

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

LABOUR APPLICATION NO. 13 OF 2022.

BETWEEN

**THE REGISTRAR OF ORGANIZATION1ST APPLICANT
HON. ATTORNEY GENERAL.....2ND APPLICANT**

VERSUS

**CHAMA CHA KUTETEA HAKI NA MASLAHI
YA WALIMU TANZANIA (CHAKAMWATA)RESPONDENT**

RULING

Date of last Order: 28.09.2022

Date of Ruling: 11.11.2022

Ebrahim, J.

In this application, the 1st Applicant is the Registrar of Organisations in the Ministry of Labour and Employment whose main objective is to register and supervise organisations' functions and activities. The 2nd Applicant is the Honourable Attorney General who has been included in the application as a necessary party as per the requirement of the law where the Government is a party to a suit. The Respondent, CHAMA CHA KUTETEA HAKI NA MASLAHI YA WALIMU TANZANIA (CHAKAMWATA) is a Trade Union duly registered on 18th day of March, 2015 whose function is to promote and protect teachers' rights, freedom of association, organisation rights and collective bargaining.

The application has been filed by way of chamber summons under **sections 55(1)(a)(b), 55(2)(a), 55(3)(a)(b) of the Employment and Labour Relation Act, Cap. 366 R.E 2019 (the ELRA); Rule 24(2) of the Labour Court Rules, 2007 G.N. No. 106 of 2007**, and **Section 95 of The Civil Procedure Code, Cap. 33 R.E 2019**. The applicants are praying for this court to issue an order for cancellation of the Respondent from the register of the Registrar of Organizations. They are also praying for grant of any other order which this court may deem fit and proper. The application is supported by an affidavit of one Pendo Berege, the Registrar of Organisations.

In the affidavit, Pendo Berege deponed that her office is vested with powers to register and supervise the functions of the Organizations. That the Organisation is required before registration to submit its Constitution which is a working tool to the Organization and her office. She averred that having been registered the Respondent is bound to conduct its activities according to labour laws, its constitution and the regulations. She also deponed that according to the Respondent's constitution it was supposed to form a Board of Trustees and run one bank account. To the contrary it did not form any and has been running more than 33 bank accounts which is against financial regulations. She

averred further that the Chief Auditor General report revealed that the Respondent has embezzled Tshs 421,491,532 of members' contributions and that she has been running her activities contrary to generally accepted accounting practices, principles and procedures. She averred also that the Respondent failed to prepare and submit financial statements and auditors report; and that she has been violating laws of the land and the Organization constitution. Ms. Berege's affidavit stated also that the Respondent did not abide to the law even after being tirelessly reminded by the 1st Applicant and that upon being served with the notice of cancellation the Respondent replied with unsatisfactory answers which raised the instant application.

The Respondent's replying affidavit sworn by one Meshack Lupakisyo Kapange denied the allegation of embezzlement on the ground that the alleged CAG report is unknown to her. That the law requires the preparation of financial statement which she was fulfilling by using a qualified independent auditor. The Respondent also deponed that on the claim of non-compliance to the organization constitution, she had already written a letter to the 1st Applicant notifying her of her intention of amending the constitution to omit the requirement of having the Board of Trustees. She then deponed that the 1st Applicant has been

uncooperative when it comes to the conversations which are supposed to be replied by the Applicant. The Respondent admitted in her affidavit to have more than one bank account as there is no law which has been contravened and that the accounts were opened to suit the arrangement of the organization which are operating at national, zonal, regional and district levels.

When the application was called for hearing the Applicants were represented by Mr. Francis Rogers, learned Senior State Attorney whereas the Respondent was advocated by Mr. Luca Ngogo, learned advocate. Both parties prayed for the matter to be argued by way of written submissions. The Court granted the prayer wherefore parties duly filed their respective submissions according to the set schedule.

Mr. Rogers filed a joint written submissions for the Applicants. He prayed to adopt the contents of the affidavit deposed in support of the application. Mr. Rogers amplified that the application has been filed to cancel the Respondent from the register of the 1st Applicant for failure to adhere to the requirement for registration contrary to section 55(1) (a) of the ELRA. Referring to the affidavit, he argued that the Respondent has violated labour law, her constitution and regulations. He specifically said that the Respondent has violated mandatory financial obligation

procedures provided under section 51(1) and (2) of the Employment and Labour Relations Act, Cap 366, RE 2019 (ELRA).

