

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 216 OF 2023

JANE CLAUDE MIHANJI APPLICANT

VERSUS

**THE REGISTERED TRUSTEE OF
RESEARCHERS, ACADEMICIANS &
ALLIED WORKERS UNION(RAAWU) RESPONDENT**

RULING

31st October 2023 & 30th January, 2024

BWEGOGGE, J.

The applicant named above lodged an application herein praying this court to interpret Article 15.7 (b) of the Researchers, Academicians & Allied Workers Union (RAAWU) Constitution, among others. The application is brought under the provisions of sections 2 (1) and 3 of the Judicature and Application of Laws Act [Cap. 358 R.E. 2019]; section 95 of the Civil Procedure Code [Cap. 33 R.E. 2019] and supported by the affidavit of the applicant herein.

In tandem with filing the counter affidavit, the respondent raised a notice of preliminary objection on point of law as under:

"This court lacks jurisdiction to entertain this matter."

The applicant is represented by Mr. Benjamini Karume, learned advocate whereas the respondent has the services of Mr. Evance Nzowa, learned advocate. The objection was argued by written submissions.

In substance, it is the argument of Mr. Nzowa, the respondent's counsel, that the respondent herein is a registered trade union in terms of the Employment and Labour Relations Act [Cap. 366 of 2019]. That section 53 (1) of the Employment and Labour Relations Act confers right to the member of the trade union to apply to the Labour Court in the circumstances where a trade union fails to comply with its constitution. Hence, the counsel opined, the principle of *ejusdem generis* should be invoked in the interpretation of the provision to encompass the matter of like nature such as the application at hand.

Further, the counsel argued that the provision of section 94 of the Act provides exclusive jurisdiction to the Labour Court to decide applications of like nature. On account of the above, the counsel prayed this court to sustain the objection herein and strike out the matter herein with costs.

In reply, Mr. Karume contended that the purported preliminary objection herein is manifestly misconceived. That the respondent's counsel has misinterpreted the provision of section 53 (1) of the Employment and Labour Relations Act, and erroneously invoked the principle of *ejusdem generis*. That the above-mentioned provision confers the Labour Court with power to preside any dispute related to the failure of the registered organization to comply with its constitution, which is not the matter before this court. That, even if the relevant provision would apply to the case at hand, the institution of the case in the specified Court is not mandatory as the word employed is "may" which suggests that the procedure provided is optional.

In the same vein, the applicant's counsel contended that the submission in that the provision of section 94 (1) of the same Act provides exclusive jurisdiction to the labour court to preside all matters of like nature, is likewise misplaced. That it is trite law that this court has unlimited jurisdiction [**The National Bank of Commerce Limited vs. National Chicks Corporation Limited & Others (Civil Appeal 129 of 2015)** [2019] TZCA 345. Further, the counsel asserted that this court is clothed with jurisdiction to determine the application herein. In sum, the

applicant's counsel opined that the preliminary objection advanced by the respondent lacks substance; hence, should be overruled with costs.

The question before this court is whether the preliminary objection on the point of law advanced by the respondent herein is merited.

From the outset, I find it pertinent to make it clear that the canon of statutory interpretation is premised on the principle that when the words of the statute are unambiguous, judicial inquiry is complete. See in this respect the cases; **Chiriko Haruna David vs. Kangi Alphaxard Lugora & Others** (Civil Appeal No. 36 of 2012) [2013] TZCA 189; and **Republic vs. Mwesige Godfrey & Another** (Criminal Appeal 355 of 2015) [2015] TZCA 264.

That said, I would revert to scrutinize the provisions of law invoked to support the argument that this court has no jurisdiction to preside this matter. The provision of section 53 of the Employment and Labour Relations Act provides that:

“(1); where a federation or registered organization fails to comply with its constitution, the Registrar or member of the federation or registered organization may apply to the Labour Court for any appropriate order including- (a) setting aside any decision,

agreement or election; (b) requiring the organization or federation or any official thereof to-

(i) comply with the constitution;

(ii) take steps to rectify the failure to comply;

(c) restraining any person from any action not in compliance with the constitution enjoins the Labour Court with jurisdiction to hear.

The provision revisited above, in no uncertain terms, enjoins the labour court with power to preside the matters pertaining to the federation or organization's non-compliance with its constitution. The member thereof may lodge an application in court for an order requiring the federation and, or organizations to comply with its constitution; take steps to rectify the alleged non-compliance and injunction against non-compliance. I need not state that the matter at hand doesn't literally fall within the ambit of the above-mentioned provision.

Likewise, the provision of section 94(1) of the same Act provides viz:

"(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 matter falling under common law, tortious liability, vicarious liability or breach of contract and to decide-

(a) appeals from the decisions of the Registrar made under Part IV;

(b) reviews and revisions of –

(i) arbitrator's awards made under this Part;

(ii) decisions of the Essential Services Committee made under Part VII;

(c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;

(d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;

(e) any dispute reserved for decision by the Labour Court under this Act; and

(f) applications including-

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

(ii) an injunction.

This provision, in clear terms, confers exclusive jurisdiction to the labour court over matters falling under the Employment and Labour Relations Act and deciding appeals from the decisions, reviews and arbitration awards made under the relevant Act. Likewise, the interpretation of the organization's constitution is not among the enlisted matters falling under the exclusive jurisdiction of the Labour Court.

It suffices to point out that, notwithstanding the apposite assertion made by the applicant's counsel that this court has unlimited jurisdiction to try any case, the provisions of the law cited by the respondent's counsel herein don't support his charge in that this court has no jurisdiction to preside this matter. Therefore, I am constrained to purchase wholesale the opinion made by the applicant's counsel in that the purported preliminary objection is devoid of substance.

Given the foregoing, I find the preliminary objection advanced by the respondent herein devoid of merit. The purported preliminary objection is hereby overruled.

I so rule.

DATED at DAR ES SALAAM this 30th January, 2024.



O. F. BWEGOGE
JUDGE