

TANZANIA / JUDGMENT

Barakuba Ndoroma Dobeye Another v Emmanuel Patric 3 Others Labour Application No

COURT
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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA LABOUR CASE NO. 000020516 OF 2024

1. BARAKUBA NDOROMA DOBEYE AND FARES NGILANTE YOTHAM
COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS
1. EMMANUEL HERMAN PATRICK; 2. ABISIUS A. LUTANDIKA; 3. ELIAS CHANDA KIPFUMU
AND 4. CHAMA CHA KULINDA NA KUTETEA HAKI ZA WALIMU TANZANIA
(CHAKUHAWATA) RESPONDENT / DEFENDANT

RULING

KAHYOZA, J, The Applicants, Barakuba Ndoroma Dobeye and Fares Ngilante Yotham are moving the court by way of notice of application and Chamber summons supported by a joint affidavit sworn by the two Applicants herein. They are seeking to challenge the 4th Respondent's General Elections, held in Tanga on 26th June, 2024. The Respondents on the other hand have come up with preliminary objections on points of law. The objections raised are to the following effect: -

1. That, the Honorable Court has no territorial jurisdiction to hear and determine this application against the 1st and 2nd respondents.
2. That, this application is incompetent for non-joinder of necessary parties who will be affected by the decision of this court.
3. That, the applicants' application is incompetent for being brought in contravention of rule 24(1) of the Labour Court Rules GN No. 106 of 2007.
4. That the applicants' application is bad in law for wrong citation of enabling provision.
5. That the applicants' application is bad in law for being prepared in contravention with the mandatory requirement of Rule 46(1, 2 and 3) of the Labour Court Rules GN No. 106 of 2007.

6. That the application hopeless for being brought in contravention of Section 23(1) and 2 of the Labor Court Rules GN No. 106 of 2007
7. The Applicants' application is prematurely filed without exhausting the internal remedy enshrined in the organization as per Section 53 (1) (a) (b) (i) and (ii) and 2(a) of the Employment and Labour Relations Act CAP 366 R.E 2019. Page. 1 When the matter came up for hearing, the Applicants were represented by Mr. Kanani Chombala, advocate, while the Respondents were represented by Mr. Emmanuel T. Msasa, advocate. Advancing arguments in support of the preliminary objection Mr. Msasa commenced on the first ground by stating that the cause of action as to the pleadings, happened in Tanga. Mr. Msasa stated further that the first Respondent is a resident of Tanga, and the second one is a resident of Dodoma and since the elections took place in Tanga therefore the High Court of Tanzania, Tanga registry is properly vested with jurisdiction to try the case and not otherwise. Submitting on the second and third grounds of preliminary objections, Mr. Msasa stated the matter before this court is incompetent for non-joinder of necessary parties who came into power as a result of the respective election but are not party to the matter at hand. Mr. Msasa submitted further that such non-joinder of necessary parties contravenes Rule 24 (1) of the Labour Court Rules, GN 106/2007. According to Mr. Msasa the said rule requires that all parties interested in the matter must be joined. As for the fourth ground of preliminary objection, Mr. Msasa submitted that the application is bad in law for citing wrong provisions. Mr. Msasa stated that sections 94(1)(f) (1-2) of the ELRA and Rule 24 as cited in the application, are all not proper enabling provisions to move this court in matters involving elections of trade unions. According to Mr. Msasa the relevant provisions are section 53(1)(a) of the ELRA, and not otherwise. Submitting on the fifth ground, Mr. Msasa contended that the application contravenes Rule 46(1, 2 &3) of the Labour Court Rules. According to Mr. Msasa the pleadings by the Applicants have not met the requirements set out by the respective rules since there is no index filed as a result, making the application is incompetent. As for the sixth ground, Mr. Msasa submitted that the application is incompetent for contravening Rule 23(1&2) of the Rules. According to Mr. Msasa the matter at hand ought to have been brought by way of a complaint and not by way of chamber summons. With regard to the last ground, Mr. Msasa stated that the matter has been brought before this court prematurely. According to Mr. Msasa the Applicants ought to have exhausted the available remedies as provided for under S. 53(1) (a) (b) (i & ii). Additionally, Mr. Msasa submitted that there must be a certification that the internal remedies of the organization have been exhausted. To that end Mr. Msasa made reference to the case of Suleiman M. Komba vs CWT, Miscellaneous Application No. 118/2022, the Labour Court at DSM. Responding to the points raised, counsel for the Applicants, Mr. Kanani, commenced by saying that the points of preliminary objections raised are nothing but a delaying tactic. With regard to the first, Mr. Kanani submitted that in both the applicants' affidavit and that of the respondents it is not stated that their place of abode is Tanga and Dodoma. He pointed out that the rest of the Respondents were joined because they are employees in the office of the 4th Respondent. He further submitted that the fourth Page. 2 Respondent is a registered association with its

