IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

MISC. LABOUR APPLICATION NO. 8 OF 2023

(Arising from Labour Application No. 7 of 2023 in the High Court of Tanzania, Labour Division Sub-Registry at Dodoma)

JOSEPH MISALABA MASOLWA & 19 OTHERS..... APPLICANTS

VERSUS

LEAH ULAYA..... 1ST RESPONDENT

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

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

RULING

9th August & 24th August, 2023

HASSAN, J.:

This application was brought under section 94 (1) (f) (i) (ii) of the Employment and Labour Relation Act, Cap. 366 [R.E 2019] Rule 24 (1) (2), (a), (b) (c) (d) (e) and (f) and Rule 24 (3) (a) (b) (c) and (d), Rule 24 (11) (a), (b), (c), Rule 25 (1) and 9 of the Labour Court Rules, 2007. The applicants are seeking for an interim order in the nature of injunction for the following demands:

1. *To make an order restraining the respondents and/or their agents, workman, assignees, and any other person acting on their behalf from varying or changing the applicants' membership and leadership positions to 3rd respondent as it was before 18th*

June, 2023, pending hearing and determination of labour application No. 7 of 2023.

2. *To make an order restraining the respondents and or their agents, workman, assignees, and any other person acting on their behalf from conducting any elections to fill vacancies of the applicant's pending hearing and determination of the Labour Application No. 7 of 2023.*

This application is made under certificate of urgency supported by affidavit deponed by all 20 applicants. In essence, the applicants are pursuing for an injunction against the 3rd respondent. Whereas, on the other side, the respondents filed a counter affidavit deponed by the 1st and 2nd respondents opposing the application.

During hearing, the applicants were represented by the panel of learned advocates, led by Mr. George Vadasto, which includes Mr. Justus Magezi, Mr. Leonard and Mr. Steven Msechu. Whereas, on the other wing, Mr. Leonard Haule, also learned advocate had the services of the respondents altogether.

To advance this application, Mr. George Vadasto, started by adopting an affidavit deponed by all applicants and filed on 24th July, 2023. He went on to submit that the guidance prominent to the applicants' application has been stated in the case of **Kibo Match Group Ltd v.**

Impex Ltd, Commercial case (2001) TLR. 152 where at page 159, it provides three tests as follow:

1. *"It must be satisfied that there exists a prima facie case, serious enough to be tried on the facts alleged and with a probability of decree in favour of the applicant.*
2. *The award of damages to the applicant will not provide an adequate remedy for the loss sustained as a result of the respondent's infringement.*
3. *The plaintiff-applicant stand to suffer greater hardship from the withholding of the injunction than that suffered by the defendant if it is granted."*

Starting with *prima facie* case, as in paragraph 1 of an affidavit, Mr. George Vadasto kickstarted by submitting that all applicants are members of the 3rd respondent holding different positions. Whereas, the 1st Applicant is a deputy Secretary General, his position as per constitution is established under article 23 (1) (d) item I of the 3rd respondent's constitution. And, his disciplinary authority is National General Meeting. He added that the rest are members of the National Executive Committee who are appointed through the Regional General Meeting, and according to paragraph 3 and 8 of the applicants' affidavit, their positions are

established by article 18 (1) (c) item II, and their disciplinary authority is Regional general meeting as per article 19 (1) (e).

Mr. George stated further that according to article 29, tenure of vacant position is twelve (12) years from the date of action. He pressed that the first applicant was elected on 17th March, 2023 and other applicants were elected on 2020 and their tenure have not yet lapsed.

The learned counsel for the applicants submitted more that, the 1st and 2nd respondents are not the ones who elected the applicants. He averred that the applicants were elected by the Annual General Meetings at the national and Regional level. He cemented that these meetings were not conducted and they are expected to be conducted in 2025.

According to paragraph 10 of an affidavit, Mr. George submitted that, the national council without observing the procedures laid down under article 43 (2) of the 3rd respondent's constitution, had practiced the powers that they do not have and thus, has resulted into illegal action to expel the applicants from their membership. On that, he disclosed that, procedure to expel members is stated under article 43 (2) of 3rd respondent's constitution. Passing to this point, he averred that according to para 9 of the applicants' affidavit, the said procedure starts at the District level, then Regional level ending at the national level. Mr. George succumbed that these procedures were not observed.

