

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

AT DODOMA

MISCELLANEOUS LABOUR APPLICATION NO. 3 OF 2023

(Originating from Labour Application No. 17 of 2022)

**DEUS GRACEWELL SEIF.....1ST APPLICANT
ABUBAKAR SALUM ALLAWI.....2ND APPLICANT
VERSUS
CHAMA CHA WALIMU TANZANIA (CWT).....RESPONDENT**

RULING

Last Order: 16/04/2024

Ruling: 21/06/2024

MASABO, J:-

By a chamber summons filed in this court under Rule 24(10)(b) 24(11), (b) of the Labour Court Rules, 2007, and section 95 of the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC), the applicant has invited this court to find the respondent and one Maganga Moses Japhet in contempt of its injunctive order issued on 13th December 2022. The order had the effect of restraining the respondents, its employees, servants and other persons acting on the respondent's name from proposing and discussing any agenda involving the applicants' disciplinary measures at the respondent's National General Meeting scheduled for 15th to 16th December 2022, pending hearing and determination of Misc. Labour Application No. 17 of 2023. The applicants

have subsequently prayed that the said Maganga Moses Japhet be committed to prison for six months for his contemptuous conduct.

The application was sternly opposed by the respondent through a counter affidavit deposed by Maganga Moses Japhet who is identified as the principal officer of the respondent.

With the consent of the parties, the application was heard by way of written submissions. The submission supporting the application was drawn and filed by Mr. Jeremiah Mtobesya, learned Counsel whereas the respondent's reply was drawn and filed Mr. Gabriel Mnyele, learned counsel. Before I move to the submissions, for appreciation of the application, it is apposite, I think, to briefly narrate the factual background to the application as follows.

The genesis of the application as deciphered from the applicants' joint affidavit is the applicants' Economic Case No. 39 of 2021 before the Court of the Resident Magistrate for Dar es Salaam at Kisutu and their subsequent suspension from the posts they held within the respondent union. Prior and during the pendency of the said case in which the applicants were jointly charged with economic offences, the applicants were both officers of the respondent union serving in the capacities of Secretary General and Treasurer, respectively. At the conclusion of the case, they were found guilty, convicted and sentenced. Dissatisfied they appealed in Criminal Appeal No. 129 of 2022 before this court, Dar es Salaam Registry. As the appeal was still pending, on 16th September 2022, the respondent's organs

imposed a disciplinary measure on both applicants suspending them from their respective posts pending the decision of the respondent's General Meeting scheduled for 15th and 16th December 2022. Determined to restrain the respondent from taking further disciplinary steps against them, the applicants sought and obtained an injunctive order from this court restraining the respondent from tabling and deliberating on the applicant's disciplinary measures at the said meeting. Contemptuously, the respondent tabled and deliberated the matter and, in the end, it terminated the applicants' memberships from the association. Hence, the present application cites the respondent for contempt and praying for sanctions against the Secretary General of the Respondent, one Maganga Moses Japhet.

Back to the written submissions, submitting in support of the application Mr. Mtobesya adopted the contents of the affidavit and the reply to the respondent's counter affidavit to form part of his submission. He proceeded to submit that the injunctive order issued by this court on 13th December 2022 had the effect of restraining the respondent, its employees, servants, agents and/or assignees and appointees from proposing and discussing any agenda involving the applicants' disciplinary measures at its General Meeting held on 15th and 16th December 2022 or at any other date pending hearing and determination of the applicants' application that was pending before this court as Labour Application No. 17 of 2022. It was his further submission that, in compliance with Rule 9 of the Labour Court Rules, the typed order was served to the Respondent's registered office, to its General Secretary,

and to its principal officer one Maganga Moses Japhet was served in person on 14th December 2022.