head office in Kigoma and the same is reflected under paragraph 4 of the counter affidavit. According to Mr. Kanani, Section 18 of the Civil Procedure Code requires a case against the defendant to be filed where it has a head office. Mr. Kanani further made reference to the case of Abdallah Ally Seleman vs Tabata Petroleum, Civil Appeal No. 89/2017, in which the Court of appeal held that claims arising from the same transaction cannot and should not be separated. In an attempt to solidify his position, Mr. Kanani also made reference to another decision of this court in Sarapia Veruli vs Multichoice T, Civil Case No. 6/2021, Moshi registry. In this case it was held that the High Court has jurisdiction on matters involving association no matter where the cause of action took place in Tanzania. Addressing the issue of non-joinder, Mr. Kanani submitted that the point was misplaced. According to Mr. Kanani such misjoinder must involve an indispensable party whereas without such party, there can be no judgment. To support this contention, Mr. Kanani cited the case of Car Truck Ltd vs MKB Security Ltd, Land Case No. 169/2021, in which the HC Land Division held that joinder or misjoinder cannot be the reason to defeat a suit. To cement it all, Mr. Kanani invited the court to be guided by the decision of the Court of appeal in Juliana Mkwabi vs Lawrent Chimwaga, in relation to what it stated on the issue of non-joinder. As for the 3rd and 4th grounds of objections, Mr. Kanani submitted that the application was in compliance with Rule 24 of the Labour Court Rules. According to Mr. Kanani parties were served with the notice and that is the reason they appeared before the court. In further reference to the fourth point, Mr. Kanani submitted that the issue of wrong or non-citation of the provisions of the law is not fatal as it is curable. To support this contention, he cited the case of Joseph Shumbusho vs Mary Grace Tigerwa and Mic Tanzania Ltd Vs Golden Globe Ltd. In this case the Court of Appeal held that wrong citation of one of the provisions while the rest of the provisions are correct did not render the matter incompetent. Mr. Kanani also made reference to Art. 107 A of the constitution of the United Republic of Tanzania which enjoins the court to consider substantive justice and not technicalities. On the fifth ground, Mr. Kanani submitted that Rule 46 has not been contravened because pleadings are paginated as per the requirement of the law. He also added that Rule 46 was not applicable in this matter. It was his further stance that even if it Rule 46 was applicable, still the anomaly was curable under the overriding objective principles. With regard to the sixth point, Mr. Kannai submitted that the Rules did not contain Section 26. As such this point was based on non-existing law. As for the last ground, it was Mr. Kanani's submission that all other remedies had been exhausted as required by the law; and that this was reflected in paragraph 12 of the affidavit supporting the application. He wound up by urging the court to overrule all the points of preliminary objections raised by the Respondent in that they were devoid of merit. He also pressed for costs for what he said that the points raised were nothing but vexatious.

Page. 3 With this summary of the arguments for and against the preliminary points of objection, I shall now proceed to consider them and their impact on the matter before me. Acknowledgeably, the dispute between the Applicants and the Respondents is rooted in Trade Union's constitution. The fourth Respondent is a Teacher's Trade Union registered as Chama cha Kulinda na Kutetea Haki za Walimu Tanzania (CHAKUHAWATA). Its headquarter is located at Lumumba Street, Kigoma Ujiji Municipality within Kigoma region. Following

CHAKUHAWATA general elections held in Tanga region on 26th June, 2024, the 1st, 2nd and 3rd respondents were elected as national leaders. It is the outcome of the general elections which the Applicants are challenging on grounds of breach of CHAKUHAWATA's constitution. It is also stated that the election was in breach of the Employment and Labour Relations Act as well as the Public Servants Standing Order No. 2 of 2013. For reasons that will become obvious, I have opted to start with the last point which states that the Applicants' application has been filed without first exhausting the internal remedies. Section 53 (1) (a) (b) (i) & (ii) of the Employment and Labour Relation Act [CAP 366 R.E 2019] provides; 53 (1) Where a federation or registered organisation fails to comply with its constitution, the Registrar or member of the federation or registered organisation may apply to the Labour Court for any appropriate order including-

- (a) setting aside any decision, agreement or election;
 - (b) requiring the organisation or federation or any official thereof to- (i) comply with the constitution; (ii) take steps to rectify the failure to comply;
 - (c) restraining any person from any action not in compliance with the constitution.
- (2) Before the Labour Court hears an application prescribed in subsection (1), it shall satisfy itself that-
- (a) the organization's or federation's internal procedures has been exhausted; or
 - (b) it is in the best interests of the organization or federation that the application be heard notwithstanding that any internal procedures have not been exhausted. As far as the fourth Respondent, CHAKUHAWATA, is concerned, its constitution and the rules made under it clearly cover the organization's general election. Article 23 of the Constitution provides;

23. NAMNA YA VIONGOZI WA HAMA WATAKAVYOPATIKANA

- (i) UCHAGUZI WA VIONGOZI Viongozi wote katika ngazi zote za chama watachaguliwa kwa kupigiwa kura ya siri utakapofika wakati wa uchaguzi. Page. 4 As to the complaints arising from the elections, the rules (2015) made under the CHAKUHAWATA'S constitution do clearly provide for a comprehensive procedure of dealing with such matters. I shall reproduce the relevant part for ease of reference.