Arguing further, learned counsel faulted the respondents that, they have illegally assembled what they call as an extraordinary national executive committee meeting and the national council meeting. He contended that the said meetings were illegal since they were not adhered to the constitution of the 3rd respondent.

All said and done, he concluded this point by submitting that, there is a *prima facie* case in Labour Application No. 7 of 2023 which is pending before this court.

On the issue of irrepealable loss, Mr. George referred paragraph 6 of the applicants' affidavit, on that, he submitted that the respondents have already directed the Regional offices to conduct election to fill the vacancies and some of the regions have already conducted such election in the absence of this Court orders. As a result, he submitted, new leaders will be elected and this will be irrepealable loss to the applicants. Thus, he added, the applicants' membership was repelled illegally and this is an irreparable loss. In the case of **Deus Gracewell Seif & Another v. Chama Cha Walimu Tanzania, Misc. Labour Application No. 2 of 2023** at page 12 which provides:

> *"Essentially loss of membership to the union and suspension in the post 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."

On the balance of convenience, Mr. George submitted that if injunction will not be granted, it will encourage an illegal and un-procedural act of the respondents. He averred that; this court has to intervene in order to make sure that rule of law is observed. He further argued that, if injunction will not be granted, the applicants' vacancies will be filled and the respondents will suffer no loss.

More so, Mr. George submitted that the applicants are fit person who were elected by the general meeting. He also stated that, the respondents will suffer no loss if an organ which elected the applicants will be afforded an opportunity to deliberate their issues and decide according to the 3rd respondent's constitution.

Mr. George went on to argued that, in the respondents' joint affidavit there is no facts which show that the respondents will suffer any loss if this application will be granted. He added that, there is no affidavit of the 3rd respondent which is opposing for the grant of this application. Therefore, he concluded his submission by submitting that the applicants have been abled to establish the 3rd test. Thus, from the outset, Mr. George pleaded that the 3rd and 4th prayers in the chamber application be granted by the court.

In addition to what was submitted by Mr. George, the learned counsel Justus Magezi added that, regarding the first test, the applicants are members of the 3rd respondent as shown in the annexure P1, and that their membership were terminated as evidenced in annexure P6 at page no. 1 paragraph 3, and page no. 4 and 5 of the same annexure P6.

Mr. Justus added further that, with regard to the second test which question as to whether there was a necessary intervention of the court to grant the application. He averred that the respondents have instructed the calling of Regional election to replace the applicants' position as directed by the 2nd respondent as annexed by annexure P7. And that, some of the Regions have already conducted the election like Tabora as per annexure P8.

Moreover, Mr. Justus submitted that if the court will not grant the sought application, the continuing act will pre-empt the main application which is still pending, that is, labour Application No. 7 of 2023 and it will prejudice the entire proceedings of that main application.

On the issue of irreparable loss. Learned counsel Justus pressed that, the loss of the applicants in their leadership position cannot be reparable in the monitory terms. Therefore, he argued, that the applicants stand to suffer more than what the respondents could have suffered.

Lastly, Mr. Justus cemented on the case of **Deus** (supra), that this case falls squarely within the environment of the case, where it was an application against Chama Cha Walimu Tanzania who is the 3rd respondent in this application as in page No. 8.

On his side, Mr. Leonard, learned counsel for the applicants submitted more by attacking the counter affidavit filed by the respondents which consists of 12 paragraphs. He submitted that the counter affidavit as a piece of evidence, it contains contradicting facts like in paragraph 2 where it provides that the applicants were not members and they are not members at all. While, in paragraphs 3 and 4 of the counter-affidavit, the respondents admit that, the applicants were the members and they were expelled. He therefore stressed that, in fact, there is big contradiction between 2nd, 3rd and 4th paragraphs.

Mr. Leonard submitted further that; Paragraph 6 deals with suspension by acknowledging that the applicants were suspended. He added that in paragraph 8, the applicants have waived their right to be heard, that mean, the respondents are accepting that the applicants were members. Again, in paragraph 11 it confirms that, the applicants are members. Owing to that contradiction, the learned counsel argued that, an evidence of this type misdirects the court and the same should not be relied upon.

In conclusion thereof, Mr. Leonard passionately submitted further that, wisdom demands that, the temporary injunction sought by the applicants must be granted since there is no evidence objecting this application.

