

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

LABOUR REVISION APPLICATION NO. 385 OF 2022

YAKOBO JOHN MASANJA APPLICANT

VERSUS

MIC TANZANIA LIMITEDRESPONDENT

RULING

Date of last Order: 13/02/2023

Date of Ruling: 28/02/2023

MLYAMBINA, J.

One of the issues involved in this revision, by way of preliminary objection, is a classic example of issues of which this Court has recorded eight distinct schools of thought. It is; *whether the High Court has jurisdiction to entertain Revision Proceedings against the Ruling or Order of the Registrar or Deputy Registrar.* For rationality of the decision, I find it worth perhaps briefly noting the synopsis of this ruling. I start setting out the definition of the Deputy Registrars as to; whether they form part of the Labour Court. I then consider the arguments of both parties. Thereafter, I navigate to various decisions of the Court on the raised issue. Before concluding, I identify and address, in so far as I am able to do so, the arguments of principle that arise in this case in

respect of the proper application of the labour law. In so doing, I take into consideration that labour laws have peculiar features as compared to other laws.

Before proceeding on a detailed examination of this matter, it is necessary to mention that; it is no longer an open question that the Deputy Registrars are part of the Labour Court. The matter has been set at rest by *The Written Laws (Miscellaneous Amendments) (No. 2) Act No. 3 of 2020* vide section 67 which added paragraph (b) to section 50(2) which now recognizes the Deputy Registrars as part of the High Court constitution. Further to that, vide *section 68 of the amendment, section 54 of the Labour Institutions Act, Cap 300* was repealed and replaced with

54. There shall be Deputy Registrars who shall exercise powers and perform such duties as are conferred under

(a) N/A

(b) *Order XLIII of the Civil Procedure Code; and*

(c) Rules made by the Chief Justice under section 55. [Emphasis added]

From the afore amendment, it is clear that the Deputy Registrars are part of the labour Court and their powers are clearly exercised under

Order XLIII of the Civil Procedure Code [Cap 33 Revised edition 2019].

Therefore, the decision of Deputy Registrar of the Labour Court has the same status from that of the Deputy Registrar of the High Court Sub Registry or any Division of the High Court as they both derive powers from *Order XLIII of the Civil Procedure Code*. But such powers do not turn them to be Judges of the Labour Court. Now, the question is; *what is the proper way to challenge the decision of the Registrar in the exercise of the powers stipulated above?* On this area, there are not less than eight conflicting schools of thought and the atmosphere is not yet settled to date. Before venturing unto an analysis, I will consider the submissions of both parties.

It was the Respondent's submission that; this application for revision against the decision of Hon. Fimbo, Deputy Registrar dismissing *Execution No 356 of 2022* cannot be entertained by this Court as it lacks jurisdiction to do so. The Respondent derived the position from *sections 67 and 68 of The Written Laws (Miscellaneous Amendments) (No. 20 Act, 2020 (supra)*.

According to the Respondent, the amendment of *section 50(2) of the Labour Institutions Act [Cap 300 Revised Edition 2019]* had the effect of formally recognizing Deputy Registrars as part that constitutes

the High Court as rightly stated in the case of **Iron Steel Limited v. Martin Kumalija and 117 Others**, Labour Revision no 169 of 2022 at page 9 and 10. Also, in the case of **Sogea Satom Company v. Barclays Bank Tanzania and 2 Others**, Misc Civil Reference No.15 of 2021, High Court of Tanzania at Dar es Salaam (unreported), where the Court while poised with the same question stated at page 8 that:

The question that follows is whether a decision rendered by Deputy Registrar of the High Court can be considered as a decision or order of lower Court? The answer to this question is no except where the law clearly states otherwise, a decision or order rendered by the Deputy Registrar of the High Court is a decision of the High Court and *may be challenged by way of an appeal, reference and or revision to the Court of Appeal or by way of review to the same High Court.* [Emphasis applied]

It was the Respondent's humble submission that; the Applicant's Application for revision cannot be entertained by the same Court as it lacks Jurisdiction. To bolster up the argument, the Respondent cited two scholarly works: *One*, the Prominent **Mulla The Code of Civil Procedure**, 16th Edition, pp 1194 to 1197 who maintains that the High Court's revisionary powers cannot be invoked unless amongst other

things that the case/decision ought to be revised is of a subordinate Court to the High Court. *Two*, the book by Dr. J. Clement Mashamba titled **Civil Litigation Practitioner's Manual**, January 2018, pp 382 and 383 describing Revision to be undertaken either upon application by an aggrieved party to a superior Court or suo motu by the superior Court.

It was the firm understanding of the Respondent that labour laws are silent regarding the way of challenging Deputy Registrar's decisions. Therefore, in such circumstances, according to the Respondent, *Rule 55(1) of the Labour Court Rules G.N 106 of 2007* comes into place as it allows this Court to adopt other laws in case of a *lacuna*. On that note, the Respondent referred this Court to the provision of *Order XLI Rule 1 of the Civil Procedure Code [Cap 33 Revised Edition 2019]* which provides for a remedy by way of reference to the High Court as an appropriate way to challenge a Deputy Registrar decision in execution proceedings.