Mr. Rogers argued that the Respondent has failed to observe to the standard of general accepted accounting practice, principles and procedures to prepare and submit financial statement and auditors report according to the law. That the 1st Applicant took measures after observing the irregularities committed by the Respondent where the CAG conducted a special audit and found that the Respondent has embezzled the union funds. He submitted further that the report showed that the Respondent had no explanation about the cash money in the hands of the union and those at the bank account contravening the provisions of **section 51(1)(b) of the ELRA** and the union constitution and regulations which require the Respondent to keep books and records of the income, expenditure, assets and liabilities.

Mr. Rogers contended further that the CAG special report revealed that the Respondent has been running 33 bank accounts and the main union account has been closed due to the disputes existed among the union leaders which is contrary to **Article 33(1) and (5) and Regulation 28 of the Union Constitution and Regulations.** Mr. Rogers gave more statement on the special audit report where he submitted that the

report reveals the embezzlement of Tshs. 421,491,532 and it reveals that there was no current status of the money in 33 bank accounts. He stated that the special audit report was conducted so as to protect members' contributions from being embezzled, hence the instant application.

Mr. Rogers similarly submitted that the Respondent has **offended her Constitution Art. 26(1) and 29(1) (3) and (4)** of their Constitution by not registering a Board of Trustees to manage all the assets of the union as well as the advisory body of the Respondent. He claimed that it is about seven years the Respondent has not fulfilled her obligation, and that she has been veiling to the reason that she wrote a letter to RITA. However, no discernible measures have been taken by the Respondent to amend the constitution to omit the requirement of the Board of Trustees. In his view, the Union leaders are untrustworthy in administration of the members' (teachers) contributions. Thus, Mr. Rogers pressed this court to grant the application to cancel the Respondent from the Register as per **section 55(2)(a) and 56(3) of ELRA.**

In reply, Mr. Ngogo for the Respondent prayed to adopt the counter affidavit of one Meshack Lupakisyo Kapange. He started challenging the

provisions of **section 55(1)(a) and (b) of ELRA** which the applicant's counsel referred to in his submissions on the ground that the same permits the institution of the application of this nature when an organisation fails to comply with registration requirements or contravenes the provisions of **Part IV of the ELRA**.

Mr. Ngogo suggested four issues which this court may dwell in to decide the instant matter. They are as follows:

1. Whether the Respondent failed to comply with the Registration requirements; or
2. Whether the Respondent has failed to comply with the provision of Part IV of ELRA;
3. Whether the respondent failed to comply with her constitution; and
4. What are the remedies available if the above preceding issues have been answered negatively.

Amplifying the first issue Mr. Ngogo argued that the Applicants' counsel did not refer to section 46 of the ELRA which provides for the registration requirements. To him the applicant neither deponed nor submitted any registration requirement which the Respondent did to the contrary. That the Applicant's claim for failure to register the Board of

Trustees is not the requirement of registration. He argued that the respondent had acquired fully body corporate powers under **section 49 of the ELRA** that makes the requirement of the board of trustee redundant.

Mr. Ngogo alternatively argued that even when she tried to register the board of trustees to the Authority responsible for registration i.e., Insolvency and Trusteeship Agency (RITA) they replied to her that it is not a legal requirement. He also pressed some blameworthy to the 1st Applicant for deliberately stalling the process through the letter which purported to cancel the Respondent from the register and suspended all meetings which she planned to conduct. That even the process of amending her constitution was halted by the 1st Applicant. Hence, she did not contravene any registration requirement.

On the 2nd issue Mr. Ngogo argued that the Applicants have not established how the Respondent failed to comply to **sections 55(1)(a) and (b) and 53 of the ELRA**. He contended that the Respondent neither violated **section 51** nor **52** since she had been complying to the requirements provided thereunder. Mr. Ngogo stated further that the referred special audit report is unknown to the Respondent. He argued that the same report is referred differently as the Chief Auditor General

Report and sometimes as Controller Auditor General while it is showing that it was made by a commission formed by the 1st Applicant.

