

**IN THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT MUSOMA**  
**LABOUR APPLICATION NO. 04 OF 2023**

**TUICO (TANZANIA UNION OF INDUSTRIAL  
AND COMMERCIAL WORKERS) ..... APPLICANT**  
**VERSUS**  
**MMG GOLD LTD ..... RESPONDENT**

**RULING**

*29 August & 19 September, 2023*

**M. L. KOMBA, J.:**

The applicant, TUICO is among the Trade Union in Tanzania which organizes members from Industries, Commercial, Finance, Institution, Services and Consultancy. And the respondent, MMG (Minerals and Metals Group) is the company dealing with mining activities.

On 16<sup>th</sup> March, 2023 the applicant (through her responsible officer) wrote a letter addressed to the respondent's Human Resources Manager requesting to meet with the workers of the respondent to exercise Organization Right. The applicant proposed the meeting to be held at respondent premises on 22<sup>nd</sup> March, 2023 between 12:30 and 13:00 afternoon.

On 20<sup>th</sup> March, 2023 the applicant received a call from respondent's Assistant Human Resources Officer advising her not to conduct the proposed meeting with the workers and they will contact with her office over the matter. Latter on 22<sup>nd</sup> March, 2023 the applicant was told that there won't be any Organization Right meeting with the workers.

The applicant decided to lodge the dispute before the Commission for Mediation and Arbitration for Mara at Musoma CMA/MAR/MUS/31/2023 and the respondent was to appear on 24<sup>th</sup> April, 2023. On his appearance the respondent's Human Resources Officer named Edwin Maresi requested the time to consult with management on how to conduct the same Organization Right. He never went with the solution hence the mediation was marked failed. The said results instigated the present application at hand.

The applicant in this application which is filed under Rule 24 (1) (2) (a) (b) (c) (d) of the Labour Court Rules GN. No. 106 of 2007 praying for the following orders;

- 1. That, this Honourable Court be pleased to issue an order to grant permission to the applicant in this matter Organization Right at the premises of the respondent in this matter upon the first hearing of this application.*

*2. Any other reliefs and/or order that this Hon Court may deem fit and just to grant.*

When the matter was fixed for hearing, Mr. Mengo Donald, Secretary of TUICO appeared for the applicant while respondent was represented by Mr. Kasimu Masimbo (representative) and Mr. Edwin Meresi.

It was Mr. Mengo submission that when he requested for the meeting so that he can encourage worker on organizational right, he was denied the right. He referred the matter to CMA where mediation failed hence this application claiming for organizational of workers.

In contesting the application by the applicant, Mr. Kasimu pointed that the application is bad in law as the applicant wrote a letter to respondent instead of filling form no 14 under section 64. Form which was said to be filled and submitted was not attached and it was not explained to whom was addressed.

It was his further submission that according to TUICO constitution of 1995 revised in the year 2020, applicants are supposed to recruit members from industries, business, financial institution and counseling services. According to GN 47 Rule 23 TUICO are supposed to recruit on the areas as mentioned in the constitution and guided by Rule 23 (1)

and S. 48 of Employment and Labour Relations Act insist the trade union to comply with its constitution.

Mr. Kasimu argue that respondent find she is not among the sectors which must have trade union under TUICO constitution as they are dealing with exploration and mining activities and therefore TUICO has no mandate over their institution as they are not covered under their constitution.

It was his submission that according to registered Trade Union in Tanzania, the responsible Trade Union to deal with respondent is TAMICO which has registration No. 05 registered on the year 2000 deal with mining sector, energy and construction. Another Trade Union is NUMET which was register under number 029 on 20/2/2013 and registered to deal with mining and energy. He said, these are the responsible Trade Unions mandated to recruit workers dealing with minerals and that the respondent Institution is affiliated to NUMET since 2018 and it has 156 members out of 180 workers. He said NUMET is recognized Trade Union with bargaining powers since 14/05/2021. According to S. 68 (1) and (2) of the Employment and Labour Relations Act, Cap 366 [R.E 2019] (ELRA) respondent have signed the collective bargaining agreement on 22/10/2022 and still into force and those who

are not members according to S. 72 (2) are contributing agency shop fee monthly. From this submission he said in respondent Institution more than 80% of its works are members of Trade Union registered and recognized by the law and they exercise their right in Trade Union. He remarked that, according to the law, worker is not supposed to have more than one trade Union and insisted that TUICO has no mandate in any way basing on their constitution to recruit respondent workers.

During rejoinder, Mr. Mengo submitted that a letter was send in order to make them understand as latter on they filled and sent required form. About TUICO mandate he submitted that the constitution was quoted rights but elaboration is available in regulation 13 (2). Responding to the issue of majority he submitted that section 67 (1) does not hinder other trade union to recruit workers at a working place where there is another Trade Union. He insisted that his intention to recruit workers who are not recruited by any trade union.

That makes the end of parties submission. And now it is my time to determine whether the application is meritorious.

Organization Right is a mandatory worker's right as is expressed under paragraph 4 of the third schedule to the (ELRA). Under section 4 of the ELRA organisation is defined to mean a trade union or employers'

association. Section 11 (1) of ELRA provides for the right of Organisation which include the right to determine its own constitution. And section 47 (1) (b) of the ELRA provides for the requirements of the Organization Constitution which include to prescribe the qualifications for membership.

Thus, the applicant as the organization is required to have its own constitution which also will have to describe the qualification of its memberships. In the application at hand, the applicant did not attach her constitution to prove that she is eligible to recruit the respondent's workers as her members. This court finds that applicant was supposed to attach her constitution to prove that she has the mandate over the respondent's workers. He who allege must prove, see **Standard Chartered Bank (T) Ltd vs. Samwel Nyalla Nghuni**, Civil Appeal No. 45 of 2020.

Nevertheless, the respondent in her submission argued that basing on the applicant constitution she has no mandate in any how to recruit the respondent's workers and they are already in terms with the eligible organization. I subscribed to the TUICO constitution in the relevant provisions about the memberships it read as follows;

### *3.1 Wanachama Waanzilishi*

*3.1.1 Wafanyakazi wote waliokuwa wanachama wa OTTU katika Sekta za Viwanda, Biashara, Taasisi za Fedha, Huduma na Ushauri kabla ya kuanzishwa Chama hiki watakuwa wanachama waanzilishi wa Chama. 3.1.2 Waliokuwa watendaji wa OTTU wakati wa kuanzishwa kwa Chama nao ni wanachama waanzilishi wa TUICO.*

### *3.2 Wanachama Wapya*

*3.2.1 Wanachama wapya watatokana na wafanyakazi walioajiriwa/waliojijajiri katika Sekta za Viwanda, Biashara, Taasisi za Fedha, Huduma na Ushauri na shughuli zinazohusiana na sekta hizo.*

*3.2.2 Wanachama kwa mujibu wa ajira zao ndani ya Chama chenyewe (TUICO).*

Therefore, reading from the above excerpt there is nowhere the mining workers mentioned to be one of the qualified members to be entitled to join the applicant's organization.

I am not persuaded that industrial workers could be the same as the mining workers. I have read G.N No. 687 of 2022, Wage Order, the mining workers are listed under paragraph 9 of the second schedule while the industrial workers are listed under paragraph 11. That means Mining and Industries are not the same thing.

From above analysis I find that the applicant has failed to prove that she has mandate to recruit respondent's workers in her organisation. Actually, she has none and thus, I find the application has no merit and hereby dismissed.

It is accordingly ordered.

**DATED** at **MUSOMA** this 19<sup>th</sup> day of September 2023.



*NK*  
**M. L. KOMBA**  
**JUDGE**