

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

MISC. LABOUR APPLICATION NO. 369 OF 2020

BETWEEN

ST. JOHN'S UNIVERSITY OF TANZANIA APPLICANT

VERSUS

ST. JOHN'S UNIVERSITY OF TANZANIA – ST. MARK'S CENTRE...1ST RESPONDENT
NOELA PATRICK KIWIA 2ND RESPONDENT
ELIZABETH MOKIWA 3RD RESPONDENT
PASCAL NALINGIGWA 4TH RESPONDENT
AMINA SANGALI 5TH RESPONDENT
SOPHIA S. MSANGI 6TH RESPONDENT
CATHERINE SAMBANO 7TH RESPONDENT
AGNESS MKOLO 8TH RESPONDENT
RICHARD KAMENYA 9TH RESPONDENT
SUBIRI KATETE..... 10TH RESPONDENT
SABITHA HATIBU 11TH RESPONDENT
VISCAL KIHONGO 12TH RESPONDENT
CHARD DANIEL 13TH RESPONDENT
MICHAEL JOHN14TH RESPONDENT
BEATRICE HALII 15TH RESPONDENT
MAXIMIN JACOB 16TH RESPONDENT
HELFAS A. MNYOGWA 17TH RESPONDENT
ELIA KAKONI 18TH RESPONDENT
BRIGHTON MANYAMA 19TH RESPONDENT

FR. SAMWALI P. LIPEMBE.....	20 TH RESPONDENT
EMMANUEL SANINGA	21 ST RESPONDENT
YOHANA MTOKAMBALI	22 ND RESPONDENT
YESSE UDOBA	23 RD RESPONDENT
ELIZABETH B. MGOO	24 TH RESPONDENT
DIONIS E. MGAYA	25 TH RESPONDENT
BEATRICE MAPANDE	26 TH RESPONDENT
FR. LUKAS MARK SAID	27 TH RESPONDENT
BEANTINA R. CHAMI	28 TH RESPONDENT
EMMAUS MWAMAKULA	29 TH RESPONDENT
ANDREW CHALLE	30 TH RESPONDENT
HEZRONE CHIKOLO	31 ST RESPONDENT
DR. ANNA NKEBUKWA	32 ND RESPONDENT

RULING

S.M. MAGHIMBI, J:

This Ruling comes from the preliminary objections raised against the appeal preferred by the Appellant St. John University of Tanzania against the rest of Respondents. The appeal is against the decision of the Labour Commissioner dated 24th July 2020. In their notice of preliminary objection, the 2nd to 32nd respondents, duly represented by Mr. Sylvatus Mayenga, learned advocate raised the following objections:

1. The Appellant adding the wrong party to the appeal.
2. The Court has no jurisdiction to entertain the matter.

At the onset of his submissions, Mr. Mayenga abandoned the 2nd point of objection and argued only on the first objection that the applicant has added a wrong party to the appeal. His submission was that it is not in disputes that the 2nd to 32nd Respondents preferred a claim to the Labour Officer claiming to be paid salaries by the Appellant. That the Labour Officer by his order dated 26th May 2020, ordered the Appellant to pay salaries to the referred Respondents. That aggrieved with the decision, on 25th June 2020, the Appellant lodged a Notice of objection to the Labour Commissioner and the Labour Commissioner issued an order dated 24th July 2020 upholding labour officer's decision. He then pointed out that when the Appellant preferred an appeal to this Court, she joined St. John University of Tanzania St. Mark Centre as the 1st Respondent. His argument was that St. John University of Tanzania St. Mark Centre, is a new party to the appeal as it was neither forming party of the complaint to the labour officer nor to the Labour Commissioner.

He submitted further that, as it can be noted from the proceeding of this matter, from its institution until 29th September 2021, when orders for written submissions were set, the 2nd Respondent has never appeared, something which he said was sending a clear signal that the 1st Respondent (if truly exists and it is a different person from the

Appellant), is not aware of the ongoing proceedings. Further that in any event, joining her at this stage of the appeal while the Appellant never sued her in previous proceedings is tantamount to the denial of the right to be heard. He supported his decision by citing the decision of the Court of Appeal in **Joseph Magombi vs Tanzania National Parks (TANAPA), Civil Appeal No.114 of 2016**, where the Court, had time to deliberate and rule on whether an appellant can add a new party to the appeal. That the Court at page 13 of its decision had the following to say:

"we further say, that unless a proper procedure has been followed to change or alter a name, no change of parties name should occur. Nothing convinces us that at any stage of the proceedings in the present situation change of party's name was entertained. The change of names in the present appeal is thus unjustified. Based on the change of the respondent's name as illustrated above led Mr. Mwaluko, learned Counsel to press upon us that we strike out the appeal.

