

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

**LABOUR REVISION No.14 OF 2022
(ARISING FROM CMA/SHY/18/2017)**

- | | |
|---------------------------|----------------------------|
| 1. RAJAB TENGA | 1 ST APPLICANT |
| 2. DEUS JIMAMBO | 2 ND APPLICANT |
| 3. SHETA JUMA | 3 RD APPLICANT |
| 4. NGOLE KISILA | 4 TH APPLICANT |
| 5. ISAYA PETER | 5 TH APPLICANT |
| 6. WILLIAM ISAYA | 6 TH APPLICANT |
| 7. ABDUL DANDALA | 7 TH APPLICANT |
| 8. STEVEN SYLIVESTER..... | 8 TH APPLICANT |
| 9. ISAYA EMMANUEL | 9 TH APPLICANT |
| 10. SHABANI MAULID | 10 TH APPLICANT |
| 11. AMOS MAKUMBATI | 11 TH APPLICANT |
| 12. DOTTO MAHONA | 12 TH APPLICANT |
| 13. HAMIS JOSEPH | 13 TH APPLICANT |
| 14. HAMIS JOSEPH | 14 TH APPLICANT |
| 15. PAUL ZANZIBAR | 15 TH APPLICANT |

VERSUS

REGIONAL MANAGER TANESCO SHINYANGARESPONDENT

RULING

28TH November & 15th December 2023

F.H. MAHIMBALI, J

The applicants in this case are aggrieved by the decision of the CMA Shinyanga in Labour Dispute No. CMA/SHY/18/2017. Thus the basis of this revision case before this court.

However, for the reasons to be stated hereinafter, the hearing of the revision application has not been possible. According to our record, this revision application was filed in this registry on 7th December 2022, a year ago. Since then, the hearing of this revision application has not been possible following the original record not being traced anywhere.

In efforts to trace the said original file, at last, I summoned the Arbitrator Incharge of CMA – Shinyanga as to where about of the said CMA's record. In her statement before this Court on 26th October 2023, she stated that, she arrived in the said CMA in 2019. That in her following up the said record, she established the said CMA/SHY/18/2017 has different names of parties. It reads **Ambrose Mlutha Vs. BGML** and not concerning **Rajabu Tenga and 13 Others Vs. Regional Manager Shinyanga**. However, in her full search, she established that the appropriate record concerning **Tumaini Mafuru Vs. Regional Manager Tanesco Shinyanga** is not CMA/SHY/18/2017 but CMA/SHY/181/2017, which the same was already forwarded to this Court since 10th October 2018 and she supplied proof of the said reception by this court vide the dispatch record dully signed and dated.

Mr. Rajabu Tenga on behalf of his fellow parties on this submission by Ms Magreth – Arbitrator, stated that the relevant records in respect of this case has brought confusion, as per award of CMA – Shinyanga by Mr. Mvembuka it is referred as CMA/SHY/18/2017 and not CMA/SHY/181/2017. However, they have nothing more to state on that confusion.

In his reply Mr. Mpogole learned state attorney was of the view that, for the lasting solution, since the original record is not traced, and that their office has none of the records save the award itself, he advised this Court to be guided by the Court of Appeal's decision in the case of **Yusufu Mbulilo Vs. Republic**, Criminal Appeal No. 405 of 2018, that there be re-composition of the CMA's record.

In my further perusal of the record, I have noted that there **was Labour Revision No. 60 of 2018** filed in this Court in which its ruling dated 17th March 2020 dismissed the said revision application for being filed out of time. It has further been established that the said record CMA/SHY/181/2017 (**Tumaini Mafuru & 23 Others Vs. Regional Manager, Tanesco – Shinyanga**) was returned to the CMA – Shinyanga on 17th March through the letter dated 17th March 2022 amongst 109 files.

Thus, the relevant CMA file as per available supporting evidence is not CMA/SHY/18/2017 but rather CMA/SHY/181/2017.

Now, what is the way forward of this fracas. In my thorough digest and working on the advice of Mr. Mpogole, learned state attorney for the respondent, I had decided to inquire from the remaining parties (the applicants) whether they had any useful record which may guide the Court in determining this matter. None had any. From the submissions, all parties (applicants) and the learned counsel for the respondent are unanimous about the incompleteness of the record of this revision and thus we cannot proceed with the hearing. The mandatory documents commencing the revision in this court are missing, which are complaint statement, and the proceedings. The only document which is readily available is the CMA's award. That alone cannot make this revision proceeding proceed as it is insufficient by itself.