Replying to the submissions by applicants' counsels, Mr. Leonard Haule kickstarted with prayer to adopt the counter affidavit to form part of the respondents' submissions. In furtherance to the above, he begged to reply his learned brothers' submissions as follows: That, he will respond Mr. George Vadasto and Mr. Justus Magenzi submissions together. Also, he wishes to reply Mr. Leonard's submission and end up with final conclusion.

To begin with, Mr. Haule stated with the issue of *prima facie* case. On that, he submitted that his learned brothers had submitted that all applicants are members of the 3rd respondent holding different positions. On that, he submitted that, all applicants are not members of the 3rd respondent as it has been stated in paragraph 2 of their counter affidavit.

He averred that membership of the 3rd respondent has to be proved by the membership cards, but all the applicants herein had not attached their membership card which could be a proof of their membership.

Adding to that, Mr. Haule submitted further that, there is an annexure P1 which was attached by the applicants. On the annexure P1,

he stated that, there is a list of names *visa vis* number of which they are not membership cards which can prove their membership status. Mr. Haule cited the case of **Abdiel Reginald Mengi & Another V. Jacqueline Ntuyabaliwe Mengi, Civil Application No. 618/01 Of 2021 - CAT** (unreported) at page 19 it provides:

> *"Admittedly, the court agreed with Mr. Msumbuko on the position that an affidavit is a sworn evidence and that whatever document, a party intend to form a part of it, has to be stated in the affidavit and attached to it, contrary to that the document will not form part of the evidence."*

As per authority above, Mr. Haule submitted that the applicants had not provided their membership card and attached them.

On the other venture, the respondents' counsel questioned that, if the applicants claim to be members of the 3rd respondent, what are they doing in this court if they are members.

Furthermore, Mr. Haule submitted that there was an issue of the 2nd applicant that, according to paragraph 2 of the applicants' affidavit, the 2nd applicant is a deputy treasurer. On that effect, Mr. Haule contended that, the 2nd applicant is not, and had not been a deputy treasurer and that position had not existed in the 3rd respondent's constitution.

Adding to that, Mr. Haule averred that on *prima facie* case, he understands that there is Labour Application No. 7 of 2023 which is pending before this honourable court. However, on that effect, he argued that, having Labour Application No. 7 of 2023 alone does not make it a *prima facie* case. Mr. Haule gave out reason that, it is that so because it has been filed by people who are not members of the 3rd respondent. He submitted that the applicant had a duty to attach their membership card to show that they are members of the 3rd respondent.

On the relief sought, Mr. Haule submitted that relief sought in paragraph 4 of the applicants' affidavit is a vague relief which cannot be acted by the Court to issue any valid order.

On the issue that the applicants may suffer irreparable loss. Mr. Haule submitted that there is no irreparable loss that the applicants might suffer because even the applicants themselves have not stated in their affidavit as to what extent the purported irreparable loss may be incurred. He stressed that, for example if they are employees, they could have shown what salary they could lose. Instead, it is the 3rd respondent who is going to suffer irreparable loss if the prayer is granted, this is because the 3rd respondent will not be in position to serve his members as required by constitution.

Moreover, Mr. Haule contested further that the case of **Deus** (supra) which was cited by the applicants to justify their stand, in his view, is distinguishable and it is not an authority which can bind this court since it bears the ruling of the fellow judge who has the same jurisdiction with this court. Adding to that, he protested what was referred by applicants' counsel at page 12 of **Deus** case (supra), to him that is not a binding principle but rather an *obita dicta*. Thus, to his opinion, this test should fail.

On the 3rd test which is the balance of convenience, Mr. Haule submitted that on the balance of convenience, it is the respondents who are likely to suffer more loss than the applicants.

With respect to the submission fronted by learned brother Leonard, who had challenged the respondents' counter affidavit of 12 paragraphs, Mr. Haule submitted that there is no contradicting facts in the counter affidavit. More so, respondents' counsel also challenged paragraph 2 of the Applicants' affidavit which provides that applicants are not members. On that, Mr. Haule submitted that he did so because the applicants' affidavit averred that applicants are members. Therefore, he argued that there is no contradicting facts on that point, and he insisted that the applicants are not members of the 3rd respondent, and that is why they are seeking for assistance in this court.

