

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

MISCELLANEOUS APPLICATION NO. 291 OF 2022

**OMARI BAKARI LIYANGA1ST APPLICANT
SAID KASIMU KILUKE.....2ND RESPONDENT
EPIPHANIA NGONYANI.....3RD RESPONDENT**

VERSUS

**MSAJILI WA VYAMA VYA WAFANYAKAZI
NA WAAJIRI.....1ST RESPONDENT
MWANASHERIA MKUU WA SERIKALI.....2ND RESPONDENT
CHAMA CHA WAFANYAKAZI WA HUDUMA
ZA JAMII TANZANIA(TASIWU).....3RD RESPONDENT**

EXPARTE RULING

*Date of last Order: 5/9/2022
Date of Ruling: 12/9/2022*

B. E. K. Mganga, J.

Applicants have filed this exparte application under Rule 55(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 and Rule 5(1) and (2)(a), (b), (c) and (d) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN. No 324 of 2014, seeking the court to (i) grant leave to file an application for certiorari against the decision made by the respondent on 11th February 2022, (ii) grant applicants leave to file an application for mandamus compelling the 1st respondent to allow the applicants to continue to hold

their positions, and (iii) any other relief(s) the court may deem fit to grant. The application is supported by the chamber summons and the joint affidavit of the applicants. In their ten paragraphed joint affidavit, applicants stated that in the election that was conducted on 25th May 2021 they got majority votes and were elected for the post of vice secretary, vice chairperson and treasurer respectively as deponed in paragraph 2 and 3. They deponed in paragraph 4, 5 and 6 that on 10th December 2021 they received a letter from the Registrar of Workers Organization and Employers Organization, 1st respondent, requiring them to attend a meeting to be held in Dodoma on ground that there were complaints relating to election and that they attended the said meeting though they were not given a copy of the complaint. That, in the meeting, the 1st respondent reserved the decision and that on 11th February 2021, they were notified by the 1st respondent that he has nullified the results relating to their positions and that after the said decision they have been barred to perform their duties as deponed in paragraphs 7, 8 and 9 of their joint affidavit. In the 1st and 10th paragraphs they deponed that they know the content of their joint affidavit and that they filed the joint affidavit to support their application.

When the application was called on for hearing, Mr. Josephat Basheka, personal representative of the applicants appeared and argued for and on behalf of the applicants. In his submissions, Mr. Basheka

submitted that, on 12th October 2021 applicants were summoned by the registrar of workers organization and employers' association, 1st respondent, at Dodoma allegedly, that elections were not conducted in terms of the 3rd respondent's constitution. He submitted further that, on 11th February 2022, 1st respondent nullified the results. Mr. Basheka submitted further that, 1st respondent has no jurisdiction to nullify the said result because that power is reserved to this court as per Section 53(1)(a) of the Employment and Labuor Relations Act [Cap. 366. R.E. 2019]. It was submissions of Mr. Basheka that applicants had no other remedy other than to file this application and argued that applicants now can't access their offices and prayed that this application be granted so that applicants can file revision application before this court. In impressing the Court to grant the application, Mr. Basheka cited the case of ***Kevin Peter Makaranga v. The Police Force, Immigration and Prison Service Commission and 2 others***, Miscellaneous cause No. 51 of 2020 HC (unreported) and ***Engelbert Lucas Chelele v. The Police Force, Immigration and Prison Service Commission and 3 others***, Miscellaneous Civil Cause No. 11 of 2022, HC (unreported).

During submissions, the court asked Mr. Basheka whether, the affidavit in support of the application complied with the provisions of Rule 24 of GN. No. 106 of 2007. Mr. Basheka maintained that the affidavit is

properly before the court submitting that Rule 24 of GN. No. 106 of 2017(supra) does not apply in the application at hand because the said Rule requires the other party to be served while an application for leave for judicial review is *ex parte*. He went on that, Rule 5(6) of GN. No 324 of 2014(supra) provides that the court may direct that the other party be served. He conceded that, Rule 24 of GN. 106 of 2007(supra) requires *inter-alia*, a statement of legal issue and relief be disclosed in the affidavit.