According to Mr. Ngogo the CAG has no power to conduct audit in the Respondent's books since his power is restricted to audit government accounts as per **Article 143(2)(c) of the Constitution of the United Republic of Tanzania of 1977**. That the auditing of the Respondent is provided under **section 51(1)(c) of the ELRA** which gives power to the registered union to arrange for annual audit of its books and records of accounts and financial statements by a registered auditor, the act which had been fulfilled.

Arguing further, he said that the report bares no names nor signatures of those persons who prepared it. That there are no descriptions of their qualifications so as to satisfy their professional capacities that renders the report doubtful of its existence. He proceeded arguing that the allegation and challenges bestowed to the report prepared by the respondent's Auditor one SILAS & ASSOCIATES is not founded since she has never been subjected to any professional misconduct by a National Board of Accountants and Auditors (NBAA) thus the audit reports submitted to the Applicant are valid. Mr. Ngogo also referred this court to the Affidavit sworn by one William Paul Kyejo from the said auditor's

office i.e SILAS & ASSOCIATES which among other things deponed that in their activities they confine to the professional general accepted accounting practice principles and procedures and the alleged embezzlement was not established.

He added that the Applicants made an afterthought decision in relying to the factor of embezzlement which was not raise by the 1st Applicant in her letter to the Respondent dated 2/8/2020 nor was it raised in her notice of cancellation sent to the Respondent.

On the 3rd issue counsel for the Respondent stated that 33 bank accounts operated by the Respondent did not violate any law or Article 33(1) of the Union Constitution since the Respondent operates throughout the country. Therefore, the funds for daily operations are channelled to different levels of administration through bank accounts. Most of all, the referred Article does not provide that the respondent shall operate single bank account, he countered.

Mr. Ngogo concluded with the 4th issue that the instant application deserves to be dismissed or else if this court finds that the Respondent did not observe to the law, she may be given an opportunity to remedy the irregularities. Further that the law does not set out the criteria for the Trade Union to be cancelled or be given opportunity to rectify. He

found refuge in the **Labour Relation Act, No. 66 of 1995** the laws of South Africa that this court be persuaded and make the order for the Respondent to remedy the anomalies since the order for cancellation of the Trade Union is resorted to when there is a serious or non-remedial violation of law which is not the case in the instant matter.

In his rejoinder Mr. Rogers raised a concern that the Respondent submitted on the requirement for registration which was not disputed. He said the Respondent's counsel has confused the court than assisting it. He however, noted the oversight of the provision of **section 55(1)** **(a) and (b)** as a typographical error which did not prejudice the Respondent. He sought inspiration from the case of **OTTU on behalf of P.S Assenga and 106 Others vs Ami Tanzania Limited**, Civil Application No. 35 of 2011 CAT at Dar es Salaam (unreported) where it was held that citing wrong provision of the law in the presence of the correct provision does not omit the correct provision. He corrected that what he meant was **section 51(1) of ELRA**.

Mr. Rogers added that the Respondent has been late to query about the existence and authenticity of the CAG report since he would have done so when she was visited and questioned by the committee which prepared that report.

He also challenged the suggestion that the respondent be given an opportunity to redress the anomalies whereas one Meshack Lupakisyo Kapange is the root cause of all problems. He referred this court at page 11 of the special audit report. He reiterated his prayer that the Respondent be cancelled from the register.

I have followed the rival submissions by the parties' Counsels. I commend them for their inputs in assisting this court to reach its decision.

Outrightly, I concur with the argument made by Mr. Ngogo for the Respondent that the laws in our jurisdiction do not explicitly provide the nature of violations which would warrant a Trade Union or Employers' Federation to be cancelled and those which warrant to be ordered to remedy the none compliance. The relevant provisions which this court stands at in relation to this application is **section 55(1)(a)(b) and (2)(a) and (b) of ELRA**. Under that provision of the law **subsection (1) (a) and (b)** provides for the offences which the Registrar may institute the proceedings against a Trade Union or Employers' Federation whereas subsection **(2)(a) and (b)** provides for the orders which this court can make. It provides that:

"55. (1) The Registrar may apply to the Labour Court for an order to cancel the registration of a registered organisation or federation if that organisation or federation fails to comply with-

- (a) the requirements for registration; or*
- (b) the provisions of this Part.*

(2) Where the Labour Court may make any appropriate order including-

- (a) cancelling the registration of an organisation or federation;*
- (b) giving the organisation or federation an opportunity to remedy any failure to comply."*

The law thus, entails either that a trade union may be cancelled or ordered to remedy the failure to comply with the requirements for registration or has failed to comply with the provisions of **Part IV of the ELRA**. In the circumstances, the determination of this application shall dwell on resolving two pertinent issues:

- i) Whether the Respondent has failed to comply with the requirement for registration or the provisions of Part IV of the ELRA; and
- ii) What is the appropriate order should this court make.

It is imperative to clearly state at the beginning that the requirements for registration are provided under **section 46 of the ELRA and section 47 of the same Act** provides for Constitutional requirements

of the organisation or federation. Whereas, Part IV of the same Act consists of sections 45 to 58 of the Act. This entails that registration and constitutional requirements are also under Part IV of the ELRA.

I confine myself to the matter at hand in consideration of the reasons asserted by the applicants, praying for this court that the Respondent has failed to comply with her constitution and that she has violated **section 51(1) of the ELRA**. I shall discuss these two complaints in *seriatim*.

Starting with the complaint that the Respondent has failed to observe with Articles 25, 26 and 29 of her constitution which call for registration of a board of trustee; indeed, the Respondent's Constitution of 2012 (The Constitution) categorically provides that there shall be a Board of Trustees of CHAKAMWATA which shall be a chief advisor of the Organisation; that it is a machinery only responsible for the loan of the organisation; and that it shall be responsible for protection of the Properties of the Organisation and it shall be responsible for protection of the interests of the organisation against other authorities - see Articles 25 and 29 of CHAKAMWATA Constitution of 2012. In his counter arguments, Mr. Ngogo stated that the inclusion of the requirement for registration of board of trustees was an oversight of the law. I am constrained to concur with Mr. Ngogo on two reasons; **one**, it is my

view that almost the contents of the constitution of the Organisations are provided under section 47 of the ELRA. When I read it thoroughly, I finds that it does not require an organisation or a federation to register a Board of Trustees. **Two** and the most important the powers which the Respondent's constitution intended to vest to the Board of Trustees are the same powers vested to the Respondent after being successfully registered. This is per section 49(1) of the ELRA which provides that:

"49.-(1) On registration, an organization or federation shall be a body corporate -

- (a) with perpetual succession and a common seal;*
- (b) **with the capacity, in its own name,** to -*
 - (i) sue and be sued;*
 - (ii) contract; and*
 - (iii) hold, purchase or otherwise acquire and dispose of movable or immovable property."* (Bold emphasis added)

At the threshold of the above law, in comparison with the matter under discussion there is no hesitation that the Respondent was duly registered. This means that she attained all powers as provided above. In that regard it is impractical and unmaintainable to maintain two corporate bodies within a single organization. Under these circumstances, I am constrained to hold that the Respondent did not commit any none compliance of the Constitution for the reasons

discussed above. Having found as such I will not converse other argument pertaining to amendment of the constitution and that the 1st Applicant has been halting the processes of the Respondent in attempting to register a Board of Trustees.

I will now converse another sub-issue of whether the Respondent failed to comply with **section 51 of ELRA**. This issue is in two folds; **one**, that the Respondent has embezzled the members' funds and **two** that the Respondent is running 33 bank accounts contrary to the Constitution and financial regulations. Counsel for the parties have made long arguments concerning the issue. When the Applicant claimed that the Respondent has failed to comply with the law which requires him to keep books and records of its income, expenditure, assets and liabilities; the Respondent's counsel maintained that she has been in compliance.

