

TANZANIA / JUDGMENT

Manus Dei Sec

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16 October 2023

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA LABOUR REVISION NO. 000010202 OF 2024 MANUS DEI SECONDARY
SCHOOL COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS
AJUAYE ABEL ANANIA RESPONDENT / DEFENDANT

RULING

NKWABI, J, 24 & 24/03/2025 The applicant was ordered by the Commission for Mediation and Arbitration (CMA) for Kigoma to pay the respondents a total of T.sh. 24,000,000/- being salary for the remaining period of their respective employment contracts. Being a school that provides education services to students, the applicant, appears to have employed the respondents as teachers. Their contracts of employment were however, terminated in August, 2021 by the applicant on grounds of misconduct. As a result, the respondents filed a Labour Dispute at the Commission for Mediation and Arbitration which found in their favour, the award of which the applicant is challenging by way of revision. The revision application has been brought to this Court under section 91 (1) (a), (b), (2) (b) and (c), section 91 (4) (a), (b) and 94 (1) (b) (i) of Employment and Labour Relations Act, No. 6, 2004 (as amended) and Rule 24 (1), (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c), (d) and (e), 28 (1) (c), (d) and

(e) of the Labour Court Rules, 2007. The chamber summons is supported by an affidavit of one, Fr. Ferdinand Athanas Barugize, the manager of the applicant. He prays this Court to grant the applicant the reliefs thus:

1. That, this Honourable Court be pleased to call for records, revise and set aside the Arbitrator's award dated 16th October, 2023 by Hon. Fortunatha Muzee (Arbitrator) made in Labour Dispute No. CMA/KGM/255/2021/15 on the grounds set forth in the annexed affidavit and on such other Page. 1 grounds which may be adduced on hearing date.
2. That, this Honourable Court be pleased to determine the matter in the manner it considers appropriate and give any other relief it considers just to grant.
3. That, this Honourable Court be pleased to give any other relief it deems fit and just to grant. The respondents resisted the revision application through counter-affidavit, sworn by Michael Mwangati, learned advocate. They intimate that they are content with the Commission for Mediation and Arbitration award which to them was fair and just. They

maintain that the revision should be struck out. The hearing of the revision was done by way of written submissions. While the applicant's submission in chief and the rejoinder thereof were drawn and filed by Mr. Charles B. Shipande, learned advocate, Mr. Michael Mwangati, learned advocate, on the other hand, did the drawing and filing of the opposing submission for the respondents. Despite all above, when I was composing judgment in respect of this revision, I entertained a doubt about the locus standi of the applicant in this revision and her appearance in the Commission for Mediation and Arbitration. I also entertained a doubt as to the parties that appear in the revision, particularly the respondents. When I called upon the counsel for both parties to address this Court, Mr. Shipande stated that the name of the applicant. The school is registered as a school and is registered under the church. He prayed the Court to nullify the proceedings and the revision be struck out. Mr. Shipande pressed that the applicant has no locus standi to be sued. He was of the view, however, that the respondents have the liberty to file a fresh labour dispute. He was adamant that that disposes the entire revision. He was also of the view that even the 2nd concern too, the revision is improper before the Court. He implored upon this Court to strike out the revision with leave to refile. Mr. Mwangati replied that the matter was discussed as to who ought to be sued and insisted that the award is executable in the way it is. On a reflection, Mr. Mwangati too thought that executability of the award would be impossible. He beseeched this Court that suit be referred to Commission for Mediation and Arbitration so that a proper person is sued, he asked for leave of the Court. Truly, when I was calling on the counsel of both parties to address this Court, I had in my mind the position of the law as stated in *Ilela Village Council v. Ansaar Muslim Youth Centre*, Civil Appeal No. 317 of 2019, CAT (unreported) where it was held that: "It follows then that, in law, Ansaar Muslim Youth Centre does not legally exist. As such, any order and/or decree issued in the name of Ansaar Muslim Youth Centre will not be executable because the properties of the Registered Trustees of Ansaar Muslim Youth Centre are not vested in the 1st Page. 2 respondent. Furthermore, the 1st respondent does not have powers to transact any business or invest or manage the properties of the Registered Trustees of Ansaar Muslim Youth Centre." Likewise in *Registered Trustees of Chama Cha Mapinduzi v. Mohamed Ibrahim Versi and Sons & Another*, Civil Appeal No. 16 of 2008, CAT, (unreported) it was underscored that: "Incorporation Act, renders it a body corporate by that name with the power to sue and be sued in that corporate name (see section 8(1) and (6). Therefore, in law, the Registered Trustees of C.C.M. is a separate person with its own legal identity distinct from Naibu Katibu Mkuu C.C.M." Courts of law have insisted in adequate identification of the parties assigning a rationale as in *Unilife Group Investment v. Biafra Secondary School & Another*, Civil Appeal No. 144 (B) of 2008, (unreported) where it was pressed home that: "The reason why parties to court proceedings must be adequately identified is that, court proceedings are a very vital process through which litigants' rights are determined. They result to two possibilities, i.e. winning a case or losing it. It follows therefore that, courts must be certain of the parties before them so that if a party wins the case, then the court must be assured that the right goes to a proper person entitled to it. The same way if a party loses a case the court must be sure that the liability goes to the proper person who is liable, hence the

significance to the properly describe the capacities and identities of the parties in the pleadings and adequately demonstrate the same in the evidence during the trial.” See also Charles Peter Semwenda v. Azania Bank Limited & 7 Others, Civil Appeal No. 555 of 2022, CAT 14/02/2025 which quoted with approval Attorney General v. Malawi Congress Party & Another and went on to state that: “Likewise, in the instant appeal, since the suit property was not owned by the deceased, at the time of his death, it was improper for the appellant to institute the suit against the respondents in his capacity as an administrator of the deceased’s estate. Thus, the land case lodged by the appellant before the High Court was incompetent. In view of what we have demonstrated above, we invoke our revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction Act, Cap. 141 and hereby nullify the entire proceedings and set aside the decision of the High Court in Land Case No. 108 of 2022.” Since both counsel concede that the applicant has no locus standi to sue or be sued, it is thus ruled. The proceedings in the Commission for Mediation and Arbitration are thus a nullity. I proceed to quash the proceedings. As to the resultant award, the same is set aside. As everything done in the Page. 3 Commission for Mediation and Arbitration have been nullified, this Revision Application in this Court has no legs upon to stand as such, I strike it out of the Court’s register. This being a labour matter, I make no order as to costs. It is so ruled. Dated at KIGOMA this 24th of March 2025 . J. NKWABI JUDGE OF THE HIGH COURT

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