Contemptuously, the applicant's disciplinary matter was tabled and deliberated at the General Meeting of the Respondent held on 15th and 16th December 2022 and after deliberation, the Meeting resolved to terminate their membership from the association and the decision was later on communicated to the applicants vide letters signed by the respondent's General Secretary Maganga Moses Japhet. Mr. Mtobesya argued that by disobeying the court's order Maganga Moses Japhet, being the principal officer of the respondent, committed a civil contempt hence punishable. He submitted that the essential ingredients of civil contempt are: the presence of lawful order which was clear and certain, not ambiguous; disobedient of the same by the respondent; and willful and intentional disobedience. All these are present. First, the order disobeyed was of this court which is a competent court. Hence a lawful order of this court. Second, the order was clear, certain and not ambiguous as it categorically restrained the applicant, its employees, servants, agents, assignees and whoever appointed or instructed by the respondent to table the agenda at the respondent's general meeting. Third, there was a patent disobedience as contrary to the order, the respondent tabled and deliberated the agenda. Lastly, the disobedience was willful and intentional as the respondent union was served with the order at its registered office and the then General Secretary Maganga Moses Japhet was also served on the morning of 14th December 2022. Hence they were all fully aware of the order.

For the foregoing reason, Mr. Mtobesya prayed that this court should grant the orders sought and in fortification, he made reference to the cases of **Ruwaichi John Kereth vs. M'ringa Estates Ltd**, Misc. Civil Application No. 66 of 2022 [2022] TZHC Land D 867 TanzLII. He amplified that, Maganga Moses Japhet should be committed to prison for six months for his contempt against the court's order. Also, the decision and resolution reached in the said meeting by which the applicants were removed from their positions and their membership in the union was terminated, be nullified for being conducted in contempt of the order of this court. This prayer was made under the prayer for "any reliefs against the respondents". The decision of the Court of Appeal in the case of **Antony Ngoo and Another vs. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 [2015] TZCA 269 TanzLII also reported in [2015] TLR 54 was cited in fortification of the submission that, the nullification of the court's order can be made under the prayer for "any other reliefs the court may deem fit and just to grant".

In reply, Mr. Mnyele opened his submission with a conceptual foundation and principles governing contempt of court. He submitted that contempt proceedings are within the court's inherent powers to vindicate the rule of law by condemning litigants who disobey its orders. It reinforces the court's authority and ensures that its orders are obeyed (see **Tanzania Bundu Safaris Ltd vs. Director of Wildlife and Another** [1996] TLR 246). The jurisdiction to punish for contempt, he argued, should however be sparingly invoked only when it is absolutely necessary for the interest of justice and

upholding the rule of law as held in **Felix Masha and Two Others vs. the Capital Markets and Securities and Another**, Miscellaneous Civil Cause No. 16 of 2011(Unreported). Still on the concept, he submitted that there is a distinction between criminal and civil contempt, the documents initiating them, the laws governing them and the standard of proof required to establish them. In criminal contempt, the standard of proof is beyond reasonable doubt whereas in civil contempt, the proof is on the balance of probabilities but tends to be as high as the standards in criminal cases. For civil contempt of court to be proved, he argued, it must first be proved that the order alleged to have been disobeyed is clear and unambiguous, the respondent had full knowledge of its contents and that the order was actually disobeyed (see **Exim Bank Limited vs. Rafiki Halai**, Miscellaneous Commercial Application No. 105 of 2021 [2021] TZHCComD 3367 TanzLII and **Silent in Hotels Limited vs. Interstate Office Services Ltd** Civil Case no. 464 of 1999 [2008] TZHC 65 TanzLII). If in the end the civil contempt has been proved the court has the option to provide for payment of a fine, failure of which the contemnor may be committed to prison.

Responding to the prerequisite conditions, Mr. Mnyele sternly disputed the fact that the respondent was served on 14th December 2022. He submitted that while it is true that they were served with the order, the same was not served upon the respondent on 14th December 2022 as averred. Rather, it was served upon the then acting Secretary-General on 15th December 2022 as per the endorsement of service appearing on the order. On the liability of

Maganga Moses Japhet, it was submitted and argued that, for the following reasons, he is not liable for contempt.