As what is the proper way forward, the Court of Appeal which is our Apex Court in the country had dealt with such a situation of missing records and directed the reconstruction of court records in a situation more than once. See **MARUNA PAPAI V. R** [2021] TZCA 180 TANZLII, **Yusuph s/o**

Mbululo vs Republic (Criminal Appeal No.405 of 2018) [2023] TZCA 17511

(21 August 2023), to mention but a few.

When it is established that it is insufficient or impossible to make a full reconstruction or the available records don't suffice the hearing of the appeal, the best remedy is to quash the proceedings and set aside the judgment of the lower courts and as the case may be either order retrial or as it may deem necessary for the justice of the case. In the current case, unlike the three situation dealt above by the CAT which were for criminal cases, they all ended up quashing the trial court's proceedings, conviction and sentence and ordered the retrial. However, in the latest case (**Yusuph s/o Mbululo vs Republic**), the Apex Court having considered that the appellant had been in prison waiting for his appeal about 23 years ago following the missing of record, and being persuaded by their previous position in **CHARLES**

RAMADHANI V. R [2020] TZCA 1871 TANZLII quashed the conviction and set aside the sentence against retrial option, reasoning that the scales of justice dictate so in tilting.

The current case is of a civil nature. The best recourse in my considered view as to the scales of justice, should tilt on balancing. Retrial is the best option.

Re-emphasizing what the Apex Court of our Jurisdiction echoed in the case of **Yusuph Mbululo** (supra), it is now high time that the digitization of the court record is even over speeded to avoid such untold encumbrances. In their own words, the Apex Court lauded clearly:

The appellant Yusuph Mbululo's 23-year delayed right to appeal to this Court on account of missing appeal record is an urgent wake-up call to the Chief Registrar of the Judiciary of Tanzania, Registrar of the Court of Appeal, High Court Registrar, all the Deputy Registrars. The Chief Registrar should ensure that Registrars and Deputy Registrars all heed the Supreme Court of India's directives to the Registrar General of the High Courts of India. They should realize that technology and digitalization are a way forward for Court registries in Tanzania on how to eliminate or minimize the incidents of missing court records. They should realize directives of the Supreme Court of India's

directives to the Registrar General of the High Courts of India Technology and digitization is a way forward for court registries in Tanzania on how to eliminate or minimize incidents of missing court records.

The Caribbean Court of Justice website describes court registries as engine rooms (<https://ccj.org/about-the-ccj/court-registry/>). For Tanzania, the Registrars, Deputy Registrars, and all registry staff who work in the engine rooms of the courts must digitize their registries to maintain public trust in the administration of justice in the digital age. The website of the Caribbean Court of Justice states:

"The Registry is the 'engine room' of the Court. It manages all cases from filing to disposition. It is responsible for the receipt, transmission and custody of documents filed in the Registry and sub-Registries. It is the conduit for the flow of information between the Court and the parties before it. The Registry is also responsible for service of all

documents filed in the original jurisdiction. To provide greater access to justice documents may be filed in the sub-Registries and transmitted to the Registry."
<https://ccj.org/about-the-ccj/court-registry/>

As a modern cure of such fracas of missing court records in our courts, and perhaps legal and administrative measure taken by the Chief Justice of Tanzania in response to the directives issued by the Apex Court of the Land in **Yusuph Mbululo's** case – a 23-year delayed right to appeal to the Court of Appeal, I am aware of his recent directives of the commencement of *"e case management system"* in Tanzanian Courts (e-cms) issued on 2nd October 2023 to all judges and registries in Tanzania mainland as a technological measure to curb the recurring situation in our courts. Let the technological move taken be embraced by all judicial officers as the best measure to the current world technology and that digitalization is the best way forward for Court registries in Tanzania on how to eliminate or minimize the incidents of missing court records. By the way, it is modernity by itself.

All this said and done, in the circumstances of this case, I find it a wastage of time and resources keeping on adjourning this matter endless

and unprogressively. As to the best lasting solution of the matter, I quash all the proceedings and orders emanating thereof.

As to the best way forward, the applicants if still desirous in pursuing this matter, leave of refiling their labour dispute at CMA is hereby granted in a period of seven weeks from today.

DATED at SHINYANGA this 15th day of December, 2023.



F. H. Mahimbali
Judge

Ruling delivered today the 15th day of December, 2023 in the presence of Mr. Tenga for all applicants and Ms Beatrice, RMA, present in Chamber Court.



F.H. MAHIMBALI
JUDGE