Further, the Respondent cited the persuasive decision of **Okia Omtatah Okoiti & Another v. Attorney General & Another**, Civil Application No 1, (2019) EKLR, in which the Supreme Court of Kenya held that:

A party aggrieved by Registrar decision...Could seek a review of that decision before a single Judge of the supreme Court. Therefore, the supreme Court has jurisdiction to hear and determine review application against the registrar's decision.

From the above cited persuasive decisions and legislations, the Respondent was of the firm view that the decisions of the Deputy Registrar can be challenged. However, the route opted by the Applicant is erroneous. The Respondent, therefore, prayed the application for revision to be dismissed.

In response, the Applicant conceded that the Registrar and Deputy Registrar of the Labour Court are appointed by Chief Justice pursuant to provision of *Section 54 (1)(2) of the Labour Institutions Act (supra)*. The Applicant cited the book by Ally Kileo, titled: **Comprehensive Issues of Employment and Labour Law** p. 384, where it was stated:

In some matters the Labour Court moves suo motu to examine the decision of the registrar; if he acted without authority the decisions are set aside, but if he was moved by parties, the Labour Court defines the registrar's orders as appellable, to the Court of Appeal of Tanzania.

The above was the position of this Court in the **LAPT and Isaack Holela and 2 Others**, Execution No. 266 of 2008 (unreported). It was submitted by the Applicant that; in **LAPT case**, the Judge moved *suo motu* to ascertain the correctness of what the registrar did in the Court case file and quashed them or set them aside. It was the Applicant's view that; it can be accepted she could do the same when moved by the parties. However, in **Hemed Omary Kimwaga v. SBC Tanzania Limited**, High Court of Tanzania (Labour Division) at Dar es Salaam, Miscellaneous Application No. 75 of 2011 (unreported), the Court seems to have a different standing on how to deal with decisions of the Registrar while executing CMA awards or decisions of the High Court. Having being moved by a party, the Court reviewed the decision of the Deputy Registrar while executing the decision of the Labour Court, confirmed the award that ordered reinstatement as per the executed decision contrary to the wishes of the Applicant who wanted to be compensated. The Judge reviewed the decision of the Deputy Registrar and affirmed it.

In rejoinder, the Respondent distinguished the cited case of **Hemed Omary Kimwaga v. SBC Tanzania Limited** with this case as it was determined prior to *The Written Laws (Miscellaneous*

Amendments) (No. 2) Act No. 3 of 2020. Further, the cited decisions in the submission in chief which are more recent are unchallenged by the Applicant in his reply. With such submission in mind, I will revisit by highlighting the eight conflicting positions of the High Court properly to be termed as eight different schools of thought.

The profunder of the first school of thought of the Labour Court are of the view that; whoever aggrieved by the decision of the Deputy Registrar, the remedy is to appeal, by implication to appeal to the Court of Appeal of Tanzania. In fact, according to the establishment of the office of the Registrar as per amendment to *Section 54 of the Labour Institutions Act*, the Registrar is answerable to the Judge in-charge. In the case of **Total T Limited v. Godlever Massawe**, Execution No. 405 of 2009, High Court of Tanzania Labour Division at Dar es Salaam (unreported), the Court was of the following opinion at p. 5 of its decision:

While it is the legal position that CMA decisions are executed by this as Court decrees, and in execution of such decrees the Registrar proceeds under the provisions of Order XXI of the CPC as provided for under rule 48 and 99 of the Labour Court Rules. Section 38 of the CPC empowers the executing Court to determine all questions arising between

the parties in the suit in which the decree was passed. The resultant decision is a Court decree, which in my opinion, appealable.

The definition of the Labour Court under *section 4 of the Employment and Labour Relations Act and section 2 of the Labour Institutions Act* refers to the Labour Division of the High Court established under *section 50 of the Labour Institutions Act, 2004*. *Section 50 of the labour Institutions Act, 2004* as amended in 2020 establishes the Labour Division of the High Court to be constituted by the Judge with an option of assessors. It also recognizes Deputy Registrar as part of the Labour Court.

The profunder of the second school of thought of the High Court Labour Division is of the view that; the decision of the Deputy Registrar is subject of Review. First, the review of decisions or proceedings of a responsible person or body performing a reviewable function which is instituted by way of chamber application supported by an affidavit. The responsible person or body performing a reviewable function is considered to be an inferior body to the Labour Court, which is under Rule 26 of the Labour Court Rules. Rule 26(11) of the Labour Court Rules allows the Court to entertain an oral application where parties

consent which means that the powers under this sub-rule are exercisable by the Judge.

Second, review is of Judgement or decision of a Judge under *Rule 27 of the Labour Court Rules*. In the case of **Hemed Omary Kimwaga and SBC Tanzania Limited**, Misc. Application No. 75 of 2011 (unreported), this Court having been moved by a party, went ahead to review the decision of the Registrar who, while executing the decision of the labour Court, confirmed the award that ordered reinstatement as per the executed decision contrary to the wishes of the Applicant who wanted to be compensated. The Hon. Judge reviewed the decision of the Deputy Registrar and affirmed it. In **TUICO and Attorney General and Two Others**, Misc. Civil Application No. 1 of 2008 (unreported), the Judge refers to review of a decision of the Judge which is different from the decision of a responsible person.