On the issue of wisdom, Mr. Haule averred that temporary injunction can be granted upon satisfying the legal requirements and not wisdom. He pressed further that the submissions of his learned brother Leonard should be ignored because the proper way to challenge the counter affidavit is through filing a reply to counter affidavit. Mr. Haule referred the case of **Tanzania Breweries Ltd v. Edson Dhobe & 18 Others, Civil Application No. 95 of 2003 - CAT** (unreported) to support his argument.

Lastly, Mr. Haule prayed that the relief sought by the applicants seeking this court to issue an order restraining the 3rd respondent not to conduct the election in various Regions should not be granted for the following reasons; that Tanzania mainland is consisting of 26 Regions, the applicants have not specified in their chamber summons or affidavit the name of Regions against which this court should make such order. Therefore, in his view this court is hand tied, as it cannot make a blanket order restraining Regions which are not known out of 26 Regions. He stressed that, since they did not mention them, they cannot stand and mention them at this stage. In conclusion, Mr. Haule prayed that this prayer which is vague and not specific should not be granted.

Re - joining the applicants' submission, Mr. Justus averred that, this court was invited by the applicants to see whether the applicants have

satisfied all three tests required for the court to award an order of injunction as sought by the applicants. Thus, Mr. Justus contended that with regard to the 1st test of *prima facie* case, the respondents' counsel conceded in his reply submission that there is Labour Application No. 7 of 2023 pending determination before this honourable court and this application was filed by the applicants in this Misc. application. Therefore, he argued that, the test of prima *facie case* was established by both submissions from the applicants and the respondent.

With regard to the issue of balance of convenience, Mr. Justus begged to reiterate their earlier submissionS as in the submission in chief. Additionally, he averred that while the respondents' counsel was confronting this test, he was supposed to show this court why the court's intervention in this application was not necessary, but he did not submit anything on that effect, instead, he stressed to submit on the loss that the respondents are likely to suffer. On that note, Mr. Justus submitted that the 2nd test of balance of convenience of necessity for court intervention was not submitted by the respondents' counsel. Therefore, he argued, that it goes without saying that this test was also proved by the counsel for the applicants.

Coming to the last issue of whether there was an irreparable loss on the part of the applicants if the order is not granted. Mr. Justus averred

that in his reply submission, the respondents' counsel contended that the applicant's affidavit did not show the extent of which the applicants will be likely to suffer the purported irreparable loss.

On that, he contended that this was a misleading submission as under paragraph 12 and 13 of the applicants' affidavit they have pleaded the irreparable loss which they will suffer if this application will not be granted. For instance, under paragraph 12, they pleaded that they will lose their membership status to the 3rd respondent. Also, under paragraph 13 they pleaded that they will lose their leadership positions to the 3rd respondent. Adding to that, they argued that if this application will not be granted their leadership positions will be filled by other members through the intended election which have already been announced by the respondent.

Mr. Justus went on to submit that all this will be done while the main application, the labour Application No. 7 of 2023 which is pending before this court will be yet to be determined.

Mr. Justus stressed that these two losses pleaded by the applicants under paragraphs 12 and 13 of the affidavits are irreparable because the loss of membership and leadership position to the 3rd respondent is amenable. That means, it cannot be reformed in monitory form, and this

is what was addressed in the case of **Deus Gracewell Seif & Another v. Chama Cha Walimu Tanzania** (supra) at 15.

Furthermore, Mr. Justus stated that the respondents' counsel also submitted that the case of **Deus** (supra) is distinguishable. On this point, he argued that what his rival counsel has submitted is not true as they have stated earlier that the circumstance of these two cases are similar and they are not distinguishable.

Mr. Justus also contended that the respondents' counsel has duty to show why he is contending that these two cases are distinguishable, but the duty was not discharged.

More so, the respondents' counsel submitted on the Respondents' submissions that, the case of **Deus** (supra) is not an authority which can bind this court because it was a ruling from the judge who has same mandate to this court. On that argument, Mr. Justus protested that Mr. Haule's submission not only lacks respect to this court but it is also unfounded because the learned counsel did not cite the reasons as to why this authority should not be followed, but he rather attacked the level of the decision maker. In his view, Mr. Justus averred that, having submitted that, the 3rd test of irreparable loss has also been proved by the applicants.

