

IN THE HIGH COURT OF TANZANIA

DODOMA SUB- REGISTRY

AT DODOMA

LABOUR REVISION NO. 2986 OF 2024

(Arising from Labour Dispute No. CMA/DOM/142/2021/25/2022)

BODI YA WADHAMINI YA JIMBO

KUU LA KATOLIKI DODOMAAPPLICANT

VERSUS

DYANKALIHANA FELIX KAHARULE 1ST RESPONDENT

MAGINGA BUSINESS HOLDING CO. LTD2ND RESPONDENT

RULING

30th May & 14th June, 2024

MUSOKWA, J.

This application for revision was made under section 91 (1) (a) (b), (2) (a) (b), 3 and 4 (a) (b) of the Employment and Labour Relations Act, Cap. 366 R.E. 2019; and Rule 28 (1) (c) (d) and (e) of the Labour Court Rules, 2007 G.N. No. 106 of 2007 (Labour Court Rules). The application was supported by the affidavit of Fr. Revocatus Majuto. This labour dispute originates from Labour Dispute No. CMA/DOM/142/2021/25/2022 which was instituted by

the 1st respondent at the Commission for Mediation and Arbitration (CMA) at Dodoma. The facts are that the 1st respondent, before the CMA, alleged breach of an employment contract by the applicant. The 1st respondent was an employee of the applicant, working as a teacher in a school that is owned by the 2nd respondent. Being aggrieved by the award of the CMA which was decided in favour of the 1st respondent, the applicant has preferred the instant application.

The matter came for hearing on 30th May, 2024 whereby Mr. Constantino Gwivaha learned counsel appeared for the applicant. Ms. Vanessa Msangi learned advocate held brief of the learned counsel, Mr. Sedrick Mbunda, with instructions to proceed.

Before the hearing begun, Mr. Gwivaha prayed for leave to withdraw the matter before this court, with leave to re-file under Rule 34 (1) of the Labour Court Rules. The learned counsel proceeded to state that, while the provision requires that the withdrawal of a suit should be by way of notice, there is no prescribed form for such notice. In support of his position, Mr. Gwivaha cited the case of **International Tax Consultants Limited vs Mac Donald Justus Rweyemamu**, Misc. Labour Application No. 115 of 2023, HC Labour Division at DSM. The learned counsel asserted that in the aforementioned

case, this court was faced with a similar scenario. The dilemma was whether the withdrawal of the suit may be made informally. Submitting further, Mr. Gwivaha stated that this court, in the case of **International Tax Consultants Limited** (*supra*) invoked Rule 55 (1) and (2) of the Labour Court Rules. On that basis, the counsel for the applicant prayed for leave to withdraw the matter before the court informally, with leave to re-file. Mr. Gwivaha further prayed that there should be no order as to costs.

In reply, Ms. Vanessa Msangi learned counsel representing the respondents had no objection to the prayers of the applicant. Further, in consideration of the fact that the matter before the court is a labour matter, Ms. Msangi did not pray for costs.

Upon the submissions by the parties, this court is called upon to determine whether the law permits the informal withdrawal of a labour suit. The provision of Rule 34 (1) of the Labour Court Rules, stipulates that: -

34.-(1) A party who has initiated proceedings and wants to withdraw the matter shall file a notice of withdrawal as soon as possible and the Court shall proceed to mark the matter accordingly, on such terms as to costs or otherwise in accordance with these rules.



As correctly observed by this court (Mlyambina J.) in the case of **International Tax Consultants Limited** (*supra*), the provision of Rule 34 of the Labour Court Rules poses the challenges regarding informal withdrawal of a labour matter before this court. This court observed that: -

"There is no doubt that the difficulties for the parties and the Court exist in applying the provision of Rule 34 (1) (2) & (3) of the Labour Court Rules G.N. No, 106 of 2007 when the applicant wants to withdraw the application informally in the course of hearing. Rule 34 (supra) requires a party to file a notice of withdrawal".

In the circumstances, I also resort to Rule 55 (1) and (2) of the Labour Court Rules which provides that: -

"55 (1) Where a situation arises in the proceedings or contemplated proceedings which these Rules do not provide the Court may adopt any procedure that it deems appropriate in the circumstances.

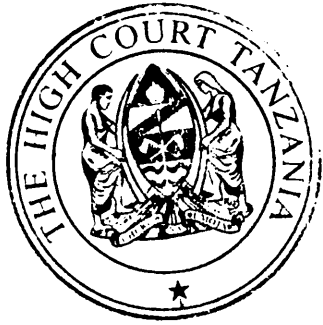
(2) In the exercise and performance of its powers and functions or in any incidental matter, the Court may act in a manner it considers expedient in the circumstances, to achieve the objects of the Act and, or the good ends of justice."

In view of the foregoing, the application is hereby marked withdrawn with leave to refile under Rule 55 (1) and (2) of the Labour Court Rules. The same

be refiled within fourteen (14) days from the ruling hereof. Each party to bear own costs.

Order accordingly.

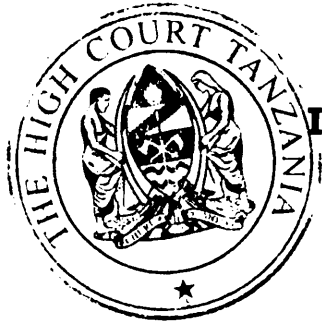
DATED at **DODOMA** this 14th day of June, 2024.



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I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of Mr. Constantino Gwivaha, advocate for the applicant; and in the presence of the 1st respondent.



A handwritten signature in cursive script, appearing to read "I.D. Musokwa".

I.D. MUSOKWA
JUDGE