The third school of thought maintains that the High Court Judge of the Labour Division has jurisdiction to entertain revision application against the decision of the Deputy Registrar. The profunder of this school are evident in among other cases, the case of **Impala Warehouse and Logistics (T) Limited v. Samuel Kayombo and**

3 Others, Revision No. 926 of 2018, High Court of Tanzania Labour Division at Dar es Salaam (unreported); **Chui Security Co. Limited v. Thomas Bangu, Revision No. 27 of 2019**, High Court of Tanzania Labour Division at Dar es Salaam (unreported); **NMB Bank LC v. Sarah Richard Hamza**, Labour Revision No. 85 of 2019, High Court of Tanzania Mwanza Sub Registry at Mwanza; **China Communication Co. Limited v. Boaz Matiba and 298 Others**, Labour Court Digest of 2015, Case No. 149; **DAWASCO v. Wilson Chacha**, High Court Labour Digest of 2015, Case No. 181; **Central Security Guards Limited v. Ramadhani Shomari and 97 Others**, High Court of Tanzania, Labour Division at Dar es Salaam (unreported) and **Finca Microfinance Bank v. Vedastus Chundu**, Revision No. 23 of 2020, High Court of Tanzania Shinyanga Sub Registry at Shinyanga (unreported). In the case of **George Mapunda and Wema Abdallah v. DAWASCO**, Rev. No. 01 of 2014 held that this Court has jurisdiction to revise the decision of Deputy Registrar in the course of execution of decrees if moved properly by the parties or suo motu.

In the case of **Finca Microfinance bank** (supra), the Applicant filed an application for revision challenging the execution

proceedings and order by the Deputy Registrar in execution No. 9 of 2020 originating from ex-parte Judgement of the CMA in Labour Dispute No. CMA/222/2017. Upon interpartes hearing, this Court allowed the application for revision, quashed and set aside the execution proceedings and its resultant orders with an order that *Execution No. 9 of 2020* be determined afresh by another Deputy Registrar.

In the case of **Central Security Guards Limited** (supra), the Court was moved to call and examine the record before the Deputy Registrar for the purposes of satisfying itself as to the correctness, legality and propriety of the proceedings and orders made thereto. After analysis, the Court entertained the matter and dismissed the application on merits. The same stance was taken in the case of **Akbar Hassan Mohamed v. Zetas Zemin Teknolojis A.S**, Revision No. 417 of 2020, High Court of Tanzania Labour Division at Dar es Salaam (unreported); **Seleman Athman Salehe and 7 Others v. Joinven Investment (T) Limited and AL-Hatimy Developers**, Revision No. 813 of 2019, High Court Labour Division at Dar es Salaam (unreported); **Freco Equipment Limited v. Neema Omari Mkila**, Revision No. 282 of 2022, High Court of Tanzania

Labour Division at Dar es Salaam (unreported); **China Railway Seventh Group Co. Limited v. Baraka Rajabu Kidori**, Application for Reference No. 4 of 2020, High Court of Tanzania Labour Division at Arusha (unreported).

In the case of **Pangea Minerals Limited v. Mussa Mayeye**, Labour Revision No. 61 of 2018, High Court of Tanzania Shinyanga Sub Registry (unreported), the Applicant Pangea Minerals Limited filed an application for revision in terms of the provisions of *Rules 55, 28 and 24 of the Labour Court Rules, 2007* intending the Court to revise the decision of the Deputy Registrar in **Labour Execution No. 10 of 2018** dated 24th August, 2018. In the Labour dispute No.CMA/SHY/69/2011 in which, the Applicant was ordered to compensate the Respondent TZS 44,965,859/= for unfair termination. Parties however settled out of Court and registered a deed of settlement dated 11th day of May 2016 to the effect that the Respondent be compensated TZS 25,799,640/= being full realization of the whole claim. He was accordingly paid.

Sometimes in the year 2018, in **Labour Execution Case No. 108 of 2018**, the Respondent lodged another fresh application for execution claiming the difference on account that he was forced to

sign the settlement deed and that there was an error in calculation. This application was made before another Deputy Registrar who entertained it and ordered the decretal unpaid award of TZS 6,700,620/= be paid to the Respondent. Being aggrieved, the Applicant preferred application for revision. Upon hearing, the Court held:

As the Respondent was uncomfortable with the decretal sum decreed by the first Deputy Registrar, instead of filing a fresh application, thus inviting another Deputy Registrar to review or correct the order of the other, he would have asked this Court to revise the decision of an application for execution of the former Deputy Registrar. What was therefore done by the second Deputy Registrar was not only supported by any justification, but also illegal.

In the case of **MIC Tanzania Limited v. Edwin Kasanga**, Misc. Labour Application No. 404 of 2019, High Court of Tanzania Labour division at Dar es Salaam (unreported), the Court upon been moved with an application for extension of time to file revision against the Registrars order dated 26th March, 2019 and the subsequent garnishee order nisi dated 27th March, 2019; and upon been satisfied that the application was reasonable, using the powers vested under *Rule 56 (1) of the Labour Court Rules* allowed the application by giving the Applicant

14 days to file the intended revision application. The same position was reached by this Court in the case of **Deposit Insurance Board (Liquidator of FBME Bank Limited) v. Vinayachandran Pathaya Thingal**, Misc. Labour Application No. 384 of 2021, High Court of Tanzania Labour Division at Dar es Salaam (unreported). While in the case of **Rashid Bowa v. D.T. Dobbie and Co (T) Limited**, Misc. Application No. 120 of 2019, High Court of Tanzania Labour division at Dar es Salaam (unreported), the Court dismissed the application for extension of time to file revision for lack of merits.