From the joint affidavit and submissions made by Mr. Basheka, it is undisputed that the matter arose at the time of election of office bearers of the 3rd respondent. In other words, the dispute arose when applicants and other members of the 3rd respondents were exercising their mandates under the 3rd respondent's constitution. During submissions, as pointed hereinabove, I probed Mr. Basheka whether the affidavit in support of the application complied with the provisions of Rule 24 of GN. No. 106 of 2007(supra) because the said Rule requires *inter-alia* that the affidavit to give statement of material facts in a chronological order on which the application is based and legal issues arising from that material facts. I did so deliberately because I felt that the joint affidavit does not provide sufficient information to enable the court to make a well-informed decision. I am of that view because, the joint affidavit is silent as to whether, (i) the 3rd respondent is trade Union, employers' association, or a federation, and

whether it is registered or not. This is because, section 46(1), (2) and (3) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] provides different conditions for registration of the said three organizations. In addition to that, section 47(1)(g), (h), (i), (j), (k) of Cap. 366 R.E. 2019(supra) puts conditions to be complied with, by the three organizations including provisions relating to office bearers, prescribe a procedure for nomination and election of office bearers, procedures for appointment or nomination or election of officials, establish circumstances and manner in which office bearers, officials and trade union representatives may be removed from office, establish the circumstances and manner in which ballots shall be conducted etc. In the application at hand, there is no elaboration in their joint affidavit as such, the court is unaware what the constitution of the 3rd respondents provides in relation to election and officer bearer because the same was not attached to this application. In absence of the said constitution and paragraphs in the joint affidavit explaining the procedure for election and removal of office bearers of the 3rd respondent and or mandate of the 1st respondent, the court cannot be able to know whether, there is an issue that can justify the court to grant leave or not. Now, the issue is whether, if the 3rd respondent is registered, then, was there compliance with its constitution during election? If there was non-compliance of the constitution, was the

application properly filed before the court without citing section 53 of Cap. 366 R.E. 2019(supra)? In my view, it was not. Applicants were supposed to cite sections 46, 47 and 53 of Cap. 366 R.E. 2019 (supra). It was not enough for the applicants to cite Rule 55(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 and Rule 5(1) and (2)(a), (b), (c) and (d) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN. No 324 of 2014 while there are specific provisions in Cap. 366 R.E. 2019 (supra).

As pointed hereinabove, applicants have filed this application under 55(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 and Rule 5(1) and (2)(a), (b), (c) and (d) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN. No 324 of 2014 alleging that there is no specific provision in Labour Statutes. That is not the correct position. A person aggrieved by the decision of the Registrar may make an application before this court under section 53 of Cap. 366 R.E. 2019(supra).

I have read the letter of the Registrar attached to the joint affidavit of the applicants and find that it is stated in the said letter that the 3rd respondent was registered on 8th June 2001 and that from the date of registration to the date of the decision of the 1st respondent, 3rd respondent has never held a general meeting and has failed to put criteria

for her office bearer. In the said letter, it is alleged that leaders of the 3rd respondent have violated the constitution and are appointing themselves as leaders without being elected. The said letter shows further that there was violation of the 3rd respondent's constitution at the time of election of the herein applicants which is why 1st applicant nullified election of the applicants. Whether that is correct or not, in my view, can be determined in a properly filed application and not in this application. I have considered the cases cited on behalf of the applicants and find that they are not relevant in the application at hand.

Applicants have cited the provisions of Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN. No 324 of 2014 while there are specific provisions covering the issue in question. It is a settled law that, when there is specific law, the recourse must be to that law and not to the general law. It can be noted that the application at hand relates to labour issues well governed by labour statutes and Rules made thereon. But applicants relied on the provisions of Rule 55(1) and (2) of the Labour Court Rules, GN. No. 106 of 2007 wrongly, in my view, alleging that there are no provisions in labour statutes covering the situation in the application at hand. Since there are provisions in Labour statutes covering the situation at hand, applicants were

supposed to move the court properly and complying with the provisions of Rule 24 of the Labour Court Rules, GN. No. 106 of 2007.

For explained hereinabove, I find that the application was improperly filed, and I hereby struck it out for being incompetent. I direct that if applicants are still interested in the application, they may file a proper application under the provisions of the Employment and Labour Relations Act [Cap. 366 R.E. 2019].

Dated at Dar es Salaam this 12th September 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 12th September 2022 in chambers in the presence of Joseph Basheka, Personal representative of the applicants but in the absence of the respondents.



B. E. K. Mganga
JUDGE