For case of reference let **section 51(1) (a) and (b)** speak for itself:

51.-(1) Every registered organisation and federation shall, to the standards of generally accepted accounting practice, principles and procedures-

- (a) keep books and records of its income, expenditure, assets and liabilities;*
- (b) for each financial year ending on 31 December, prepare financial statements in the prescribed form;*

In proving the assertion that the Respondent has contravened section 51, the Applicants attached a report under paragraph 10 of the affidavit supporting the application referred to as **the special audit conducted by Chief Auditor General** marked as "**Annexure SG-3**" The Applicants' counsel in his written submissions has referred annexure SG-3 as a **special audit conducted by the Controller and Auditor General**. These two versions about the report prompted the Respondent's counsel to argue that the report is untenable and is unknown to the Respondent. I have to make my findings on the arguments since I have seen and read the report dated 16th October, 2019 titled thus:

*"JAMHURI YA MUUNGANO WA TANZANIA
OFISI YA WAZIRI MKUU KAZI, VIJANA, AJIRA NA WENYE ULEMAVU
TAARIFA YA UKAGUZI MAALUMU WA CHAMA CHA KUTETEA HAKI NA MASILAHI YA
WALIMU TANZANIA (CHAKAMWATA)"*

In simple translation it means SPECIAL AUDIT REPORT IN RELATION TO CHAKAMWATA (i.e an abbreviation name of the Respondent). In the introductory part of the report at 1st paragraph, it is indicated that the audit was initiated by the office of the Registrar of Organisation i.e., the 1st Applicant. It is also indicated that the 1st Applicant initiated the audit under **section 51(1) (d) (ii) and 52(2)**

(b). For the sake of clarity the said provisions are quoted verbatim as hereunder:

51.-(1) Every registered organisation and federation shall, to the standards of generally accepted accounting practice, principles and procedures-

(a) Not Applicable (N/A)

(b) N/A

(c) arrange an annual audit of its books and records of accounts and its financial statements by a registered auditor;

(d) **by 31 March of the following year, submit the financial statements and auditor's report to-**

(i) N/A

(ii) **the Registrar.**

52-(2) Every registered organisation or federation shall provide to the Registrar-

(a) N/A

(b) within 30 days of a request from the Registrar, a written explanation of anything relating to the statement of membership, the auditor's report or the financial statements:

Provided that, the Registrar shall not inquire into the financial affairs of any organisation unless there are serious grounds for believing that the organisation has infringed the law or that the funds of the organization have been embezzled or otherwise misused;

From the above quote in tandem with the introductory part of the Special Audit Report under discussion it is outward that the 1st Applicant

after receiving financial statements and auditors' report from the Respondent, there were grounds she believed that the Respondent has infringed the law. She also had grounds to believe that the funds of the organisation have been embezzled or otherwise misused thus formed a committee of three officers. Two officers came from NATIONAL AUDIT OFFICE OF TANZANIA (NAOT) known in Kiswahili language as '**Ofisi ya Taifa ya Ulaguzi**' and one officer from the office of the 1st Applicant. This is according to paragraph 4 of the introductory part of the Report. Again, it is my considered view that under the proviso of **section 52(2)(b) of the ELRA** which empowers the 1st Applicant to inquire into financial affairs of the Respondent upon believing that has infringed the law or embezzled the funds of the organization, there is no any other law which provides for procedures or mechanism to be used by the Registrar. That means, she is at liberty to apply any acceptable/practical mechanism including forming a committee of auditors as she did. In my view it was the appropriate mechanism since the queries concerned financial analysis.

Having found as above I am settled to hold that the disassociation of knowledge to the said report by the Respondent and the argument that the CAG has no power to audit the organisation crumbles. Additionally, after giving a short narration about the wherfrom of the report, I

hereby disregard the names baptized to it, henceforth I will hereinafter refer it to as "SPECIAL AUDIT REPORT".

Before I rest the issue of the report, counsel for the Respondent complained also that the report bears no name or signatures of the officers. However, my perusal finds that at page 17 of the same report there are three names, their status in that committee and signatures.

Now, as to the contents of that Special Audit Report in relation to the facts that funds of the Respondent's Tshs. 421,491,532 has been embezzled since they were withdrawn in contravention with the general accepted and required procedures and the Constitution and regulations did not meet a critical challenge from the Respondent. This is because in her counter affidavit the Respondent made a general denial that she does not know the amount of the alleged embezzled fund as they are not reflected by her books of account.

