

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

**REVISION NO. 436 OF 2022**

*(Arising from the decision of the Deputy Registrar Hon. E.M. Kassian, DR in respect of Labour Execution No. 268 of 2022 delivered on 20<sup>th</sup> day of September, 2022)*

**BETWEEN**

**CLEOPHAS M. MANYANGU ..... APPLICANT**

**VERSUS**

**ASSOCIATION OF LOCAL AUTHORITIES OF**

**TANZANIA .....RESPONDENT**

**RULING**

03 May -1<sup>st</sup> June, 2023

**OPIYO, J**

This Ruling is in reference to the preliminary objection raised in Revision Application filed by the applicant to the effect that the application is untenable in law as this honourable court lacks the requisite jurisdiction to entertain the application.

In this application only the respondent was represented by Ms. Frida Molell, State Attorney. The applicant appeared in person. The hearing of the preliminary objection proceeded orally where Ms. Molell submitted that



the court has no jurisdiction based on section 50(2)(a) of Labour Institutions Act, CAP. 300 R.E. 2019 as amended adding paragraph (b) which added Deputy Registrar as part of the High Court. She continued that, such amendment made Hon. Kassian Deputy Registrar who made the impugned decision part of this court. She continued to submit that, because the decision for which revision is applied is from Hon. Kassian who is part of this court, filing this application for revision is incompetent.

Ms Molell submitted further that, this application ought to be filed before a higher court, not the same court as per Section 57 of CAP 300 R.E. 2019. The section provides for whoever is aggrieved by the decision of this court to appeal to the Court of Appeal. To cement her point she referred to the case of **Ukerewe Saccos Ltd vs Jumanne A. Josiah**, Labour Revision No. 3 of 2022, High Court at Mwanza, Mnyukwa, J at page 15 as the application for reference was dismissed for want of jurisdiction and then she prayed for the application to be dismissed.

In response applicant submitted that the preliminary objection is baseless as the application has been brought under Section 94(1) of the ELRA, Cap 366 RE 2019, rule 24(1)(2) (a-f), 23(3)(a-d) and 28(1)(d), 55(1)(2) of Labour Court Rules GN No. 106 of 2007. He continued that, the provisions



of law cited especially section 98 of CAP. 366 R.E. 2019 and rule 55 of the Labour Court Rules [G.N. No. 106 of 2007] provide that all decisions of Deputy Registrar are subject to scrutiny by the judge. To support his point, he cited cases of **Mamlaka ya Maji Safi na Usafi wa Mazingira Dar es Salaam vs Grace Mapunda and another, Revision No. 240 of 2020, Maghimbi, J** and **Revision No. 433 of 2021, UAP Insurance (T) Ltd vs Yuda Shayo & 6 others High Court Labour Division, Mganga, J** and **CHODAWU Vs. Board of Trustees of Tanzania National Park Revision Application No. 27 of 2022, High Court Arusha, Mwaseba, J**. He argued that all these cases shows that the shows it is a practice of this court to revise decision of the Deputy Registrar.

In his view the argument that this court has no jurisdiction in terms of Section 50(2) of the LIA and amendment as insinuated by the learned state attorney has no legal basis, because there is no decision of the Deputy Registrar that can be subjected to appeal to the Court of Appeal, unless such decision is tested by the judge.

He submitted further that this preliminary objection was brought premature for failure to construe provision of the Law properly and that there is no decision of court of appeal supplied to show that practice. He continued



that the case of **Ukerewe Saccos** (supra) that has been cited was for reference not for Revision like the one at hand. He therefore prayed for the preliminary objection to be dismissed.

On rejoinder Miss Mollel reiterated what have been submitted in the submission in chief.

After perusal of the rival submissions of both parties, this court has been asked to determine whether this court has jurisdiction to revise the decision of the deputy Registrar. There is no dispute that the decision that the applicant has filed the application for revision for is of the Deputy Registrar in execution proceedings. The respondent in support of her preliminary objection insisted that this court has no jurisdiction to entertain the matter while on the other hand the applicant maintained that the court has jurisdiction based on the provisions of law under which the application has been brought.

