

**THE UNITED REPUBLIC OF TANZANIA**  
**(JUDICIARY)**  
**THE HIGH COURT – LABOUR DIVISION**  
**(MUSOMA SUB REGISTRY AT MUSOMA)**  
**(Revisional Jurisdiction)**

**CONSOLIDATED LABOUR REVISIONS No. 13 & 17 OF 2023**

*(Arising from the Commission for Mediation and Arbitration for Mara  
at Musoma in Labour Dispute No. CMA/MUS/231/2021)*

**JOHN MILINDI MAKOKO ..... APPLICANT**

***Versus***

**NORTH MARA GOLD MINE LIMITED ..... RESPONDENT**

**RULING**

06.05.2024 & 07.05.2024  
**Mtulya, J.:**

On the 10<sup>th</sup> August 2023, the Court of Appeal (the Court) in the precedent of **Adamu Wamunza** [*As Administrator of the Estates of the Late Paul James*] **v. Kinondoni Municipal Council & Another**, Civil Appeal No. 424 of 2020, had faced with an issue on: whether **P. James** and **Paul James** is one and the same person in official documents which give right to land ownership. Before resolving the contest between the parties, the Court had travelling to other common law jurisdictions in Kenya, India and Nigeria, and produced the following words to the Tanzanian communities:

*This case concerns circumstances in which a person may use his names in official documents...the connection between an individual and his names is regarded as lifelong, both in law and as a matter of*

*social practice...it is possible to change one's name officially by deed poll or statutory declaration, a process which requires a good cause and official registration. The law stresses the need for a stable and coherent use of names to avoid any danger of confusion as to identity or lineage. The aim of preventing confusion over identity of names is no doubt, a legitimate one.*

The Court then advised the communities in Tanzania that: It is desirable to avoid confusion both in relations among individuals and the authorities and in relations among individuals. It went further to state that unregulated change of names might well offer opportunities for dishonest behaviors.

The Court then travelled in different places of country to read the precedents in **Christina Mrimi v. Coca Cola Kwanza Bottlers Ltd** [2008] 2 E.A 69; **Lujuna Shubi Balonzi v. Registered Trustees of CCM** [1996] T.L.R 203; and **Swalehe Juma Sangawe [As Administrator of The Estate of the Late Juma Swalehe Sangawe, Hussein Swalehe Sangawe] v. Halima Swalehe Sangawe**, Civil Appeal No. 82 of 2021.

The Court moved further and invited the available practices on the subject in other Commonwealth states of Kenya, India and Nigeria in the precedents of **Peter v. Sunday Post** [1958] E.A 424; **Njilux Motors Ltd v. Kenya Power and Lighting Company Ltd & Another** [2000] 2 EA 466; **Chiranjilal v. J As Jit Singh** [1993] [2]

SCC 507; and **Alhaji Mailafia Trading & Transport Company Ltd v. Veritas Insurance Company Ltd** [1986] 4 NWLR [Pt. 38] 802.

In the final analysis, the Court held that: *the names P. James and Paul James have no any link*. The reason of holding so is displayed at page 20 of the judgment that: *no evidence whatsoever was led by the appellant revealing that the alleged Paul James was also using the name and referred to as P. James*.

Before the decision of the Court in the indicated precedent of **Adamu Wamunza [As Administrator of the Estates of the Late Paul James] v. Kinondoni Municipal Council & Another** (supra) was delivered, twelve years earlier, specifically on 1<sup>st</sup> February 2011, the Court had produced a detailed reason in favor of consistency of names for suits lodged in courts, and at page 5 of the Ruling in the decision of **Jaluma General Supplies Ltd v. Stanbic (T) Ltd**, Civil Appeal No. 34 of 2010, stated that:

*Names of the parties is central to their identification in litigation. Both parties are limited liability companies with their attributes. If one changes its name, it becomes a different legal entity, altogether. Consequently, the name of the appellant in the Notice of Appeal was fundamentally different from that in the plaint. It was fatal irregularity rendering the Notice of Appeal incompetent.*

In the instant revision, the referral of a dispute to the Commission for Mediation and Arbitration Form [CMA F-1] (the form)

on the details of the other party had referred the respondent as: **North Mara Gold Mine Limited** of P.O. Box 422 Tarime. On the other hand, the details of party referring the dispute to the Commission was called: **John Milindi Makoko** of P. O. Box 2988 Mwanza.

After full hearing of the case, the **Commission for Mediation and Arbitration for Mara at Musoma** (the Commission) which heard the dispute between the parties in **Labour Dispute No. CMA/MUS/231/2021** (the dispute) had resolved in favor of **Mr. John Milindi Makoko** (the applicant) and awarded him Tanzanian Shillings 52,463,598.96/= as per section 40 (1) (c) of the **Employment and Labour Relations Act** [Cap. 366 R.E. 2019]. However, the Award was issued against **Barrick North Mara Gold Mine Ltd.** It was unfortunate that **Barrick North Mara Gold Mine Ltd** was not party to the proceedings of the dispute in the Commission.

The applicant was aggrieved by both the display of the parties in the Award and the contents of the Award hence approached this court and lodged **Labour Revision of No. 13 of 2023** against **North Mara Gold Mine Limited**, praying for examination of the record regarding correctness, legality and regularity of the finding of the Commission in the Award. On the other hand, **North Mara Gold Mine Limited** (the respondent) had also preferred **Labour Revision**

**No. 17 of 2023** to support the move taken by the applicant. The dual revisions were consolidated and produced a total of eleven (11) issues to be resolved by this court.