Lastly, with regard to the submission made by the respondent's counsel not to grant the 4th prayer, Mr. Justus submitted that the same is submission at bar since it was not reflected in the respondents' counter affidavit.

Aiding to the rejoinder, Mr. George submitted that the counsel for respondents insisted that applicants are not members and because they are not members, they are before the court where they can register their grievances. The respondents' counsel also added that the 4th prayer is vague as it did not mention specific Regions where the prayer is sought. In response to these claims Mr. George submitted that Regions are established by the law and under section 59 of the Evidence Act, the court ought to take judicial notice.

Moreover, Mr. George succumbed that the respondents' counsel submitted that the real person to be affected by the order of the court is the 3rd respondent, but, the 3rd respondent did not contest this application since he did not file a counter affidavit to protest the same. Therefore, Mr. George pressed that, it was wrong for the respondents to ask the court to consider certain prayers. He also cemented that the respondents are at liberty to file their case and ask for the orders as they want. Therefore, in his conclusion Mr. George prayed for prayer number 3 and 4 of the chamber summons to be granted.

Stressing more for the rejoinder, Mr. Leonard demonstrated to the court that, the case of **Abdiel** (supra) which was referred by respondents' counsel as in paragraph 19 provides that even if the document which was protested by the respondents' counsel was not attached to the affidavit, the same can be made as part of the supporting affidavit. Therefore, he argued that what was submitted by the counsel for the respondents was irrational assertion.

Also, on the case of **Tanzania Breweries** (supra) at page 8 that counter affidavit is only encountered by reply to counter affidavit, in this point Mr. Leonard contended that, that was not the decision of this case, but rather, the decision was at page 11 of which it does not torched.

Finally, Mr. Leonard contended that, the temporary injunction sought by the applicants comprises of all legal requirements and the court can use its discretionary powers to grant it.

Now, going through the above submissions by the learned counsels for and against the application, the issue for determination is whether or not the application has met the condition for granting the order sought by the applicants.

To confront the adjoined arguments, I will start to demonstrate the position of law which guide an application of this nature. Thus, to begin with, firstly, it is worth noting that, a temporary or Mareva injunction is a

common law remedy developed by the courts for the purpose of granting a provisional relief to the plaintiff or applicant against the defendant or respondent if their action is designed to frustrate the court order, pending determination of the main suit or application. See the case of **Mareva Compania Naviera SA v. International Bukk carries SA [1980] 1 All ER 213.**

Therefore, in applying this principle, the Supreme Court of Canada in **Aetna Financial Services versus Feigelman (1985) 1 SCR 2,** had once stated that:

> *"In granting Mareva injunction, two conditions must be established **firstly**, that the applicant must demonstrate a strong prima facie case or a good and arguable case, and **secondly**, having regard all the circumstances of the case, it appears that granting the injunction is just and justifiable".*

In our jurisdiction, this ancient paradigm has also gained recognition. For instance, *mareva injunction* has attained a statutory support in terms of section 2 (3) of the Judicature and Application of Laws Act [Cap. 358 R. E 2019] which fathom the application of common law and equity in our jurisdiction.

Similarly, in a number of times, our court has taken that initiative on board with a view to protect personal rights against prejudice. it

includes the case of **Trustees of Tanzania National Parks (supra) and Ugumbee Igemba (supra)** see also **Abdak M. Malik & 545 Others versus AG, Misc. Land Application No. 119 of 2017, HC LD (unreported), Jitesh Ladwa versus Yono Auction Mart and Co. Ltd & Others, Misc. Civil Land Application No. 26 of 2020 HC DSM (unreported) and Leopard Net Logistics Company Ltd versus Tanzania Commencial Bank Ltd & 3 Others, Misc. Civil Application No. 585 of 2021,** just to mention a few.

To underscore the foregoing, I take recognition of the features assembled in the case of **Kibo Match Group Ltd v. Impex Ltd** (supra), of which, although not conclusive, as other akin issues may be an infringement of plaintiff's or applicant's rights and preservation of justice.

Therefore, in the instant application, the applicants' counsel have demonstrated clearly that the respondents had expelled the applicants from the 3rd respondents' membership, and also, had expelled the 1st, 2nd and the 4th applicants from their leadership positions of the 3rd respondent, and that, this was done in violation of the 3rd respondent's constitution of 2014 and upon dishonour of the principles of natural justice. See paragraph 2, 3, 4, 5, 6 and 7 of the applicants' affidavit in support of the application.