Mr. Mayenga then submitted that though the above decision is in respect of change of name, but it applies with equal force in a situation at hand. That it was necessary and important for an appellant to

maintain parties who were at wrangles in the previous proceedings than adding and changing parties to the original complaint. Further that going by record and available proof from the Appellant, it is not disputed that on 5th June 2018, the Appellant wrote a letter to Tanzania Commission for Universities (to be referred as TCU) seeking disestablishment of the 1st Respondent. On 20th January 2020, the TCU issued an order disestablishing of the 1st Respondent which was done at the request of the Appellant and that the decision of the Appellant blessed by TCU was officially gazetted in the Government Gazette No.262 of 6th March 2020. He invited this Court to take judicial notice of all these notices because it is through a statutory process that the 1st Respondent was made redundant.

He then argued that it is obvious from the above that, the Appellant is suing a party who does not exist and it is the same Appellant who established the 1st Respondent and consequently reached a decision to disestablish her. His submissions was hinged on the fact that, this is a total abuse of the court process because at the time of lodging this appeal, the 1st Respondent was no longer existing and the Appellant was the one who caused the same not to exist through disestablishment. That the Appellant had ample time before the labour officer and labour commissioner to ask for adding the 2nd Respondent

than to bring her through backdoor. He prayed that this Court make a finding and rule and that this a total abuse of the court process and the only weapon the Court it has in its armory is to strike out the appeal or in the alternative strike the 1st Respondent in the Court record.

In reply, Mr. Sosten Mbedule, learned advocate representing the applicant did make any submission in denial of the fact that the 1st respondent is no longer in existence. His only argument is that the 1st respondent was ordered by the Labor Commissioner to appear before him for questioning. Further that a letter dated 26/05/s2020 shows that the Commissioner compared documents of the appellant and the 1st respondent before issuing the compliance order. He questioned the reason why the labor commissioner compared the documents and the 1st respondent was not ordered to appear. He further questioned when the 5th respondent Amina Sangali resigned from representing the 1st respondent until the 29th September, 2021 when Mr. Mayenga appeared for the first respondent.

On the cited case of **Joseph Magombi** (supra), Mr. Mbedule submitted that the case does not apply to the appeal at hand because there was no labor dispute before the Labor Officer for Mr. Mayenga to submit that the 1st respondent was not a party of the proceedings as the Labor Officer has no jurisdiction to determine the labor disputes. That

even the order of the Labor Officer dated 28th May, 2020 does not mention the names of the parties to conclude that the 1st respondent was not engaged in the proceedings at the Labor Office.

He also pointed out that the order on annexure 1 of the Compliance Order provides details of salary arrears for the 2nd to 32nd respondents which were calculated from the 1st respondent monthly payrolls and the applicant did not take part in preparation or verification of the claims at the Labor Office and the applicant was not ordered to bring those details. That the 1st respondent was called for questioning and submission of documents by the labor officer through a representative.

On my part, I think the only issue is whether the 1st respondent is an existing entity to legally form a part of these proceedings. Since there is no denial of the letter from the TCU dated 20th January, 2020 that the 1st respondent's establishment was revoked by the TCU, it means that legally the 1st respondent does not exist as the revocation was effective from 20th January, 2020. It is also obvious from the letter that it is the appellant that requested for the disestablishment of the 1st respondent, it means that the appellant was the parent company of the 1st respondent. There is also a Government Gazette dated 06th March, 2020

which I take judicial notice of, in the Gazette, the 1st respondent was disestablished. In law, this means that the 1st respondent is no longer in existence. These fact were not at all denied by Mr. Mbedule, his argument is only that I should recognize the existence of the 1st respondent because the 5th respondent had once represented her. With respect to the learned Counsel, a University whose establishment has been revoked cannot be said to exist simply because there was a person who represented it post revocation.

In Tanzania, universities are established and dis established through a procedure laid down by the law and since the procedure was finalized and the revocation gazetted, then we cannot assume its existence by the 5th respondent's appearance in court to represent her. That said, I am in agreement with Mr. Mayenga that the 1st respondent is not in existence and we cannot continue to carry a dead weight by dragging along a person who does not exist. The remaining question on the remedy available to such established irregularity.

My first take would have been to order amendment of the appeal so that the name of the first respondent be struck out from the records, but that is not going to be the case here. This is because the whole appeal lies on the fact that the 2nd to 32nd respondents were employees

of the 1st respondent, an entity which does not exist and the grounds thereto intend to shift the burden to the 1st respondent who is not in existing, for that matter the appellant will have to find another way to discharge her to liability (if any) and not add her as a party while she does not exist. Therefore ordering amendment by removing the name of the 1st respondent will amount to bringing a new appeal in disguise of the name and number of this appeal, something which will be against the procedures. Therefore having found that the 1st respondent is a non-existing entity, the remedy is; which I hereby order, to strike out the appeal.

All said and done, the objection raised by the 2nd to 32nd respondents is hereby sustained. The appeal before me is consequently struck out.

Dated at Dar-es-salaam this 22nd day of April, 2022.




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S.M. MAGHIMBI
JUDGE