Besides, the Applicants stated that the Special Audit Report revealed that the auditor i.e. SILAS & ASSOCIATES used by the Respondent to prepare her financial statements did not follow general accepted accounting practice, principles and procedures. The Respondent recounted it by lodging an affidavit (Annexure C- 9) of one William Paul Kyejo who identified himself as a partner at the very SILAS & ASSOCIATES who deposed that they had never established an

embezzlement of the amount pointed by the Special Audit Report. He also stated that they had been preparing the Respondent's financial statements professionally basing on the standard of generally accepted accounting practice, principles and procedure and that they had never been charged and convicted for any professional misconduct. Considering the defence explanation by the Respondent, it is my view that the serious accusation of embezzlement raised in the Special Audit Report and complained by the Applicants cannot be simply denied by a mere oral assertions. The circumstance of this matter oral (affidavit evidence) cannot supersede the written Report which specifically and clearly showed each transaction which did not follow financial standard. I have also considered the Respondent's defence made in replying to the notice of intention to file this application (i.e. Annexure SG 6) which shows that the Respondent had knowledge of the Special Audit Report. In the notice (Annexure SG 5) the 1st Applicant raised an accusation to the respondent which read that:

"Special audit conducted by Chief Audit General on 16th October, 2019 established without doubt that TZS 421,491,532 being members' contributions have been embezzled from the union bank accounts by union leaders between 1st day of June, 2018 and 31st day of June, 2019 contrary to union constitution Article 29(4) and Regulation5(1)(2)."

The Respondent replied that:

"Concerning your second ground based upon the utilization of Union's TZS. 421,491,532/= that is a legitimate expenditure of the Union and was used for a variety of purpose which some of them are salaries, allowances, stationary, travelling fares, travelling allowances, seminar allowances, office rent, procurement of office equipment, mass media, condolences, bonus for retired teachers etc. all as per Article 34 of CHAKAMWATA constitution."

In comparing the two statements above; the accusation and the reply thereat, it is my position that the Respondent made light answers to serious questions which in my take such answers would have sufficed in a case where the accused person has a duty to only cast a shadow of doubt to the prosecution evidence than in civil case where the standard of proof is on the preponderance of probability; see **section 3(2)(b) of the Evidence Act, Cap. 6 R.E 2022**. This entails that the court will uphold the evidence and decide in favour of a party whose evidence is weightier than the other; see **Hemed Said vs Mohamedi Mbili [1986] TLR 113**. In that regard I find the Applicants have managed to prove that the Respondent embezzled Tshs. 421,491,532 being members' contributions.

Before I embark to another fold in the sub-issue under consideration, I prefer to comment on the Respondent's contention that the issue of

embezzlement is an internal affair which is dealt by internal procedures. With due respect, that is not the position of the law. My interpretation is that the obligations placed on the Trade Unions and Employer's Federations in terms of **section 51 and 52 of the ELRA** are intended for the protection of the rights of members of the said organisations. The Registrar has been afforded monitoring powers in terms of the **proviso of section 52(2)(b) of the ELRA**. Thus, the Respondent cannot exonerate herself from the powers of the 1st Applicant on a mere contention that she has internal procedures in dealing with leaders of the Organisation who are involved in embezzlement.

I have been persuaded by the observation made by Van Niekerk, J. of the Labour Court of South Africa, held in Cape Town in the urgent application which is reported in **United People's Union of SA v Registrar of Labour Relations** (2010) 31 ILJ 198 (LC) at page 4 which was quoted with approval in the case of **Commission for Conciliation Mediation & Arbitration vs Registrar of the Labour Relations & Others** (J984/10) [2010] ZALC 110; (27 July 2010) AfricanLii.org where he observed that:

"Trade unions are public institutions, not private businesses. The act of registration confers many benefits on those trade unions that seek to be registered. But these benefits come at the price of submission to the reporting requirements established by section 100 of the LRA,

all of the requirements that are intended to provide a guarantee to union members that their membership subscriptions have been utilized to further their interests. A failure by a registered trade union to comply with section 100 and to keep books of account and records to the standard required by section 98 undermines this statutory guarantee. Ultimately, it is the Registrar who is the underwriter of this warranty, and like all underwriters, the Registrar must protect the general interest at the expense of the particular when this is necessary. The Registrar is accountable to the public as a whole should a registered trade union (or employers' organization, for that matter) fail to implement the required financial and administrative controls, and a degree of due diligence by the Registrar in enforcing the relevant requirements of the Act is therefore necessary."