Henceforth, guided by the above guidelines and principles underlined in **Kibo Match Group Ltd v. Impex Ltd** (supra), to which, I fully subscrib with, thus, I can now start to determine the application by examining the tests raised in this case which imposed the condition for consideration upon granting of temporary injunction.

Regarding the first test thus, whether there exists a *prima facie* case serious enough to be tried on the facts alleged and with a probability of decree in favour of the applicant.

On the basis of the applicants' submission, learned counsels for applicants submitted that there is a prima facie case in labour application No. 7 of 2023 which is pending before this court. Mr. George submitted that, according to paragraph 10 of the applicants' affidavit, the national council without observing the procedures laid down under article 43 (2) of the 3rd respondent's constitution had practiced the powers that they do not have, and thus has resulted into illegal action to expel the applicants from their membership and also illegally expelled 1st, 2nd and 4th applicants from their leadership position. On that, he disclosed that, procedure to expel members is stated under article 43 (2) of 3rd respondent's constitution. Passing to this point, he averred that according to paragraph 9 of the applicants' affidavit, the said procedure starts at the District level,

then Regional level ending at the national level. Mr. George succumbed that these procedures were not observed.

Arguing against respondents' submissions on the point of *prima facie* case, learned counsel Leonard Haule contended that he understands that there is Labour Application No. 7 of 2023 which is pending before this honourable court. However, on that effect, he argued that having Labour Application No. 7 of 2023 does not make it a *prima facie* case. He reasoned out that, it is that so because the Application has been filed by people who are not members of the 3rd respondent. He submitted that the applicant had a duty to attach their membership cards to show that they are members of the 3rd respondent.

Gathering from the arguments by learned counsel herein-above, I find it pertinent to express what I can call as guiding authority at this juncture. That is the view propounded in the case **Colgate Palmolive v. Zakaria Provision Stores and Others, Civil Case No. 1 of 1997** HC (unreported), of which I am fully subscribed, where it was held that:

> *"I direct myself that in principle the prima facie case rule does not require that the court should examine the material before it closely and come to the conclusion that the plaintiff has a case in which he is likely to succeed, for to so would amount to prejudging the case on its merit. All that the court has to be satisfied of, is that, on the face of it the*

plaintiff has a case which need consideration and that there is likelihood of the suit succeeding."

On the similar venture, to emphasise on the foregoing, in the case of **American Cyanamid Co. v. Ethicon Ltd [1975] AC 396**, Lord Diplock had once stated that:

> *"There was no rule of law that the court was precluded from considering whether, on a balance of convenience, an interlocutory injunction should not be granted unless the plaintiff succeeded in establishing a prima facie case or a probability that he will be successful at the trial of the action..."*

Hence, going by the terse submissions, I find myself constrained to hold that, by having application No. 7 of 2023 which is pending determination before the court, the first test of *prima facie* case has been affirmatively held. Though, I am alive that, the fact that there is an application pending determination in this court was neither mentioned in the applicants' affidavit nor in the counter affidavit deponed by the respondents. However, as it came to the knowledge of the court, I take judicial notice to observe its existence, and auspiciously, the same is confirmed to exist.

On the issue of irreparable loss. The applicants' counsel referred the court to paragraph 6 of the applicants' affidavit. On that, he submitted that the respondents have already directed their Regional offices to

conduct election to fill the vacancies and some of the Region have already conducted such election in the absence of this Court orders. As a result, he submitted that new leaders will be elected and this will occasion to irreparable loss to the applicants. Thus, he added, the applicants' membership was illegally repelled, and this will cause an irreparable loss. To support his assertion, he cited the case of **Deus Gracewell Seif & Another v. Chama Cha Walimu Tanzania, Misc. Labour Application No. 2 of 2023** at page 12 which provide:

> *"Essentially loss of membership to the union and suspension in the post 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."*

Contesting on the applicants' argument in this point, Mr. Haule disputed that there is no irreparable loss that the applicants might suffer, this is because even the applicants themselves, have not stated in their affidavit as to what extent the purported irreparable loss may occur. To support his argument, he cited an example thus, if they are employees, they could have shown what salary they could lose. However, Mr. Haule contended that, instead it is the 3rd respondent who will suffer an irreparable loss if the applicants' prayer will be granted. He signposted

the reason that, the 3rd respondent will not be in position to serve his members as required by constitution.