The profunder of the fourth school of thought maintains that; the decision of the Deputy Registrar is not revisable before the Judge of the Labour Court. The main argument of the supporters of this school is that the Judge of the High Court cannot revise the decision or order made by the same High Court. This school is evident in among other cases, the case of **Iron and Steel Limited v. Martin Kumaliya and 117 Others**, High Court Labour Revision No. 169 of 2022 (unreported); **Andalus Corner Limited v. Happiness J. Kikoti and Mary Tenga t/a Tegemeza Finance Co. and Court Broker**, Labour Revision No. 301 of 2021, High Court of Tanzania Labour Division at Dar es Salaam (unreported). In the **Andalus Corner Limited case**, the Court having

borrowed leaf from the decision of the same Court in the case of **National Microfinance Bank PLC v. Victor Modesta Banda**, Labour Revision No. 34 of 2020, Tanga District Registry at Tanga (unreported), came with the position that the decision of a Deputy Registrar is not revisable. Again, in the case of **Andalus Corner Limited v. Happyness J. Kikoti & another**, Labour Revision No. 301 of 2021 the Court held that:

Having considered parties submissions I have noted that there is no dispute that this Court does not have jurisdiction to entertain an application for revision against a decision of the Deputy Registrar issued on execution. This means, a decision issued by a Deputy Registrar is not revisable by the High Court. The Applicant's counsel acknowledged that the decision of the Deputy Registrar is the decision of the High Court and therefore, the High Court cannot revise its own decision.

I agree with the parties. This position has been a subject matter in the case of **National Microfinance Bank PLC v. Victor Modesta**

Banda, Labour Revision No 34 of 2020, dated 31 May 2022 where I am inclined to borrow a leaf. In this case my learned sister Hon. L. Mansoor deliberated at length on the issue of revisability of the decision of the Deputy Registrar in execution proceedings. After such lengthy deliberation, she came with a view that the decision of a Deputy Registrar is not revisable and she dismissed the application which sought revision of a decision of the Deputy Registrar. In this matter, I will take the same root.

Again, in the case of **Rose @ Tanna Ally Nyabange v. Athuman Ally Nyabange (administrator of the estate of the late Warioba Nyabange) & 2 Others**, Misc. Civil Application No. 15 of 2022 High Court of Tanzania Mwanza Sub Registry at Mwanza, it was held that:

As correctly submitted by the counsel for the 1st Respondent, this Court lacks jurisdiction to revise the order of the Deputy Registrar. In law, the decision of such judicial officer is the order of this Court.

The profounder of the fifth school of thought maintains that Revisional powers over the decision of the Deputy Registrar is by the Court of Appeal of Tanzania. This school is evident in the case of **Iron and Steel Limited v. Martin Kumalija and 117 others**, Labour Revision No. 169 2022, High Court of Tanzania Labour Division at Dar es Salaam (unreported). In the **Iron and Steel Limited case**, the Court having revisited a number of Court of Appeal of Tanzania's decision including the case of **Serenity on the Lake Limited v. Dorcus Martin Nyanda**, Civil Revision No. 1 of 2019, Court of Appeal of Tanzania at Mwanza (unreported) and **Millicom (Tanzania) M.V v. James Alan Russel Bell and Others**, Civil Revision No 3 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported), observed that revisional powers are exercised only vertically and not horizontally. Further, the Court had these to state:

Revisional power over the decision of a Deputy Registrar is within the ambit of the Court of Appeal. There can never be a situation where the High Court can enjoy a concurrent jurisdiction with the Court of Appeal. It is the Court of Appeal which can revise a decision of a High Court...a decision of the High Court cannot be revised by the High Court because it is registered in a Register of the High

Court. Further, a High Court cannot compete with the Court of Appeal on powers.

The profunder of the sixth school of thought maintains that whoever aggrieved with the decision of the Deputy Registrar has to file Reference before the Judge. It is the same position maintained when the Registrar or Deputy Registrar is exercising his powers of execution under Order XXI of the Civil Procedure Code, Cap 33 Revised Edition 2019. This position is evident in among other cases, the case of **Mustafa Mbinga v. Tourism Promotion Services (T) Limited**, Reference No. 3 of 2020, High Court of Tanzania Labour Division at Arusha (unreported).

In **Mustafa Mbinga case** (supra), the Applicant was dissatisfied with a ruling of the Deputy Registrar dismissing application for execution No. 88 of 2020 for reasons that the Respondent had satisfied the arbitral award fully and there was nothing left in the award to be executed. Upon lodging a reference, the Labour Court Judge apart from allowing the additional payment of 1 month and 4 days' salary arrears, found the Applicant's claim to be lacking in merit.