12. MALALAMIKO YA UCHAGUZI.

- i. Malalamiko yote yanayopinga matokeo ya uchaguzi yatafanywa kwa maandishi ndani ya siku saba tangu matokeo ya uchaguzi yalipotangazwa na malalamiko hayo yatakabidhiwa kwa katibu wa chama wa ngazi ya juu inayofuata. Ikiwa malalamiko yanayotolewa yanahusu ngazi ya taifa, kamati tendaji taifa itashughulikia malalamiko hayo. ii. Baada ya kupokea lalamiko lolote, Katibu wa chama wa ngazi husika ataitisha kikao cha kamati tendaji ya ngazi inayohusika ndani ya siku ishirini na nane (28) ili kushughulikia suala hilo. From the Rules extract above, it is clear that any protest arising from the election must be lodged by way of a written complain within seven (7) days of election results announcement and the same must

be submitted to the secretary. For national level elections, the Rules provide that the written complaint must be submitted to the national executive committee of CHAKUHAWATA. The executive committee, according to CHAKUWAHITA Rules, shall convene a meeting of the executive committee within 28 days to address the complaint lodged. When the issue of exhausting all available remedies was raised by the Respondents, the Applicants among other things stated that the internal remedies available had been exhausted. Looking at paragraph xii of the Applicants' joint affidavit in support of the application, the Applicants aver that they filed a complaint but the 4th Respondent (CHAKUHAWATA) failed to determine it on the ground that they were advised by the permanent secretary- TAMISEMI to convene a meeting at a later date. With due respect to the Applicants, I do not think this is a correct interpretation. On the face of it, the letter from CHAKUHAWATA dated 24/07/2024 was in the first place meant to notify the Applicants that the complaint had been received. Secondly, it was meant to bring to the applicants' attention that the matter would be dealt with in the time frame indicated in that letter. In other words, this was a notice of a meeting to address their complaint. The notice also highlights the reasons for the meeting rescheduling from the earlier date of 27/07/2024 to dates between 30th August and 10th September, 2024. From the wording of that letter, it is apparent that the Applicants' conclusion that the fourth Respondent refused and/or failed to attend their complaint is not only illogical but it is also unjustified. Now, going by court record, it is evident that the Applicants' application (the matter under consideration) was admitted before this court on the 21st August, 2024. This was nine days before the national executive committee meeting was scheduled to address the same matter on 30th day of August, 2024. This clearly shows that this matter was filed while the complaint lodged with the fourth Respondent was still pending. From such state of affairs, it cannot be said that the available internal remedies had been exhausted. From this chain of events, it is apparent that the present application has been filed prematurely, and as such it is incompetent. Section 53 (2)(b) of the Employment and Labour Relations Act makes it mandatory to first exhaust all the available internal remedies before knocking at the doors of this court. I am acutely aware that under subsection 2(b) of the above provision this court may in its discretion entertain the matter if it finds it in the best interests to do so notwithstanding that any internal procedures have not been exhausted. In the present matter, however, I do not see such interests. This is because the Applicants have deliberately and for no apparent reasons abandoned their complaint they lodged with the fourth Respondent, CHAKUHAWATA. In *Joshua Nassary v Speaker of the National Assembly of the United Republic of Tanzania and Another*, (Miscellaneous Civil Case NO.22 of 2019) [2019] TZHC 15782 (29 March 2019) it was held that failure to exhaust internal remedies renders the application premature. See also *Ezekiah T. Oluoch v Chama cha Walimu Tanzania (CWT)*, (Labour Complaint No. 7898 of 2024) [2024] TZHC 7644 (31 July 2024). I find these two decisions of this court highly instructive, and in my view, they represent the proper position of the law. From the above discussion and holding, I do not think I need to address the rest of the points of preliminary objection. This alone suffices to dispose of the matter. With that said and done, I uphold the last point of the preliminary objection. I find that the present matter has been prematurely filed, and I proceed to declare it incompetent

for the above stated reasons. Consequently, it is struck out. This being a labour matter, parties shall bear their own costs. It is so ordered. Dated at KIGOMA this 16th of December 2024 . P. R KAHYOZA Page. 6 JUDGE OF THE HIGH COURT Page. 7

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