Thus, addressing the issue of irreparable loss as argued by the rivals counsel, I am alive to the fact that an irreparable loss is one which cannot be calculated by monitory terms. See **Mwakeye Investment Ltd v. Access Tanzania Limited, Misc. Land Applic ation No. 654 of 2016 HC** (unreported);

More so, I am also aware of the view given by some esteemed legal writers, for instance, interpreting the three principles, **Sarkar on Code of Civil Procedure, Ninth Edition, 2000 at page 1997** he had this to say on the issue of irreparable loss:

> *"By irreparable injury, it is not meant that there must be no physical possibility of repairing the injury, all that it meant is that, the injury would be a material one, and one which could not be adequately remedied by damages"*

Therefore, going through submissions by learned counsels, I have found a lot of merit on the applicants' affirmation. Guided by the above authorities, including the finding in **Deus Gracewell Seif & Others v. Chama Cha Walimu Tanzania** (supra) of which, I am fully subscribed thereto. Thus, in the matter at hand, the applicants counsel has demonstrated what was contained in paragraph 6 of the applicants'

affidavit that, the 1st, 2nd and 4th applicants were illegally expelled from their leadership position of the 3rd respondent. This averment was adjoined by the respondents as at paragraph 3 of the counter affidavit which acknowledged that, the 1st, 2nd and the 3rd applicants were temporarily suspended from their position in the 3rd respondent. Thus, owing to that facts, it cannot gainsay that the applicants will not suffer an irreparable loss for that undertaking if they will lose their vacancies.

Notably, in my considered view, what was submitted by the respondents' counsel that it is the 3rd respondent who will suffer an irreparable loss if the order for temporary injunction will be granted is an unfounded assertion. For that, it is submission from the bar, hence the statement is not supported in the counter affidavit.

That said, so long as the applicants will likely suffer from suspension, there will be a need to protect the likelihood of their rights being curtailed. In **T. A. Kaare v. General Manager Mara Cooperative Union (1987) TLR. 17**, it was held that:

> *"There is requirement to consider whether there is a need to protect either of the parties from the species of injury known as irreparable injury before right of the parties is determined."*

On the balance of convenience, Mr. George submitted that if injunction will not be granted, it will encourage an illegal and

unprocedural acts by the respondents. He averred that, this court has to intervene in order to make sure that the rule of law is observed. He further argued that, if injunction will not be granted, the applicants' vacancies will be filled and the respondents will suffer no loss.

Challenging on this point, Mr. Haule shortly submitted that on the balance of convenience, it is the respondents who are likely to suffer more loss than the applicants.

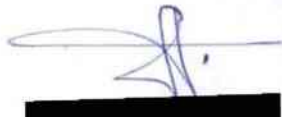
In my view, going through this contested argument, I am of the opinion that it is the applicants who the balance of convenience favoured. Taking inspiration from what was held by the learned author **Sarkar on Code of Civil Procedure, Ninth Edition, 2000 at page 1997**, he had this to say:

> *"Where the plaintiffs are likely to suffer irreparable injury in case the injunction is refused and balance of convenience also lies in their favour they are entitled to grant an interim injunction."*

Thus, based on the above arguments by the parties and the persuasive findings of **Sarkar** (supra), I am of the same view that since it is the applicants who may suffer an irreparable loss, the balance of convenience will also lie in their favour. On that, I am convinced that the 3rd respondent will suffer none, as deponed under paragraph 6 of the applicants' affidavit in support of application.

Apart from above, other contested issues include that the counter affidavit contains contradicting facts. On his side, Mr. Leonard, learned counsel for the applicants attacked the counter affidavit filed by the respondents which consists of 12 paragraphs. On that, Mr. Leonard submitted that the counter affidavit as piece of evidence, it contains contradicting facts like in paragraph 2 where it provides that the applicants were not members and they are not members at all. While, in paragraphs 3 and 4 of the joint counter affidavit, the respondents admit that the applicants were the members and they were expelled. He therefore stressed that, in fact there is big contradiction between 2nd, 3rd and 4th paragraphs.