In the case of **A. H. Jamal (As Administrator of the Estate of the Late Alnoor Tajdin Nanji and Sonix Corporation v. Wellworth Hotels and Lodges Limited**, Misc. Civil Application No. 61

of 2021, High Court of Tanzania, Dar es Salaam Sub Registry (unreported), the Court had these to state:

Apparently there is no specific provision in the Civil Procedure Code or any other law which governs procedure of appeal from the decision of a Deputy Registrar or Registrar of the High Court but generally the practice has been that any person who is dissatisfied with a decision of the Registrar or Deputy in his or her capacity as such may refer that decision to a Judge.

Secondly, in terms *Rule 1 of Order XL*, no appeal lies from an order made under *Order XXI Rules 9 and 10* in execution proceedings. Thirdly, pursuant to *Order XLI Rule 1* where, before or on the hearing of a suit in which the decree is not subject to appeal or where in the execution of any such decree any question of law or usage in having the force of law arises, on which the Court trying the suit or appeal or execution the decree entertain reasonable doubt the Court may, either of its own motion or on the application of any of the parties draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement with its own opinion on the point for the decision by the High Court.

That said, it is my finding that the decision of Registrar or Deputy Registrar in exercising his or her powers of execution under *Order XXI* cannot be appealed to the

Court of Appeal and the Orders is actually not appealable in view of *Rule 1 of Order XL of the Civil Procedure Code*.

The proponent of the sixth school of thought do also base their position on the provision of *section 38 (1) of the Civil Procedure Code (supra)* which provides:

38.-(1) All questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

The above position was also maintained in the case of **National Microfinance Bank Plc v. Victor Modesta Banda**, Labour Revision No. 34 of 2020, High Court of Tanzania at Tanga (unreported).

The proponent of the seventh school of thought in respect of the decision of the Deputy Registrar maintains that; *the decision made by the Deputy Registrar of the High Court is deemed to be the decision of the High Court. It is therefore challenged by way of an appeal, reference and/or revision to the Court of Appeal*. Such school is evident in the case of **Nurdin Mohamed Chingo v. Salum Said Mfiwe and Another**,

Civil Reference No. 6 of 2022, High Court of Tanzania Dar es Salaam Sub Registry (unreported).

The eighth school of thought maintains that decisions of the Deputy Registrar on execution cannot be challenged by way of reference to the Judge. The profounder of this school are existent in the inter alia cases of **Phillip Joseph Lukonde v. Faraja Ally, Land Reference No. 1 of 2020**, High Court of Tanzania Dodoma Sub Registry (unreported) as quoted with approval in the case of **Registered Trustee of Taqwa Private Secondary School v. Registered Trustee of Bakwata**, Land Reference No. 03 of 2022, High Court of Tanzania Mwanza Sub Registry (unreported). In the case of **Phillip Joseph Lukonde** (supra) the Court held that:

...It is apparent that the High Court cannot seek opinion from itself. Since the Deputy Registrar entertained execution...in this Court as execution Court, this decision cannot be subjected to this kind of application.

Out of the eight avenues, Review and Revision come close to the possible remedy on challenging decisions of the Honourable Registrar of the Labour Court. However, I find reference and appeal not coming up at all in Labour Law Statutes. In fact, to my humble opinion, an appeal

cannot be done in the same Labour Court. It lies to the Court of Appeal as against the decision of the Labour Court Judge only.

I do understand that right of appeal is a constitutional right conferred by *article 13 of the Constitution of the United Republic of Tanzania, 1977* to any person aggrieved by the decree or appealable order. However, the review application remedy is equally covered under the same article as "any other remedy". Essentially, review would ordinarily presuppose that the order on the materials before the Deputy Registrar was probably correct order. However, the element which could be looked into during the hearing of review application could not have been available to the Appellate Court on appeal. Therefore, review remedy against the decision of the Deputy Registrar to the Labour Court Judge will enhance labour justice.

Moreso, as per *section 58 of the Labour Institutions Act [Cap 300 Revised Edition 2019]* is very clear to the effect that reference is to be made by the Labour Commissioner to the Labour Court and to the Court of Appeal of Tanzania. *Section 58 (supra)* provides:

- 58.**-(1) The Labour Commissioner may-
- (a) refer any point of law, other than the point of law referred to in paragraph (b), to the Labour Court-

- (b) refer a point of law to the Court of Appeal if-
- (i) there are conflicting decisions of the Labour Court in respect of the same point of law; and
 - (ii) the parties to the proceedings in those decisions have not appealed.
- (2) The Labour Commissioner shall serve any reference under subsection (1) on the Council. (3) Any registered organisation or registered federation with an interest in the subject matter of any reference under paragraph (a) or paragraph (b) may apply to the Court to which the reference is made to be joined as parties to the proceedings.

Equally, *section 48 of the Labour Institutions Act (supra)* covers appeals from the order of the Labour Commissioner to the Labour Court. It is not on appeal from the decision of the Deputy Registrar on compliance. *Section 48 (supra)* provides:

- (1) An employer may appeal to the Labour Court against an order of the Labour Commissioner within 30 days of receipt of the order.
- (2) Upon an application by the employer, the Labour Court may, on such terms and conditions as it may impose, suspend the order of the Labour Commissioner pending the final order of the Labour Court or any other appeal against the decision of the Labour Court.

- (3) The Labour Court, on good cause, may condone any appeal made after the 30 days have expired.
- (4) The Labour Court may confirm, modify or cancel an order, and the order in respect of which is confirmed, modified or cancelled shall specify the period within which the employer shall comply with the confirmed or modified order.

