

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 622 OF 2019

BETWEEN

TANZANIA UNION OF INDUSTRIAL AND

COMMERCIAL WORKERS (TUICO).....APPLICANT

AND

DAR ES SALAAM WATER AND

SEWARAGE AUTHORITY (DAWASA).....RESPONDENT

RULING

Date of Last Order: 12/10/2020

Date of Ruling: 23/10/2020

A. E. MWIPOPO, J

This application for temporary injunction is preferred under section 94 (1) (f) of the Employment and Labour Relations Act, 2004, Rule 24 (1), (2) (a) (b) (c) (d) (f), (3) (a) (b) (c) (d), (9), and (11) of the Labour Court Rules, G.N. No. 106 of 2007. The applicants namely Tanzania Union of

Industrial and Commercial Workers (TUICO) applies to the Court for the Orders in the following terms:

1. That, this honourable Court be pleased to issue a temporary injunction order restraining the Respondent's action to deduct the trade union dues from TUICO members and remit it to other trade union without the permission of the Applicant's members until the main application is determined.
2. That, this honourable Court order the Respondent to allow the applicant to assess afresh its members as there is contradiction as to which trade union has got the majority members.
3. That, this honourable Court be pleased to determine matter in the manner it considers appropriate and give any other relief it considers just to grant.

This application is accompanied by Chamber Summons which is supported by the Affidavit of Elibahati Akyoo, Advocate of the Applicant duly Authorized. Statement of legal issues that arises from material facts are stated in paragraph 4 of the affidavit. The legal issues are as follows:-

- i. That, the act of the Respondent deducting the agency fees dues without the consent of Applicant's members without their authorization to do so by filling the prescribed form authorizing the deductions is illegal.
- ii. That, TUICO being the registered trade union has the rights to defend its members according to its constitution.
- iii. That, this affidavit is sworn in support of the prayers sought in the Chamber Summons and Notice of Application and in the best interest of justice the Applicant's application be granted.

The Applicant is prying for the following relief as contained in paragraph 5 of the affidavit:-

- a. The Applicant's members' deduction are being deducted and remitted to the wrong union styled by acronym FIBUCA and this trade union FIBUCA won't be able to repay back to the Applicant.
- b. That, the Respondent has no mandate to deduct those deduction from our members without their consent, henceforth his actions are unlawful.
- c. That, grant of temporally injunction by this Court and subsequent orders there on are of paramount importance.

The background of the this application is that the Applicant is a registered trade union which represents the workers employed in several sectors including employees working for the Respondent namely Dar Es Salaam Water and Sewerage Authority (DAWASA). The Applicant's members are deducted union dues and being remitted to trade union known as FIBUCA without consent of these employees. That TUICO General Secretary did write a letter to the Respondent with Ref. No. TUC/MH/1/143 dated 28th June, 2019, asking the Respondent to stop deducting agency fees to its members working with the Respondent without their consent but the Respondent did not act on the request. Then the Applicant instituted the present application for interim order.

Both parties to this application were represented, Mr. Elibahati Akyoo, Advocate, represented the Applicant, whereas Mr. Florence Saivoy Yamat, Advocate, represented the Respondent. The Court ordered the hearing of the application to proceed by way of written submissions.

The Applicant counsel submitted in support of the application that the nature of the complaint is the unlawfully deduction of trade union dues by the Respondent to the Applicant's members the act which is causing a serious chaos to the members. The Applicant and the Respondent had

conservation concerning the act of the Respondent herein above deducting the trade union dues from the members of the Applicant but all ended in vain. On 28th of June, 2019, the office of TUICO General Secretary (Applicant) addressed the letter to the Respondent headed "*YAH. KUITAKA OFISI YAKO KUSITISHA KUKATA MAKATO YA AGENCY FEE KWA WANACHAMA WA TUICO TAWI LA DAWASA*" but up to now the respondent is deducting agency fee from Applicant's members unlawfully. It should be remembered that, the applicant's members cannot be deducted their dues twice in two trade unions, but surprisingly their dues are deducted by 3% instead of 2% as provided by the applicant's constitution. The act of the respondent deducting the agency fee dues without the consent of Applicant's members is illegal subject to Section 61(1) of the Employment and Labour Relations Act, Act No. 6 of 2004.

The Applicant Counsel argued that according to Section 67(1) of the Employment and Labour Relations Act, 2004, a registered trade union that represents the majority of the employees is an appropriate bargaining unit and shall be entitled to be recognized as the exclusive bargaining agent of the employees in that unit. The Applicant herein is the one authorized as an appropriate bargaining unit and entitled to be recognized as the

exclusive bargaining agent of the employees in the employer's premises. The Respondent is deducting the union dues illegally. Under section 71(1) of the Employment and Labour Relations Act, the employer may deduct any dues from any employee if there is an agreement collectively concluded.

