

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB - REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LABOUR REVISION NO. 4 OF 2023**

**BOARD OF TRUSTEES OF CHAMA CHA**

**DEMOKRASIA NA MAENDELEO(CHADEMA).....APPLICANT**

**VERSUS**

**RENATUS NZEMO.....RESPONDENT**

**[Application from the decision of the Commission for Mediation and Arbitration for Shinyanga at Shinyanga.]**

**(Hon. A. Massay.)**

**dated the 9<sup>th</sup> day of February,2023**

**in**

**CMA/SHY/73/2021**

**JUDGMENT**

*20<sup>th</sup> February & 16<sup>th</sup> April, 2024.*

**S.M. KULITA, J.**

This Labour Application has been filed by the Applicant by way of notice of application, in terms of the provisions of section 91(1)(a)(b) and section 94(1)(b)(i) of the Employment and Labour Relations Act

[Cap 366 RE 2019], Rule 28(1)(a)(b)(c)(d)(e) and Rule 24(1)(2) (a)(b)(c)(d)(e)(f) and 24(3)(a)(b)(c)(d) of the Labour Court Rules, 2007, G.N. No. 106 of 2007.

In the Notice of Application, the Applicant prays for this Court to revise and set aside the decision of the Commission for Mediation and Arbitration (CMA) at Shinyanga in the dispute No. CMA/SHY/73/2021. The application is supported with an affidavit sworn by the Principal Officer of the applicant one Jackson Rashid Mnyawami on 17<sup>th</sup> March, 2023.

Brief facts of the case are as follows; that the respondent was employed by the appellant herein in a four-years' employment contract as a Zonal Secretary for Serengeti. The employment contract started on 1<sup>st</sup> June, 2016. It ended up on 31<sup>st</sup> December, 2020. In their contract, the respondent was paid salary and enjoyed the Social Security benefits from NSSF contributions. When the contract came to an end the respondent was claiming for two months' unpaid salaries, leave, severance payments, transport allowances, repatriation and subsistence allowance, pending payment of terminal benefits.

These claims were disputed by the applicant contending that, they had no serious employment agreement with the Respondent, in the

sense that the Respondent used to work in a voluntary basis. The case was heard and in the final analysis, the commission decided in favor of the respondent herein. Aggrieved with that decision, the applicant lodged this application for revision advancing the following grounds as aspects for determination; **one**, that the commission had no jurisdiction to arbitrate the matter as there was no strict employment relationship between the parties, **two**, that the award of repatriation and subsistence allowance to the respondent was against the weight of the evidence on record, **three**, the reliefs awarded were not pleaded in the CMA F1 and **fourthly**, that the trial proceedings were a nullity for the Arbitrator's failure to append signature.

However, on 13<sup>th</sup> February, 2024 the applicant's counsel prayed to add another ground for determination in their application. The same was granted. The applicant, thus added the **fifth** ground that, the respondent sued a wrong and non-existing party instead of the Registered Trustees of Chama Cha Demokrasia na Maendeleo (CHADEMA)

On 20<sup>th</sup> February, 2024 the matter was scheduled for hearing. Mr. Paul Kaunda, Advocate, represented the applicant whereas the respondent appeared in person. He was unrepresented.

Though he prayed to adopt the applicant's affidavit as part of his submissions yet Mr. Kaunda abandoned all grounds for determination in this revision matter, hence remained with only one ground which is the added one, ***that the respondent sued a wrong and non-existing party.***

Submitting in support of it, Mr. Kaunda amplified that, the respondent ought to have filed his case against the Registered Trustees of Chama cha Demokrasia na Maendeleo (CHADEMA) instead of Board of Trustees of Chama Cha Demokrasia na Maendeleo (CHADEMA). To support his argument, he cited the case of **Halima Mdee and 18 Others vs. The Board of Trustees of Chama cha Demokrasia na Maendeleo, Misc. cause No. 16 of 2022.**

In reply the respondent submitted that, both, the Registered Trustees of Chama cha Demokrasia na Maendeleo (CHADEMA) and Board of Trustees of Chama Cha Demokrasia na Maendeleo (CHADEMA) are the same. He urged this court not to rely on technicalities to hinder his rights.