At this point, I am bound to say that, I think it is very difficult to think of a rational ground for differentiating the procedural effect between review and revision. Some may think it is only as a matter of procedural convenience. But I think there are good and pragmatic reasons why adopting revision against the decision of the Deputy Registrar makes *ex facie* bad for the judicial business on labour justice.

At any rate, it must be appreciated that with the term review, according to **Black's Law Dictionary**, 8th edition, it means; to look again or re-examine the decision of the Deputy Registrar. While Revision means to revise the matter and pick out something done wrongly or in a wrong manner by the Deputy Registrar.

Whatever the legitimacy of its judicial interpretation, the review remedy has in my view a valuable part to play in protecting the interests of labour justice than preferring the other remedies. It is therefore my humble view that this Court should welcome the review remedy of the

Deputy Registrars decision to avoid bizarre consequences and hampering labour justice for a series of reasons.

First and foremost, the provision of law. While revision is brought in under *Rule 55 of the Labour Court Rules*, where the Court adopts a procedure it deems appropriate, review has the specific provision which is *Rule 26 of the Labour Court Rules, GN. No. 106 of 2007* which is expressly. Reading the whole *Rule 26 (supra)*, it means the said review is done by a Judge of the Labour Court. In the presence of *Rule 26 (supra)* which provides an avenue for challenging decisions of the Registrar, it means revision under *Rules 55 (supra)* cannot be invoked.

Rule 26 (supra) provides:

A party seeking to review a decision or proceedings of responsible person or body performing a reviewable function justifiable by the Court, shall file a chamber application of review to the body or person and to all other affected parties.

Second, the chances for appeal in review are very low as compared to revision. Under *Rule 26 of the Labour Court Rules*, the Labour Court has the inherent jurisdiction to review decisions of the Deputy Registrar and it will do so in any of the following circumstances to wit; where there is a manifest error or any mathematical or clerical

error on the face of the record which resulted in miscarriage of justice, or where the decision was attained by fraud; or where a party was wrongly deprived of the opportunity to be heard, or where there is discovery of new important matter or evidence, or where there is any other reasonable ground to the satisfaction of the Labour Judge. It is needless to emphasize that the scope of an application for review is much more restricted than that of an appeal.

The result of this exercise is the alleviation of the work load of the Justices of Appeal. Coupled with the Registrar's power to grant execution of the decision of Commission for Mediation and Arbitration. If one pursues the matter to the Court of Appeal, then on closure of the appeal goes to the Labour Court for execution and the decision coming out of execution is revisable and later appealable, that is putting litigation to be an endless battle, an act which contravenes public policy.

In the case of **Golden Global International Services Limited and Another v. Millicom (Tanzania) N.V**, Civil Application No. 195/1 of 2017 (unreported), p. 21, the Court took into consideration of the demand of public policy on the finality of litigation. If this Court is to adopt to the contrary, it would be inconsistent with the underlying interest that there should be finality in litigation. It is inconsistent with

the need for economy and efficiency in the conduct of labour litigation, in the interests of the parties and of the public as a whole.

Third, Revision in terms of *section 91 of the Labour and Employment Relations Act* presupposes to rectify the mistakes made by Commission for Mediation and Arbitration during arbitration of the case. It is not aimed at rectifying the mistakes made by the Deputy Registrar.

Fourth, the High Court Labour Division while doing review can appreciate new important matter or evidence or issue of which cannot be done during revision application.

Fifth, review under *Rule 26 of the Labour Court Rules (supra)* can be done only on the application of the party and it cannot be done on the second time. But revision can even be entertained by the Court suo moto.

Sixth, though revision seems to be an open avenue under *section 94 (1) (b) of the Labour and Employment Relations Act*, review seems to be the appropriate avenue under *Rule 26 of the Labour Court Rules*. The reason being that the current labour laws framework in Tanzania and SADC members such as South Africa, Botswana and Lesotho in general are designed in a *hybrid manner with unique or peculiar features*

distinguished from conventional laws such as ordinary civil procedural law (CPC).

It is perhaps worth articulating the sixth reason a little more. Under the labour laws, matters which are not normal or common are made common. Special laws with special procedures and established special institutions have been established with special methods of resolution of labour disputes such as Conciliation, Mediation, Arbitration and where necessary adjudication. In Tanzania, Mediation, Arbitration and adjudication have been preferred for the purpose of promoting peace and prosperity in employment and labour relations. Henceforth, enhance economic development through economic efficiency, productivity and social justice.

Seventh, the Labour Court in most of the SADC members including Tanzania have exclusive jurisdiction with special substantive and procedural features from the commencement of the proceedings to the finality. For example, the pleadings such as CMA F-1 are used to initiate proceedings. Also, CMA F-1 is the base for allegation even in the Labour Court. It must be served first to the Respondent before being filed in the CMA. Another unique feature, which is subject to criticism and requires advanced research, is that the Labour Court executes award not issued

by itself, to mention but a few. *The powers of the Deputy Registrar or Registrar under the labour laws are also unique aimed at making sure labor dispute are finalized within a short period and at less costs and where possible at the lowest stage.*

Eighth, the intention of labour laws is that; where possible all labour dispute to be resolved through consensus-based approach (Negotiation, Conciliation and Mediation rather than right (Arbitration and Adjudication) or power-based approach (Strike and Lockout).