The revisions hearing was scheduled yesterday morning, 6<sup>th</sup> May 2024, and both parties had invited legal services of **Mr. Faustin Anton Malongo**, learned counsel for the respondent and **Mr. Marwa Chacha Kisyeri**, personal representative of the applicant. However, before the hearing button was pressed in the electronic Case Management System (e-CMS), Mr. Malongo stood up and stated that paragraph 8 and 10 of the applicant's affidavit read together with the decision of the Court in **Jaluma General Supplies Ltd v. Stanbic (T) Ltd** (supra) render the present revisions fatal and prayed this court to quash the Award of the Commission and give appropriate orders as it deems fit to grant.

The move was protested by Mr. Kisyeri arguing that the submission of Mr. Malongo is an attempt to pre-empt hearing of the application contrary to the law. According to Mr. Kisyeri, the decision in **Jaluma General Supplies Ltd v. Stanbic (T) Ltd** (supra) is irrelevant and inapplicable in the present circumstances as in the present revision the fault was caused by the arbitrator and not the applicant. In the opinion of Mr. Kisyeri, this court may use its powers under the Ethics and Conducts of Mediators and Arbitrators,

Government Notice 66 of 2007, to sanction the arbitrator for foul play in the Award.

Mr. Kisyeri submitted further that pleadings and records of the dispute before the Commission and this court are clear, concise and correct and the revisions may proceed on merit as there is no any wrong committed by the applicant, and in any case, the parties are the same. In substantiating his submission, Mr. Kisyeri stated that Mr. Malongo is representing the same company and had appeared during the hearing of the case in **Pendo Joseph Maswi v. Barrick North Mara Gold Mine Limited**, Civil Case No. 17 of 2023, decided by this court in Mwanza Registry, and prayed this court to take judicial notice on the subject under section 59 (1) of the **Evidence Act** [Cap. 6 R.E. 2019].

In a brief rejoinder, Mr. Malongo submitted that the issue of different names was raised in paragraph 8 of the applicant's affidavit, which impliedly the applicant concedes that there is irregularity on the record and this court may invite its powers to rectify the Award. According to Mr. Malongo, that is exactly the prayer of both parties that the court to quash the Award to rectify the record.

Regarding the principle in the precedent of **Jaluma General Supplies Ltd v. Stanbic (T) Ltd** (supra), Mr. Malongo submitted that it applies in the present case in the sense that the names of parties

are central to the identification of the parties in litigation and that if one changes his name, he becomes a different person and that is fatal irregularities. On the precedent of **Pendo Joseph Maswi v. Barrick North Mara Gold Mine Limited** (supra), Mr. Malongo contended that the decision is irrelevant because in the case it was not stated that **Barrick North Mara Gold Mine Limited** is the same name as **North Mara Gold Mine Limited** and, in any case, the issue of change of names was not part of the discussions in the case.

In the opinion of Mr. Malongo, the issue on whether **Barrick North Mara Gold Mine Limited** is one and the same company to **North Mara Gold Mine Limited** has to be resolved by evidence, which is not on record hence this court cannot resolve the contest on the subject. Similarly, the complaint against the arbitrator on ethical issues, Mr. Malongo argued that there is no evidence on record to be resolved by this court. Finally, Mr. Malongo submitted that there is no law which bars him from representing different clients of different species, including companies.

I have grasped the submissions of the parties, perused the record of present revisions and decisions of the Court. From the record it is vivid that the parties' names were changed by the arbitrator. It was the fault of the Commission, and not either party. The applicant had noted the fault before filing of the present revision, but had declined Rule 25 of the **Labour Institutions**



**(Mediation and Arbitration) Rules**, Government Notice No. 64 of 2007 (the Rules), on rectification of defects in the Award of the Commission. He then rushed to this court complaining that the Award is inexecutable, as reflected at the eighth and tenth paragraphs of his affidavit.

I think, in my considered opinion, declining the provision of Rule 25 of the Rules is not proper and this court may not cherish such a move. As the applicant has declined rectification of names at the Commission as required by the law, and noting the issue of names of the parties is crucial to their identification in litigation, any change of the names is fatal (see: **Jaluma General Supplies Ltd v. Stanbic (T) Ltd** (supra). Regarding the status of the present revisions, the remedy is only to declare it incompetent before this court for want of proper names of the parties in the revisions. That is what was stated in the Notice of Appeal in the precedent of **Jaluma General Supplies Ltd v. Stanbic (T) Ltd** (supra).

Having the precedents of the Court on the subject, and for want of right record, I am moved to strike out the revisions for want of the law in Rule 25 of the Rules and precedents of the Court in **Jaluma General Supplies Ltd v. Stanbic (T) Ltd** (supra) and **Adamu Wamunza [As Administrator of the Estates of the Late Paul James] v. Kinondoni Municipal Council & Another** (supra). I do so without cost as this is a labour dispute. The applicant, if so wish,



to contest the Award of the Commission in the dispute, he may do so in accordance to the labour laws and guidance of the Court of Appeal on the subject.

It is so ordered.

Right of appeal explained to the parties.



  
F. H. Mtulya

**Judge**

07.05.2024

This Ruling was delivered in Chambers under the Seal of this court in the presence of the applicant's Personal Representative, **Mr. Marwa Chacha Kisyeri** and in the presence of the respondent's learned counsel, **Mr. Faustin Anton Malongo**, through teleconference attached in this court.

  
F. H. Mtulya

**Judge**

07.05.2024