

TANZANIA / JUDGMENT

festus silvester chanila vs gapoil tanzania ltd 2006 tzhc 332 25 july 2006

COURT
TZHCDECIDED
25 July 2006

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IN THE HIGH COURT OF TANZANIA AT DODOMA MISCELLANEOUS CIVIL APPLICATION NO. 55
OF 2003 FESTUS SILVESTER CHANILA..... APPLICANT VERSUS GAPOIL TANZANIA LTD.....
RESPONDENT

RULING

KAIJAGE, J . This Ruling is subsequent to the Chamber application brought under S. 2 (2) of the Judicature and Application of Laws Act (Cap. 358 R.E. 2002) and S. 17 of the Law Reform (Fatal Accidents and Miscellaneous Provisions Act (Cap. 310 R.E. 2002) and which has been filed on behalf of the applicant, FESTUS SILVESTER CHANILA, for the following

orders:

- (i) That, the application be heard ex-parte for leave to file an application for orders of certiorari and mandamus. (ii) Costs of the application be costs in the cause. (iii) Incidental reliefs as the Honourable court shall deem fit to make. The Chamber Application and summons were served upon the respondent, GAPOIL TANZANIA LTD., on whose behalf a Notice of the following preliminary points of objection was filed:
- (i) That, the application is unmaintainable in law for it contravenes the mandatory provision of- the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act (Cap. 310 R.E. 2002) (ii) That, the application is misconceived in law for it is seeking prerogative orders against the private body. (iii) That, the application is bad in law for the supporting affidavit contravenes the law governing affidavits. (iv) That, the application is hopelessly time barred. Learned counsel for the parties sought and were granted leave to argue the above points of objection by way of written submissions. The present application being one for leave to file a substantive application for prerogative orders of certiorari and mandamus against the decision of the Minister of Labour dated 17th December, 2002, the applicant ought to have joined the Minister and/or the Attorney General in the present proceedings. These were necessary parties, but were impleaded. Counsel for the applicant admits as much, stating that the mis-joinder could be cured by way of an amendment. Incidentally, there is before this court, no application for leave on the basis of which applicant counsel's proposition

could be entertained. Counsel for the respondent has rightly submitted that the prerogative orders intended to be sought could only issue against the government department or public officers vested with public duties to perform or quasi-judicial bodies, but not GAPOIL TANZANIA LTD., the respondent herein, which is a private limited liability company. From the foregoing brief observations, I find that non-joinder of necessary parties, without more, has rendered the present application incompetent. This conclusion has rendered irrelevant the task of considering the merits or otherwise of other points of objection. Accordingly, the present application is hereby struck-out with costs. /tpy, ----- S. S. KAIJAGE JUDGE
25/ 7//2006

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