It is further the spirit of the law that most of the dispute to be resolved at the CMA and where possible few of them by the Labour Court and where necessary and specific on the point of law to reach the Court of Appeal. It is with this spirit the Deputy Registrar has been vested with administrative and semi-judicial powers under the control and supervision of the Judge of the Labour Court.

It is further the spirit of the labour law that whether the Registrar or Deputy Registrar exercise either *administrative or quasi or semi-judicial* power are subject to the Judge unless in some special exceptional circumstances where the Registrar can make decision when exercising semi judicial powers. Therefore, and with due respect, considering the peculiarities and uniqueness of the labour laws, the

Deputy Registrar has no general power to change the substance of an award such as changing from the order of reinstatement to compensation and make quantification rather. Indeed, the decision of the Deputy Registrar on labour matters is subject of review before the Labour Judge.

Nineth, it is also within the ambit of the law that the Labour Court Judges have the general supervisory powers to all person or body performing functions under the labour laws including the Deputy Registrars or a Registrar as a peculiar feature. Therefore, any person aggrieved by the decision of the Deputy Registrar can seek the refuge to the Labour Court Judge through review and not appeal to the Court of Appeal as per normal or ordinary civil suit. The appeals from the Labour Court to the Court of Appeal as per the Labour Law must emanate from the decision of Labour Court Judge and on the point of law only.

Tenth, borrowing leaf from South Africa, the country we share commonality, *the Labour Relations Act No. 66 of 1995 as amended from time to time* provides for Review of the functions performed under the labour law through *Sections 145 and 157 of the Act* and in terms of *Section 159 (3) Labour Court Rules* have been made to govern the conduct of proceedings in the Labour Court of 2001. The Rules provide

for the right to review to all actions performed under the labour laws whether administratively, quasi-judicial or semi judicial or judicial and the powers are vested to the Judges of the Labour Court. *Rule 10(8) of the Labour Court Rules of South Africa* provides that:

When the registrar receives representations delivered in terms of sub rule (7) or the time limit for delivery of representations lapses, whichever occurs first, *the review must be placed before a Judge* in chamber for decision.

[Emphasis added]

No doubt our labour laws have to be interpreted as far as possible to conform to *Rule 10 (8) (supra)*, but there is nothing in our Labour Laws apart from *Rule 26 of the Labour Court Rules* which suggests that our laws confers review powers of the decision of the Deputy Registrar on labour matters be done by the Labour Court Judge. In fact, upon dissecting *Rule 10 (8) of the Labour Court Rules of South Africa (supra)*, I found it has the same reading with *Rule 26 of Labour Court Rules of Tanzania*.

Further, in South Africa, the person who is aggrieved by the decision of the Labour Court as a reviewing body is at liberty to challenge such decision to the Labour Appeal Court (LC) and if still aggrieved prefer appeal to the Supreme Court (SC) and as a last resort

to the Constitutional Court (CC). Under the Rule, the Registrar to the large extend perform administrative function to make sure the application for review is properly before the Court and is properly placed before the Judge for necessary orders.

Eleventh, under the Labour Court Rules of South Africa, the term Court is defined to mean the Labour Court established by *section 151 of the Act* and includes any Judge of the Court. The function of the Registrar of the Court in South Africa is subject to supervisory powers of the Judge whether *suo moto* or where a person is aggrieved by such decision so that if still aggrieved can challenge it through appeal to the Labour Appeal Court.

Twelfth, the position of South Africa is not so much different with what is provided under the Tanzania Labour laws and Labour Court Rules *Government Notice No. 106 of 2007. Rule 26 of the Labour Court Rules (supra)* provides review remedy to a party aggrieved by a decision or proceedings of a person or body performing a reviewable function justifiable by the Court. It is very clear that the Registrar or Deputy Registrar in performing his function whether administratively or semi judicial at the ultimate makes decision, such kind of decision might aggrieve a party who will seek for review.

Thirteenth, according to the hybridized labour laws which aim at promoting economy and social justice through Court and Tribunals by avoiding delays, discouraging costs and duplications of powers. It is not the spirit of the labour laws to prolong litigation, rather labour laws aim to make it simple and short. That is why, the Judges of the Labour Court are molded in a cocktail style to suit all situations. Under the labour laws, Judges are mediators and at the same time are adjudicator as per *Rule 3 of the Labour Court Rules*.

Fourteenth, Judges have been vested with powers to review the decisions of the Deputy Registrar which is not normal in ordinary suit where the reviewing body is the same person formerly made such decision. Or in case of death, retirement or incapacitation of any kind, review may be done by another fellow Judge with competent jurisdiction. On the other hand, the same Judge is vested with power to revise the decisions of the inferior or subordinate bodies such as the award of the Commission for Mediation and Arbitration (CMA).

In addition to those powers above stated, Judges can hear fresh complaints special designated for them. It is the position of the law that the proper authority to deal with review and revision is vested within Judges so that when a party is still aggrieved by such decision can

pursue the matter further through Appeal to the Court of Appeal. Here, it means, revision against the decision of the Commission for Mediation and Arbitration and review against the decision of the Deputy Registrar.