One he was not a party to the proceedings and was not served with the order in his personal capacity; **Two**, the disobeyed order did not refer or require him to stop the agenda of the meeting. The order was vague and confusing as it was directed to the respondent, its employee, servant, agents and assignees. By its multilayered organogram, CWT is a large organization with many employees and servants at the national level, regional and district levels. Thus, it was incumbent for the order to be specific on who was to comply with it. **Three**, service was not properly done considering that CWT is a corporate body. Hence, ought to have been served under Order XXVIII rule 2(a) of the Civil Procedure Code, Cap 33 R.E 2019 but this was not done. **Four**, there is no evidence that Maganga Moses Japhet as Secretary General disobeyed the court order as in accordance with clause 2.1.3(a) and (c) of the respondent's constitution, his role was to call upon the meeting and to perform other duties in the capacity of secretary in all national meetings. The blame if any ought to go to the president who is the chairperson of the meetings of the union at the national level as per clause 2.1.1. (b) of the respondent constitution. In the alternative, Mr. Mnyelle submitted that if at all there was contempt, the applicants ought to have cited all members of the General Meeting and not to single out the Acting Secretary General. Citing the Secretary-General singly is tantamount to rendering him a sacrificial lamb. Referring to the case of **Exim Bank of Tanzania Limited**

(supra) he reiterated that the standard of proof required in civil contempt is more or less similar to the proof required in criminal cases.

On the prayer for nullification of the decision made at the contemptuous meeting, it was argued that the same can neither be entertained nor granted in this application for want of nexus between it and the reliefs prayed in the chamber summons. He argued that the prayer is quite different and has been tactically made to restore through a back door, the applicants' Labour Application No. 17 of 2022 which was struck out by this court for want of exhaustion of internal remedies. In that application, the applicants were challenging their dismissal and had prayed for reinstatement. He concluded that this court having struck out the said application is *functus officio* and cannot entertain the prayer. In the circumstance, he prayed to the court to reject the prayer for reinstatement.

In rejoinder, Mr. Mtobesya submitted that the respondents were properly served with the disobeyed order pursuant to rule 7 of the Labour Court Rules which directs that service be done at the registered office. Service was done on 14th December 2022 as shown in the process servers' affidavit appended to the application and as shown in the said affidavit, Maganga Moses Japhet was served in person. Service was effected on the morning of 14th December 2022, well before the commencement of the General Meeting on 15th December 2022. Thus, the respondents cannot escape liability for its contemptuous conduct and so is Maganga Moses Japhet. As for the prayer,

Mr. Mtobesya argued that it has been appropriately made as the respondent cannot be allowed to benefit from her own wrong.

I have dispassionately considered the submission in support and opposition to the application. I thank and commend all the learned counsels for their enlightening submissions. This being an application for contempt, the main issue for determination is whether the respondent acted in contempt of the court order as alleged and if so, what are the remedies.

Before I delve into these issues, I find it appropriate to start with the conceptual foundations. When determining the preliminary objection raised by the respondent in the instant application, I referred to **Black's Law Dictionary**, 8th Edition, page 336 which defines the concept of contempt of court. While mindful of the danger of being repetitive, it is apposite, I think, to refer to that definition once more time. On that page, the term contempt of court is defined to mean;

“.....a disregard of, or disobedience to, the rules or orders of the legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body”

Further definitions and elucidations on contempt proceedings, their nature, scope and rationale are obtainable from case law, and in particular, the decision of the Court of Appeal in **Yusuph Shaban Luhumba vs Hapyness John & Others** (Civil Application 304 of 2022) [2022] TZCA 396; the decision of this court in **Silent in Hotels Ltd vs Interstate office**

