

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LABOUR REVISION NO. 3 OF 2021

(C/O CMA/RK/SMB/52/2020)

(Ndonde Severin, Arbitrator)

WALID SELEMAN APPLICANT

VERSUS

ISTIQAAMA MUSLIM COMMUNITY OF TANZANIA RESPONDENT

JUDGMENT

Date: 24/03 & 29/04/2022

NKWABI, J.:

The applicant had lodged a labour complaint against the respondent in the Commission for Mediation and Arbitration in Rukwa. The Commission, had these to say in its award:

"Kiujumla, madai ya mlalamikaji hayana msingi na hivyo shauri lake limetupiliwa mbali katika ujumla wake."

The applicant was employed as a bus conductor in an institution under the respondent's designation. It would appear that after the contractual term, the respondent refused to renew the contract. As such the applicant filed a labour dispute to the Commission for Mediation and Arbitration. As he lost his labour dispute, he preferred this labour revision to this court.

The parties prayed to argue the matter by way of written submissions. I directed them while they will be submitting on the merits of the revision, they should also submit on the question whether the respondent had the locus standi to be sued, in other words, was the respondent capable of being sued? The parties duly filed their submissions.

While the applicant maintained that the respondent has the capacity to sue and be sued on the reason that the contract of employment was executed between the respondent as the employer and the applicant as the employee, the respondent argued that she is an institution which is under the Board of Trustees. The respondent insisted that she is not a registered trustee but a registered society. It was therefore wrong to sue the respondent. She urged I strike out the matter.

In rejoinder, the applicant insisted that the respondent has the legal capacity to be sued because the respondent is the one who entered in the employment contract with the applicant.

While the applicant or plaintiff ought to have locus standi to sue as per **Lujuna Shubi Ballonzi, Senior V Registered Trustees of Chama**

Cha Mapinduzi [1996] TLR 203 (HC), Samatta J.K., as he then was, held:

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court: see Halsbury's Laws of England, 4th ed, para 49 at p 52."

the respondent too ought to have the capacity to sue or be sued. Now, the question is, can the respondent stand in litigation? She claims that she is under the board of Trustees. It is the applicant who has to prove otherwise. It is not for the respondent to prove her allegations that she is under the trusteeship.

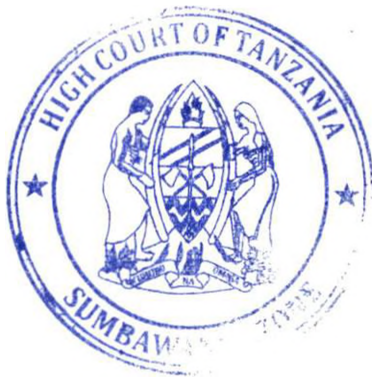
I am therefore, prepared to hold that it was not proper and justifiable for the Commission for Mediation and Arbitration to entertain the matter while the respondent had no power to sue or be sued. That it was not proved by the applicant to that end. The reality is that the labour complaint was incompetent and a nullity, see **MIC Tanzania Ltd v Minister for**

**Labour and Youth Development and Attorney General Civil
Appeal No. 103/2004.**

In the circumstances, the application for revision is struck out. The proceedings and award of the Commission for Mediation and Arbitration are revised to the extent that the same are quashed and set aside respectively for being based on incompetent proceedings. I make no order as to costs as this is a labour matter.

It is so ordered.

DATED at **SUMBAWANGA** this 29th day of April, 2022



J. F. NKWABI

JUDGE