not cite any authority to authenticate his objection, Mr. Haule

contended that it is his submission that he cited part VIII of Employment Act which deals with disputed resolution and section 88 of Employment and Labour Relation Act which deals with Arbitration, therefore, it is not true that he did not cite any authority.

Mr. Haule also disputed what was raised by his rivals learned brother that he cited section 3 of the Judicature and Interpretation of laws Act (JALA) which is a general law. On that, he argued that it is true, that section 3 of (JALA) has vested jurisdiction to the high Court, but the question is which High Court between the divisions. In his view therefore, section 3 is not applicable since it is a general law and here, we have a specific law which is section 94 of the Employment and Labour relation Act, which vest exclusive jurisdiction to the Court related to labour matters.

In conclusion, he succumbed that the submission that Preliminary Objection was raised without authority has to be disregarded. And for that note, he reiterated his earlier prayer that the application should be dismissed with costs.

Given the above position, the question which pops up at this juncture is: whether or not this court has jurisdiction to entertain application of this nature. To answer this question, it is imperative firstly

to understand on whether or not the matter in dispute is a labour matter as per the law or otherwise?

Starting with the issue that, whether or not the matter in dispute is a labour matter as per the law or otherwise. the advocate for respondents has raised the objection that this Court has no jurisdiction to entertain this matter since it is a Labour matters. In support of his argument he submitted that the 1st and 2nd respondent are the leaders of the Tanzania Teacher Union (TTU) as for them, being the president and the General Secretary respectively. Similarly, the 3rd respondent is a Trade Union (an Organization). He adds, the Trade Unions are established and governed by the Employment and Labour Relation Act, [Cap. 366 R. E 2019]. At part 4 of the Act provides for the Trade Union, Employers Association and Federation. He pressed further that the Employment and Labour relation Act, and the Labour Institution Act, are the labour Laws. Therefore, any dispute involving a Trade Union must be filed to the Organ which are responsible in dealing with Labour matters.

This argument was vehemently opposed by the applicants' counsel to the effect that, the matter in dispute is not a labour matter. In support of his assertion, he argued that the matter before the court is not an employment matter, but rather, it is a membership matter. He divulged that, the applicants are members of the 3rd respondent, and they are here

in their membership capacity of the 3rd respondent. Therefore, he stressed, that the dispute mechanism and organs started by the counsel for respondents, such as CMA & High Court Labour Division were established to dissolve Labour matters and not membership matters. Mr. George invited the court to look at the long title of the Act (Employment and labour relation Act) in support of his argument.

In my view, going through contentious argument, I am of settled opinion that, the issue in dispute fall under the sunshade of the labour matters. As rightly submitted by advocate Haule, of which I concur with him for asserting that, being under the domain of the Employment and labour relation Act, the dispute arising from the trade Union gain the status of labour matters, and that, it must be filed to the Organ which are responsible to dealing with Labour matters. Henceforth, It is from the object of section 3 (e) of the Employment and labour relation Act, that this Act is aimed at providing among others, the framework for resolution of disputes by mediation, arbitration and adjudication.

Dealing with the issue raised by applicants' counsel at this point that, the matter before the court is not an employment matter, but rather it is a membership matter. In my view, be it as it may be, whether it is an employment matter or a membership matter, so long as it is borne from Trade Union, it's affairs with respect to dispute resolution will be

cared under the Employment and labour relation Act [see section 3(e)]. Thus, in my considered opinion, all that will fall under the blanket of labour matters.

Regarding, Mr. George invitation to the long title of the Act as evidence to his assertion that the matter does not fall under labour matters. it is also my considered view, that first, the long title is not a law so to speak, but also by its drafting model, the long title is inclusive of other related matters as for its landing with phrase "to provide for the prevention and settlement of disputes, and to provide for related matters" [emphasis supplied]. That said, as I have observed herein-above, I am of the firm view that, the matter in dispute fall under the parameter of the labour matters.

Moving to the next issue, that is, whether or not this court has jurisdiction to entertain the matter at hand. Confronting the arguments by the rival's advocates, firstly, I should start to demonstrate the position of the law depicting application of this nature. Starting with section 94 (1) (f) (i) (ii) of the Employment and Labour Relation Act, [Cap. 366 R. E 2019] which provide that:

"Section 94 (1) Subject to the constitution of the United Republic of Tanzania, 1977, the labour court shall have exclusive jurisdiction over the application,

interpretation and implementation of the provisions of this Act and over any employment or labour matters falling under common law, tortious liability, vicarious liability or breach of contract and to decide-

(f) application including: -

(i) a declaratory order in respect of any provision of this Act; or

(ii) an injunction.

From the above position of the law, it is indisputably clear that any dispute arising from this Act during application, interpretation and implementation of the provisions will be subject of the labour court in term of adjudication [see section 94 (1) (f) (e)].

Adding to that, in the case of **Shyam Thanki and Others v. New Place Hotel (1971) EA 199**, it was held that:

"all the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

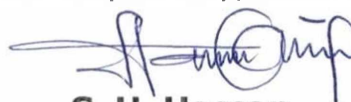
moreover, I took inspiration from other previous cases of which the same or the related matters were at stake, and hitherto, adjudication was conducted in the High Court Labour Division. For instance, the case of

Ezekiel Tom Oluoch v. chama cha walimu Tanzania, Misc. labour Application No. 436 Of 2019 at Dar es Salaam and that of **Daus Gracewell Seif and Another v. chama cha walimu Tanzania, Misc. labour Application No. 2 of 2023 at Dodoma** (all unreported). In both cases hereabove, unlike the one at hand, its citation reflects the proper court which the matter was intended to be filed from. That is, the High Court of Tanzania Labour Division.

In the upshot, for the foregoing reasons, since the application at hand fall within the ambit of labour matters, this court is ousted with jurisdiction to entertain the same. To that end, I sustain the preliminary objection raised by the respondents' counsel and consequentially, I struck out the application for being incompetent. More so, since it is a labour dispute, I make no order for the costs.

It is ordered.

DATED at DODOMA this 18th day of July, 2023.


S. H. Hassan
JUDGE