Service Ltd (Civil Case 464 of 1999) [2008] TZHC 65; **Mary Joseph v. Rachel Zephania**, Miscellaneous Land Application No. 37 of 2020, (High Court, Mwanza, unreported); **Ruwaich John Kereth vs M'ringa Estate Limited and 12 Others** (Misc. Civil Application 66 of 2022) [2022] TZHC 13259 and **Nkumbi Malashi Holela vs Musa Christopher Ginawele @ Musa Balali & 6 Others** (Misc. Land Application No. 7 of 2023) [2023]. Also, see the decision of the Supreme Court of Uganda in **Betty Kizito v Dickson Nsubuga and 6 Others** (Civil Application No 25 of 2021) 2022 UGSC 19 (6 June 2022).

From these authorities, it is garnered that, **one**, contempt proceedings are an essential component of a functioning and orderly justice system. They empower courts to address threats to the orderly conduct and integrity of judicial proceedings by disbanding all forms of disrespectful or disruptive behavior and disobedience to court orders. Hence, inherent in all courts. When a court is invoking these inherent powers, it does not seek to vindicate its own dignity or the self-esteem of judges but to safeguard the integrity of legal proceedings for the benefit of those seeking recourse before the courts. **Two**, as correctly submitted by Mr. Mnyelle, contempt of court can be classified as criminal or civil. Criminal contempt, also known as direct contempt, is committed in the immediate view and presence of the court whereas civil contempt, also known in other jurisdictions as indirect contempt or constructive contempt, does not occur in the immediate presence of the court. It most often involves disobedience of court orders by parties or nonparties to the matter. Underscoring this distinction in the case

of **Yusuph Shaban Luhumba vs Hapyness John & Others (supra)**, the Court of Appeal instructively held that;

At the outset, we subscribe to the trial Judge that, courts of law have inherent powers to ensure obedience of their lawful orders. In exercise of such powers therefore, courts of law are mandated, where necessary, to impose penal sanctions to compel obedience of its orders, including, as rightly observed by the trial Judge, court summons. The rationale behind the law is not only to protect the orderly administration of justice from being abused but to maintain public trust of the supremacy of the rule of law as well.

The Court stated further thus:

As we understand the law, the trial court can, in civil proceedings, commit a non-party to criminal prison for contempt of court in two situations. **One**, when the contempt is committed in the face of the court. As we said above, in such a situation, the court has power to deal with the issue summarily. However, in doing so, the trial Judge is obliged, as a way of affording the accused a right to be heard, to frame the charge, read it over to the accused and give him an opportunity to show cause why he should not be committed as such. (See for instance, **Masumbuko Rashidi v. R** [1986] TLR, 212). **Two**, is where a person not a party to the suit, disobeys a lawful order of the Court. In such a situation, the person in default has to be formally charged under section 124 of the Penal Code [Cap. 16 R.E. 2019]. Thus, in **Habibu Juma & 3 Others v. R**, Criminal Appeal No. 314 of 2016 (unreported), the Court observed as follows;

“We are of the firm view just like the learned State Attorney that, where there is an order given by a court which has been disobeyed by a person who is

not a party to a suit, the proper provision of the law to be applied is section 124 of the Penal in Criminal case as found in this case in the District Court, Hanang, where section 124 of the Penal Code was invoked."

It is also true as argued by Mr. Mtobesya that, as **held in Ruwaich John Kereth vs M'ringa estate Limited and 12 Others** (supra) for civil contempt to be proved as against the respondent, it has to be established that the alleged order indeed existed; it was clear, certain and not ambiguous; the respondent went against it or disobeyed it; and that, the disobedience was willful and intentional. I will now look into these four essential points starting with the first one. From the submissions by counsel from both parties, there is no dispute that this court on 13th December 2022 granted an ex parte interim injunctive order against the respondent court in Misc. Labour Application No. 17 of 2022. The substance of the order is reproduced below for convenience and ease of reference:

" Consequently I allow the application and grant interim injunction order and order that status quo on the positions of the applicants be maintained pending the result of interparties hearing of this application this court makes an order that restrains the respondent its employees, servants, agents and all assigned and the whomsoever is appointed or instructed by the respondent in any manner from proposing and discussing an agenda involving applicants discretionary measures in its intended general meeting scheduled for 15th and 16th December 2022 or any other date that the intended meeting shall hold, pending hearing and

determination of the main application that is pending before this court.”