Rejoining the Respondent's submissions, Mr. Kaunda stated that, The Registered Trustees of CHADEMA is a body corporate which, in law

is a person that can sue or be sued, though he added that, it may include Board of Trustees. In that sense, he maintained his stand.

I have keenly gone through the entire pleadings, submissions and the authorities cited by both parties to the case. I have also taken into consideration the rival issue between the parties.

I have made a revisit on the laws pertaining the political parties' registration in the country particularly on the disputed area. According to **Section 21(1) of the Political Parties Act [Cap 258 RE 2002]**, after a political party has obtained a certificate of full registration it should appoint a Board of Trustees to manage the party's properties, businesses or investments.

As correctly submitted by Mr. Kaunda, **section 21(2) of Cap 258** provides for mandatory requirement that, that the board of trustees of a political party must be incorporated. For ease of reference, I hereby quote it as hereunder:

*"(2) Every board of trustees shall be duly incorporated under the Trustees Incorporation Act and every political party shall not later than sixty days from the date of full registration submit to the Registrar(a) the names and addresses of the members of the board of*

*trustees; and (b) a copy of the certificate of incorporation"*

Upon incorporation, the board of trustees shall be granted with a certificate of incorporation and shall become a body corporate which shall include the words "Registered Trustees". This is the requirement of the law as per **section 6(2) of the Trustees Incorporation Act [Cap 318 RE 2002]** which reads;

*"(2) The name of everybody corporate created under this Act shall include the words "Registered Trustees"*

By virtual of **section 8(1) of the said Cap 318**, the body corporate shall have perpetual succession and common seal. It shall also have powers to sue and be sued in such corporate name with the words **"Registered Trustees"** For ease of reference, **section 8(1) of Cap 318** is quoted as hereunder;

*"(1) Upon the grant of a certificate under subsection (1) of section 5 the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have*

*(a) Perpetual succession and a common seal;*

*(b) Power to sue and be sued in such corporate name; "*

Up to that point I can agree with Mr. Kaunda, Advocate. However, as rightly stated by him, as well as the respondent, in their submissions, the cited laws above show that, the members of the Board of Trustees of a political party are actually the same members of the Registered Trustees of that political party.

From that above point therefore, the members that the respondent had sued in this case at CMA are actually the same. The deference is just the missing words "Registered Trustees" in the Respondent's name in the CMA record. It therefore means that members are the same and they were given their right to be heard.

In that circumstance, as the same members who ought to have appeared in this case and defend their case have actually appeared and defended their case, it means their constitutional right to be heard was fully exercised. The question that triggers my mind is that, should this case be nullified for the reason that the respondent had sued a wrong person?

I am alive with **Order 1, Rule 9 of the Civil Procedure Code [Cap 33 RE 2022]** which states;

*"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and*

*the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it"*

This position has been followed by courts of law in different cases including **NBC Holding Corporation vs. Shirika la Uchumi na Kilimo Ltd (SUKITA), Commercial Case No. 24 of 2001, HC, Commercial Division, at DSM.**

It has been amplified by **Order 1, Rule 10(1) and (2) of the Civil Procedure Code** of which I hereunder quote;

*"10.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff the court may at any stage of the suit, if satisfied that the suit has been so instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.*



*(2) The court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

With this position of the law and for the sake of justice I have to adhere to it. Save for the added ground, the applicant in this application has abandoned all other grounds for revision. Impliedly, the applicant does not dispute on the rights that the respondent has been awarded by the CMA, save for that issue of suing a wrong party. Henceforth, as long as the party that has been sued by the respondent is actually the same, save for inclusion of the words "Registered Trustees", I hereby order the substitution of the applicant's name by putting the words "The Registered Trustees" to substitute the words "Board of Trustees" which

are read before the words "Chama Cha Demokrasia na Maendeleo (CHADEMA)". This is for saving the respondent's rights which are undisputed.

On that account, the Applicant's application for revision fails. In case the Respondent executes his award from the CMA, he should do so by naming the Judgment Debtor as "The Registered Trustees of Chama Cha Demokrasia na Maendeleo (CHADEMA)". It is so ordered.



**S.M. KULITA**  
**JUDGE**  
**16/04/2024**

**DATED** at **SHINYANGA** this 16<sup>th</sup> day of April, 2024.



**S.M. KULITA**  
**JUDGE**  
**16/04/2024**