More so, Molahhlehi, J. in the case of **Commission for Conciliation Mediation & Arbitration vs Registrar of the Labour Relations & Others** (supra), at page 15 of the judgment had this to say:

"The prejudice that a union may suffer as a result of de-registration and enforcing such, even pending appeal, should be weighed against the public interest of protecting the interest of union members in particular that of ensuring that funds contributed are utilized for the purpose of benefiting union members. This simple accountability principle is founded on the notion that a union occupies a position of trust as concerning the management of the funds contributed by members. In short the provisions of s 106 of the LRA are protective in nature, intended to protect the vulnerable workers from abuse of their trust by

unscrupulous union officials whose involvement in a union may be for no other reason but to advance their selfish business interest."

Thus, the Respondent failure to comply with the requirements of section 51(1) of the ELRA means she is liable under section 55(1)(b) of the ELRA.

Having made my findings above, at this juncture, I shall not belabour in discussing the running of 33 bank accounts by the Respondent.

The above holding take me to the 2nd issue of which order should this court make. As intimated above, when an organisation is found to have violated **section 55(1)(a) or (b) of the ELRA** this court has either to order for cancellation of the registration or give an opportunity to remedy any failure to comply; **see section 55(2) (a) and (b) of the ELRA.** The Respondent's counsel urged for this court to resort at second option on the reason that the failure to comply is remedial. On their party, the Applicants implored this court to resort at the first option on the reason that the embezzlement committed by the Respondent's leaders is to the detriment of the members (teachers) of this country.

Having considered parties suggestions and the reasons associated thereto, I wish to repeat the persuasive observation made by

Molahhlehi, J. **Commission for Conciliation Mediation & Arbitration** (supra) which in part said that:

"In short the provisions of s 106 of the LRA are protective in nature, intended to protect the vulnerable workers from abuse of their trust by unscrupulous union officials whose involvement in a union may be for no other reason but to advance their selfish business interest."

Section 106 of the Labour Relation Act (LRA) of South Africa referred in the quote above is *mutatis mutandis* with **section 55 of the ELRA**. In South Africa the cancellation is made by the Registrar where it is found that an organisation is in the opposite direction of its registration. In most cases the misappropriation or misuse of the organisation funds has been reason for cancellation; see examples in the matter of **National Entitled Workers' Union (NEWU) vs The Ministry of Labour and Others**, the Labour Appeal Court of South Africa, at Johannesburg (JA47/06) [2009] ZALAC 15; (02 December 2009) AfricanLii.org and **Commission for Conciliation Mediation & Arbitration** (supra).

Inspired by the above persuasive observations, in relation to the matter at hand, among other transactions which made a total of the Tshs. 421,491,532 that was declared to have been embezzled by the

Respondent's leaders is Tshs. 32,146,000/=. According to the Special Audit Report the said amount was paid to the General Secretary of the organisation one Meshack Lupakisyo Kapange who approved the payment by himself without being approved by any other officer. Also that Tshs. 19,719,150 was withdrawn from the Bank by a letter approving the payment bearing a one signature of the General Secretary. In that situation where a leader of the high rank like General Secretary whose powers according to the Constitution, Article 15(3) is a Chief Executive, spokesman and defender of the organisation to be involve in embezzlement practice, put the organisation at risk which is detrimental to the members and the public at large. It is my further considered view that failure to meet or observe to the standards of generally accepted accounting practice, principles and procedures is sufficient reason to cancel a Trade Union. As alluded earlier, apart from the function of the union to represent the rights of its members; is to use the resources of the union in the general acceptable norms.

At the end result, owing to the reasons discussed above, I order that the registration of the Respondent (CHAKAMWATA) is hereby cancelled as per **section 55(2)(a) and (3)(a) and (b) of the ELRA, Cap. 366 R.E. 2019.** Being a labour matter I make no order as to costs.

Ordered accordingly.

Mbeya

11.11.2022



A handwritten signature in black ink, appearing to read "R.A. Ebrahim".

JUDGE.