In scrutinizing the application it is found that the application has been brought under a number of provisions. Those are section 94(1) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019], rules 24(1), (2)(a-f) and (3)(a-d), 28(1)(d) and 55(1) and (2) all of the Labour Court

Rules, G.N. No. 106 of 2007. For ease reference these provisions are reproduced in part as follows:-

*"Section 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 failing under common law, tortious liability, vicarious liability or breach of contract and to decide-*

- (a) Appeals from the decisions of the Registrar made under Part IV "*
- (b) reviews and revisions of -*
- (c) (i) arbitrator's awards made under this Part;*
- (d) (ii) decisions of the Essential Services Committee made under Part VII;*
- (e) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;*
- (f) complaints, other than those that are to be decided by arbitration under the provisions of this Act;*
- (g) any dispute reserved for decision by the Labour Court under this Act; and*
- (h) (f) applications including-*
  - (i) a declaratory order in respect of any provision of this Act;*
  - or*
  - (ii) an injunction.*



Rule 28(1)(d) *"The Court may, on its own motion or on application by any party or interested person, call for the record of any proceedings which have been decided by any responsible person or body implementing the provisions of the Acts and in which no appeal lies or has been taken thereto, and if such responsible person or body appears-*

*(a)N/A*

*(b)N/A*

*(c) N/A*

*(d)* that there has been an error material to the merits of the subject matter before such responsible person or body involving injustice.

Rule 55(1) and (2); provides for adoption of any other procedure by this court when there is a lacuna in labour laws.

From the above provisions, section 94(1)(b) of CAP. 366 R.E. 2019 states clearly that the appeal to this court deal with is those found in decisions made under part IV of the same Act. Part IV of the Act deals with decision by the Registrar in relation to trade unions, employer's associations and federations. It does not in any way deal with the decision of the Deputy Registrar in execution proceedings, but of registrar in relation to Trade



Unions etc. the instant application has been brought purposely to revise the decision made by the Deputy Registrar in execution proceedings. Thus, the application enabled by the above provision does not include the application at hand. For that matter, it was not proper to bring application under such provision of the law which is not at all an enabling provision for the same.

Rule 24 (1), (2) and (3) of G.N. No. 106 of 2007 deals with how the application should be filed, i.e, how the pleadings should be brought before this court including the relevant documents to be filed in such application. It states that the applications should be made by way of notice, accompanied with an affidavit. It went further to state what the affidavit shall constitute. This provision also is not an enabling provision for preferring revision from the decision of Deputy Registrar.

On rule 28(1)(d) of G.N. No. 106 of 2007, it is specifically states that it deals with the matter decided by any responsible person or body. One would want to know if the Deputy Registrar is the responsible person or body. The same has been cleared by section 67 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, of 2020, Act No. 3 of 2020 which added paragraph (b) to section 50(2) of The Labour Institutions Act [CAP.

300 R.E. 2019], immediately after paragraph (a, which made the Deputy Registrars as part of this court.

Rule 55(1) and (2) provides for adoption of any other law when there is a lacuna in labour laws. The applicant in his submission did not specify the lacuna is in our law justifying reference to other laws and he did also not cited the expected other law or laws to fill the said lacuna.

By the cited provision of the law, the Deputy Registrar was made part of the High Court Labour Division. That means he/she is not a responsible person or body referred to by the cited provision by the applicant, rule 28(1)(d)( supra). It follows therefore that applications for revision to be brought under the above provision do not include those challenging the decision of the Deputy Registrar as suggested by the applicant. For that matter as this application is for revision, the High Court cannot revise its own decision. Even if it was possible then, it is not under the provisions cited by the applicant.

The cases cited by the applicant in support of his position are the cases of this court which are not binding on me, but they are persuasive. I am aware that, the fact that they are not binding on me is not a certificate of



departing lightly from them. The case of **David David Mbunda v Stanley Joachim Mmanyi**, Misc. Land Appeal No. 80 of 2013, HC Land Division, Mansoor, J.) clearly puts that in the right perspective. Therefore, to depart from own decision one need to have strong reasons for that. The said authorities however, were not referred to on specific position of the law, but on showing that this court happened to have entertained similar applications for revision. Going through the decisions, it is noted that the issue of competency of the matter before the court did not arise and the issues dealt with were from the Deputy Registrar's decision in execution proceedings which I believe does not call for the use of the term revision, but review for the reasons I have already elaborated above. It follows therefore that, if the applications were brought under proper provision of the law but with wrong title referring to a revision instead of review, the court was right to determine the same given the recent effect of the doctrine of overriding objective. This is distinguishable with our case in which the provision of law cited as enabling provision is wrong. Thus the court is not properly moved.

After finding that all the provisions of laws under which this application have been preferred, none is a proper enabling provision so as to give

jurisdiction to this court to review a decision held by a Deputy Registrar, it is my conclusion that the court is not properly moved. In the case of **Balozi Abubakari Ibrahim & Another vs. Ms Benandys Limited & 2 Others**, Civil Revision No. 6 of 2015, CAT at Dar es Salaam at page 28 that: -

*"The high court having been wrongly moved, the application was incompetent and she ought to have struck it out on that basis only."*

Therefore, I hereby struck out this application for being improperly incompetent before the court. No order as to costs as this is the labour matter.



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**M.P. OPIYO,**

**JUDGE**

**1/06/2023**