In his reply submission, Mr. Mnyeale has purported that the order above was unclear, uncertain and ambiguous as to whom it was directed considering that CWT is a large and multilayered institution with many actors. In my firm view, this argument is not only far-fetched but lucidly misdirected. The order above is precise and clear on the substance of the injunction and the restrained persons. For Mr. Mnyeale’s submission to attract any weight in the respondent’s favour, he ought to have at least demonstrated that, there were two or more National General Meetings of the respondent on the said date and that, both or all of such meetings had concurrent jurisdictions to deliberate and pass resolutions on the applicant’s disciplinary measures. As no such demonstration was rendered, this court entertains no doubt as to the clarity and preciseness of its order. It would appear that the learned counsel did not comprehensively read the order because if he did, he would have come across the bolded words on the 6th page of the order which shows that the applicants had been summoned to appear before the National General Meeting of the CWT and their prayer for an order was in respect of this meeting and not a regional or district general meeting. The restrained persons are also explicitly stated. As it appears from the above order, the restraint extended to the respondent, her employees, servants, agents, assignee and any other person appointed or instructed by the respondent. Thus, there is no ambiguity whatsoever as to the persons restrained.

The third element will not detain me as the parties are both in common that the restrained agenda was tabled and deliberated at the General Meeting and in consequence, the applicants were stripped of their membership.

The last element is engaging as the parties are at loggerheads on whether the disobedience was willful and intentional. The applicants, through their counsels, have passionately submitted that the respondent and the said Maganga Moses Japhet had full knowledge of the existence of the restraint order as it was duly served to them on 14th December 2022. On her part, the respondent has maintained that service was not done on 14th December 2024 as alleged but on 15th December 2022. The applicants have, in fortification, appended a copy of a dispatch book showing that the order was served upon the respondent on 14/12/2022 at 8:54 and was received by a person identified by the name of Paschal. The respondent has, on the other hand, appended to her counter affidavit, an affidavit deposed by Paschal Hokaray John who is identified as a registry officer at the respondent's office. He deposed that starting from 10th to 16th December 2022 the union leaders were absent from office as they had traveled. Thus, he kept all the letters received on those dates at the registry pending the return of the office bearers who were.

While keenly examining both documents to ascertain what happened, I have observed that, of these two, the applicants' averment is more credible compared to the respondent's. The dispatch had better and specific particulars on the substance of the served document and the date and time

on which it was served to the respondent's registry. Inversely, the affidavit by Paschal Hokarary John is elusive and, at best, a demonstration of apathy and negligence on the said employee because a responsible employee having received a restraint order would not shelve it and wait for the return of the office bearers. Besides, unlike the dispatch which specifically states the date and time of service, the affidavit by Paschal bears no indication of the specific date on which the order was received. Impliedly, the said Paschal does not even recall when the restraint order was served on him. In the foregoing, the disposition in clause 13 of the counter affidavit is devoid of weight as it is just a condonation of laxity and apathy of the registry officer or a mere afterthought specifically tailored to save the otherwise capsizing or sinking boat.

The belated attempt by Mr. Mnyelle to discredit the mode of service is similarly unworthy as it sharply contrasts with the law on service in labour matters and, in particular, Rule 9 of the Labour Court Rules, 2007 which provides for service of documents to trade unions. It is similarly inconsistent with clause 13 of the counter affidavit in which the service has been duly acknowledged. In the foregoing, I find it to have been credibly established that the order was served upon the respondent and the disobedience was, therefore, willful and intentional. Civil contempt against the competent and lawful restraint order issued by this court on 13/12/2022 has been ably established. The first issue is thus, answered positively.