Challenging this argument, Mr. Haule submitted that there is no contradicting fact in the counter affidavit. More so, the respondents' counsel also clarified that paragraph 2 of the counter affidavit which provide that applicants are not members, on that, Mr. Haule accepted that, he did so because the applicants' affidavit averred that the applicants are members. Therefore, he argued that there is no contradicting fact on that point. He further insisted that the applicants are not members of the 3rd respondent and that is why they are seeking for assistance in this court.



In my view, as it was rightly submitted by the respondents' counsel, I see no contradicting facts so to speak. Basically, what was testified by the respondents' counsel was to reflect what was deponed by the applicants in their affidavit. [See paragraph 2 of applicants' affidavit]. Thus, this point is worthless and it is disregarded.

More so, the respondents' counsel raised the issue that case of **Deus** (supra) is not an authority which can bind this court because it was a ruling from the judge who has same mandate to this court.

On this issue, Mr. Justus protested that Mr. Haule's submission is not only lacks respect to this court but it is also unfounded because the learned counsel did not cite the reasons as to why this authority should not be followed but he rather attacked the level of the decision maker.

Addressing this issue, I am of the view that, although the decision of one judge cannot strictly bind another judge, but the same can be persuasive to the later judge and there is no harm for the court to follow the persuasive decision of the fellow judge of the same jurisdiction or otherwise as the case may be in accordance with law. To that end, for its being the court of record, the high court assume an authoritative status for later decision. Thus, this point is insignificant and it is ignored.

On the issue whether the applicants are members of the 3rd respondent or not as contested by the parties. I am certain in my mind

that this is not a proper forum to discuss this matter, hence the same could be raised and argued in the main application (Labour Application No. 7 of 2023).

On the issue raised by Mr. Haule that the relief sought by the applicants is vague. On that, he contended that an order restraining the 3rd respondent not to conduct the election in various Regions should not be granted for the reason that Tanzania mainland is consisting of 26 Regions and that the applicants have not specified in their chamber summons or affidavit the names of Regions which this court should make such order. He pressed that this court is hand tied, it cannot make a blanket order restraining Regions which are known out of 26 Regions, and since they did not mention them, they cannot stand and mention them at this stage.

Arguing against this point, Mr. George resisted that Regions are established by the law and under section 59 of the Evidence Act, the court ought to take judicial notice.

On my part, going through the entire counter affidavit there is nowhere the respondents had raised this point, thus, this is the submission at bar which does not have any effect to the application at hand. To be under the consideration of the court at this juncture, facts

raised should be deponed through affidavit or counter affidavit and not to the contrary. That said, this point is also valueless and it is ignored.

On another mission, Mr. Leonard, the counsel for the applicants had also passionately argued that wisdom demands that the temporary injunction sought by the applicants must be granted since there is no evidence objecting this application.

However, this point of wisdom, was vehemently disputed by Mr. Haule and on that, he succumbed that temporary injunction can be granted upon satisfying the legal requirements and not wisdom. He pressed more that; submission of his learned brother Leonard should be ignored because the proper way to challenge the counter affidavit is through filing a reply to counter affidavit. Mr. Haule referred the case of **Tanzania Brewers Ltd v. Edson Dhobe & 18 Others, Civil Application No. 95 of 2003 - CAT** (unreported) to support his argument.

On my side, I coincide with both counsels in my own way, that is, I hold that both ventures are applicable for determination of the matter at hand. Hence, justice demands adherence of both, principle of law and wisdom based on the circumstances of the case. At the end, what ought to be upheld is the need of justice. Therefore, in the matter at hand both paradigms have served the purpose to meet the end of justice.

On account of what I have analysed herein-above, this application is granted. Thus, I hereby make an order restraining the respondents and/or their agents, workmen, assignee and any other person acting on that behalf from varying or changing the applicants' membership and leadership position to the 3rd respondent as it was before 18th June 2023.

In addition to that, I also make an order restraining the respondents and/or their agents, workmen, assignee and any other person acting on that behalf from conducting any election to fill vacancies of the applicants pending hearing and determination of the Labour Application No. 7 of 2023.

Ordered accordingly.

DATED at **DODOMA** this 24th day of August, 2023.

S. H. Hassan

JUDGE

24/08/2023