In this scenario, the Respondent have no agreement with Applicant's members to deduct from their salaries agency fee. Deducting the agency fee without agency shop agreements is illegal subject to Section 72(1) and (2) of the Employment and Labour Relations Act. The Respondent herein above have no any legal stand to make such deductions from Applicant's members, because he have no any agency shop agreement with the members to do so. What the Respondent is trying to do is to compel Applicant's members to be members of other trade union without their consent. The Applicant prays for the Order to be issued to the respondent to stop immediately to unlawfully deducting the agency fee from Applicant's members. And all of the agency fee deducted unlawfully from Applicant's members from day one to the date of Judgment be returned or refunded back to them.

In reply, the Respondent asserted that they are not objecting the Court to grant the temporary injunction Order as prayed by the Applicant in the Chamber Summons pending the determination of Complaint No. 9 of 2019. The Respondent Counsel stated that he is not opposing the grant of temporary injunction to the applicant, but still he is of a strong contention that other reliefs should not be granted because their grant shall mean determining the fundamental root of the matter or the main case and pre emptying the whole process of hearing the matter on merits. The only thing this Court can grant at this stage is temporary injunction pending the determination of the Complaint No. 9 of 2019 on which the applicant is not objecting.

From the submissions it is clear that the Respondent is not objecting to the granting of temporary injunction order prayed by the Applicant. The reason for objecting to the other relief sought is that their grant shall mean that the Court has determined the fundamental root of the matter or the main case which is Complaint No. 9 of 2019 and pre emptying the whole process of hearing the matter on merits. The Applicant had sought three relief to this Court as they are found in the Notice of Application and Chamber Summons. The first relief is that the Court be pleased to issue a

temporary injunction order restraining the Respondent's action to deduct the trade union dues from TUICO members and remit it to other trade union without the permission of the Applicant's members until the main application is determined. The second one is that this Court order the Respondent to allow the applicant to assess afresh its members as there is contradiction as to which trade union has got the majority members. The last one is the Court be pleased to determine matter in the manner it considers appropriate and give any other relief it considers just to grant. The Applicant in the submission prayed to be recognized as exclusive bargaining agent of the employees in the unit.

I'm of the opinion that in order for the Court to grant the prayer for temporary injunction as prayed by the Applicant, the Applicant is supposed to prove that there is a serious question to be tried by the Court, the temporary injunction order is necessary to prevent some irreparable injury to the applicant and that the applicant will suffer great hardship if the injunction is withheld. This was the position of the law as it was held in the case of **Atilio Vs. Mbowe**, 1969 EA 284. The main purpose of the temporary injunction is to prevent an injury to the party.

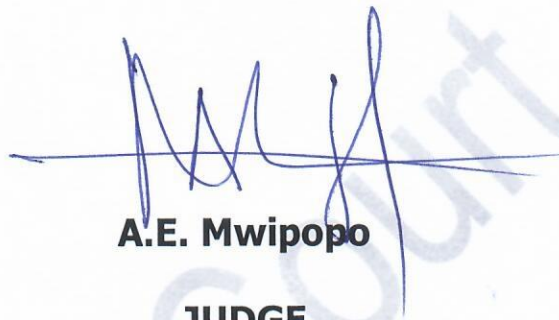
In **CPC International Inc. vs Zainab Grain Millers Ltd**, Civil Appeal No. 49 of 1995, Court of Appeal of Tanzania, (unreported), it was held that:-

“(It) is elementary that the purpose of an interlocutory injunction is to maintain the status quo until the main suit is finally determined.”

In the present application, the evidence available shows that there is a Complaint No. 9 of 2019, pending before this Court. The Applicant’s members for the time being their salary are deducted agency fees without their consent. And the Respondent is not objecting the prayers for injunction pending determination of Complaint no 9 of 2019. I’m of the same opinion that other relief sought may be determined in the Complain No. 9 of 2019. The reliefs which may be granted without affecting the outcome of the Complaint No. 9 of 2019 is the order for temporary injunction and the rights of trade union including the Applicant to operate in Respondent workplace.

Therefore, I hereby grant the prayer for injunction pending determination of the Complaint No. 9 of 2019. The Respondent is restrained from deducting the agency fees from TUICO members and remit it to other trade union without the permission of the Applicant’s members

until the main application (Complaint No. 9 of 2019) is determined. Also the Respondent is ordered to allow the Applicant and other trade union to conduct their activities at the Respondent's workplace according to the law pending the determination of the Complaint No. 9 of 2019. Each party to cover its cost of the suit.

A handwritten signature in blue ink, appearing to be 'A.E. Mwipopo', written over a horizontal line.

A.E. Mwipopo

JUDGE

23/10/2020