As for remedies which is the only remaining issue, the applicants have fronted the following three prayers: One, that the court be pleased to commit to prison the respondent's principal officer, Maganga Moses Japhet for six months. Two, costs of the applications be borne by the respondent, and three, any other orders as the court may deem fit and proper to grant. Undeniably, contempt of court needs to be sternly punished as stated by this court in the case of **Tanzania Bundu Safaris Ltd vs. Director of Wildlife & Another** [1996] TLR 246 HC (Mapigano, J as he then was) where it was held that;

"Disregard of orders of the court is certainly a matter of gravity, whatever the order and irrespective of whether it has been irregularly or erroneously made.

The punitive jurisdiction of the court to punish for breach is based upon the fundamental principle that it is for the good of the public and the parties that such orders should not be despised or slighted.....

The prime object of contempt proceedings is to vindicate the rule of law, rather than to punish an individual." [the emphasis is mine].

As the first prayer which I prefer to start with is penal in nature, I will once again stand guided by the decision of the Court of Appeal in **Yusuph Shaban Luhumba vs Hapyness John & Others** (supra), where it instructively remarked that:

"As the order contained in the said provision is penal in nature, the above procedure, we subscribe to Mr. Ngwilimi, must be followed religiously and that, imprisonment should come as a last resort. We are inspired on this by the following commentary of the

learned jurist Mulla in his Mulla, the Code of Civil Procedure, 18TM Edition (Vol2) at page 2179:

"As O 16, r. 10 is penal in nature, action thereunder cannot be taken without the strict compliance with the requirements."

In the same respect, we are also persuaded by the following pronouncement of the High Court of Tanzania (Tiganga, J) in **Mary Joseph v. Rachel Zephania**, Miscellaneous Land Application No. 37 of 2020, (High Court, Mwanza, unreported):

*"The punitive jurisdiction of the court to punish for contempt is based upon the fundamental principle that it is for the good of the public and the parties that, such orders should not be despised or slighted. **Civil contempt does not require immediate imprisonment, for it is also punishable by the imposition of a fine. The custodial penalty, comes in when the person found to have failed to show cause has failed to pay fine**".*

On the strength of this authority which is binding in this court, it is deciphered that, much as committing the contemnor to prison is amongst the available sanctions, it should be invoked as a last resort after the other available sanctions have proved futile. This court is therefore bound to start with such other sanctions before committing the contemnor in prison.

Also, as the imprisonment sought is of Maganga Moses Japhet who was indisputably not a party to Labour Application No. 17 of 2022 from which the disobeyed order originates, I have asked myself whether this court can competently order his imprisonment or impose any other remedy on him. In my considered opinion, this question attracts a positive answer because, as

shown above, the order specifically restrained the respondent, its employees, servants, agents, assigned, and other persons acting under the respondent's instruction. A person working as the respondent's Secretary General, a principal officer of any rank, an employee, agent or assignee cannot escape liability as the order disobeyed was in the form of "an order in rem" pronounced in the preservation of the status of the subject matter by barring all the persons above named from tabling and deliberating it at the respondent's General Meeting (see **Nkumbi Malashi Holela vs Musa Christopher Ginawele @ Musa Balali & 6 Others** (supra)). In the case of

Yusuph Shaban Luhumba vs Hapyness John & Others (supra) the Court of Appeal held that a third party to a suit who disobeys a lawful order of the court risks penal sanctions which can only be imposed after affording him the right to be heard. Thus, it was incumbent that the said Maganga Moses Japhet be afforded the right to be heard before the penal measure is imposed. In other words, since the applicants had intended to have Maganga Moses Japhet committed in prison, they were duty-bound to implead him personally. The omission to implead him was a fatal irregularity as it denied him the right to be heard.