Fifteenth, some may argue that review should be made by the Deputy Registrar himself/herself. The reason may be advanced to the extent that it is the same Deputy Registrar who rendered the decision on execution, therefore he has heard the matter at length, applied his mind and knows the matter at best in terms of the facts and the circumstances leading to the decision. Thus, a Labour Court Judge will need to familiarize himself/herself with the case and understand the grounds for review (if any).

Predicated with the above argument, it is my view that review remedy against the decision of the Deputy Registrar is a creation of law and rules by implication. It therefore must be complied with to avoid wanton delay of labour justice which transcends all barriers. If review remedy of the decision of the Deputy Registrar is conferred to the same body, it can cause unnecessary delay of bringing labour matters to the end. Therefore, procedural hurdles of such nature must bend before labour justice.

Nonetheless, a reviewing Labour Court Judge, when required to consider an application for review of a decision from a Deputy Registrar must take into consideration on the rule of objectivity, consistence and finality of decisions in labour matters.

Consistently and in line with the above reasoning, there is nothing in *Article 108 (2) of the Constitution of the United Republic of Tanzania, 1977* that precludes the High Court from exercising the power of review which inheres in every Court to prevent miscarriage of justice or to correct grave errors committed by it but such power must not be confused with an appellate power of the Court of Appeal on appeal.

Sixteenth, the Deputy Registrar has no power to make substantial decision to the execution. If the Deputy Registrar makes a decision and parties or either party is aggrieved by such decision, such decision is subject to the supervision of the Court through Review to the Labour Court Judge. See also the reasoning in the case of **Hubert Lyatuu Applicant v. Tanesco**, Labour Revision No. 90 of 2018 (unreported) on peculiarities of the labour laws as distinguished from normal civil suit.

In view of the above decisions, *section 94(1) of the Employment and Labour Relations Act [Cap 366 Revised Edition 2019]* provides for the powers of the Labour Court. It states as follows:

94(1) Subject to the Constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter falling under common law, tortious liability, vicarious liability or breach of contract and to decide –

- (a) appeals from the decision of the Registrars made under Part IV;
- (b) reviews and revision of –
 - (i) arbitrator's award made under this Part;
 - (ii) decisions of Essential services Committee made under part
- (c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act.
- (d) complaints, other than those that are to be decided by arbitration under the provision of this Act;
- (e) any dispute reserved for decision by the Labour Court under this Act; and
- (f) applications including-
 - (i) a declaratory order in respect of any provision of this Act; or
 - (ii) an injunction.

From the above provision, it is clear that the jurisdiction to revise the Deputy Registrar's decision is not clothed in the provision provided above. Even the relied *Rule 28 of the Labour Court Rules* does not

empower this Court to revise the decision of the Registrar. The provision empowers the Court to revise proceedings decided by any responsible person or body implementing the provision of the law. As cited above, the Registrar is defined as part of the Court. Thus, he/she does not feature to the persons specified under *Rule 28 of the Labour Court Rules*. Even if it empowers this Court to revise the decision of the Deputy Registrar, review may be an expedient process than revision because after revision one may prefer review before the same Deputy Registrar.

Again, in the case of **Halais Pro-Chemie v. Wella A.G** [1996] TLR 269 cited in the case of **Praksed Barnabas (Legal representative of Harrison Mandali & 9 Others v. The Registered Trustees of The Archdiocese of Dar es Salaam**, Civil Application No. 480/17 of 2020, Court of Appeal of Tanzania at Dar es Salaam (unreported), it was observed that:

A party to proceedings in the High Court may invoke the revisional jurisdiction of the Court where the appellate process has been blocked.

Discerning from the above reasoning, my conclusion is that there seems to be no reason, in principle, for the Court in all circumstances to

ignore *Rule 26 of the Labour Court Rules (supra)* that by its implication provides for review as a remedy for whoever aggrieved by the decision of the Deputy Registrar on Labour matters.

If this Court is to prefer reference remedy as a remedy done against the decisions of the Deputy Registrars in Sub Registries of the High Court and other Divisions of the High Court in execution or Bill of Costs matters which are not labour based, that is to adopt too dogmatic approach to what should in my opinion be limited in normal cases but not in hybrid labour law system. Though I would not regard reference or revision approach as necessarily irrelevant as the result may be the same, it is in my humble view that the review remedy before the Labour Judge has a valuable part to play in protecting the interests of labour justice particularly in promoting economy and social justice by avoiding delays, discouraging costs and duplications of powers.

I should add that, though decision of the Deputy Registrar may be challenged by way of review before the Labour Court Judge, the review must be based on proper grounds. It should not be on routine basis which may obstruct virgin application. Indeed, it should not be an appeal in disguise. The essence is to avoid frivolous review which may

ignite gambling element in labour matters. The overriding concern should be to celebrate solemnity of finality in labour matters.

Conclusively, the preliminary objection is sustained without costs. Consequently, the application is struck out for being incompetent before the Court. Order accordingly.

Y. J. MLYAMBINA

JUDGE

28/02/2023

Ruling delivered and dated 28th day of February, 2023 in the presence of the Applicant in person and learned Counsel Chali Juma for the Respondent.



Y. J. MLYAMBINA

JUDGE

28/02/2023