Needless to emphasize, it is a cardinal law in our jurisdiction that no person should be condemned unheard. Therefore, since the said Maganga Moses Japhet was not impleaded, imposition of a sanction against him would amount to an abrogation of this fundamental and constitutional right and would certainly render the sanction so imposed a nullity irrespective of its

correctness (see **Mbeya-Rukwa Autoparts and Transport Limited vs. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2001 TZCA 14 (TANZLII), **Abbas Sherally & Another vs. Abdul S.H.M Fazalboy**, Civil Application No. 33 of 2002 CAT (unreported) and **Salhina Mfaume and Seven Others vs. Tanzania Breweries Co. Ltd**, Civil Appeal No. 11 of 2017 [2021]TZCA 209, TanzLII. In **Abbas Sherally & Another vs. Abdul S.H.M Fazalboy**, the Court of Appeal held that:-

The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by the Court in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice.

Accordingly, I refrain from committing the said Maganga Moses Japhet to prison or imposing other sanctions on him as such would entail a blatant abrogation of the cardinal principle above.

As I wind up on this point and without prejudice to the above finding, I may also add here that the Court of Appeal in **Yusuph Shaban Luhumba vs Hapyness John & Others** (supra) has stated what should be done where penal measures are contemplated against a third party to suit disobeys a court order. It stated that:

“.... where a person not a party to the suit, disobeys a lawful order of the Court. In such a situation, the person in default has to be formally charged under section 124 of the Penal Code [Cap. 16 R.E. 2019]. Thus, in **Habibu Juma & 3 Others v. R**,

Criminal Appeal No. 314 of 2016 (unreported), the Court observed as follows;

'We are of the firm view just like the learned State Attorney that, where there is an order given by a court which has been disobeyed by a person who is not a party to a suit, the proper provision of the law to be applied is section 124 of the Penal Code in Criminal case as found in this case in the District Court, Hanang, where section 124 of the Penal Code was invoked'

On the third prayer in the chamber summon; the applicants have prayed that the court grant other remedies it deems fit, proper, and just in the circumstances. Mr. Mtobesya has submitted that this prayer be broadly interpreted and applied to the extent of nullifying the resolutions made at the contemptuous meeting and reinstating the applicants to their positions, a prayer which has been utterly opposed by Mr. Mnyele who considers it to be a new invention not envisaged in the prayer. I have thoroughly read the decision of the Court of Appeal in **Anthony Ngoo & Another vs Kitinda Kimaro** (Civil Appeal 25 of 2014) [2015] TZCA 269 and I entirely subscribe to its broad interpretation of the reliefs that a court can issue under the prayer for "any other reliefs as the Honourable Court may deem fit and just to grant." In my considered view the nullification of the resolution and decisions made in contempt of the court order and restoration of the applicants to their positions although not specifically prayed for in the chamber summons, they are not farfetched and could be deemed to naturally flow from the pleadings. However, considering the peculiar circumstances of the present application, I am hesitant to grant this prayer

because such a pronouncement would render the temporary injunctive order (the disobeyed order) a permanent injunction. Both parties are aware that, the disobeyed injunctive order was temporarily granted pending the determination of Labour Application No. 17 of 2022 which having been resolved, is no longer in the registry of this court. Quashing the resolution and reinstating the applicants to their positions would, therefore, permanently bar the respondent from deliberating or taking disciplinary measures against the applicants which was neither the intent nor the import of the disobeyed order. In the circumstances, I am fortified that it would be neither prudent nor fair for this court to grant the prayer.

In the alternative, I have found it fair and just under the circumstances to impose a fine on the respondent as she cannot go unpunished for her contemptuous acts. A fine of Tshs 500,000/= is consequently imposed on the respondent and it is ordered that the same be paid within one month.

As the application has its genesis in a labour matter, there will be no costs.

DATED at **DODOMA** this 21st day of June 2024.



J. L. MASABO
JUDGE