

TANZANIA / JUDGMENT

LABOUR APPEAL NO 9547 OF 2024 EDWARD A GWINO VRS TANZANIA BREWERIES LIMITED

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION AT PAR ES
SALAAM (CORAM: MLYAMBINA, J., OPIYO, J., And MGANGA, J.) LABOUR APPEAL NO. 9547 OF
2024 CASE REFERENCE NO. 202404301000009547 EDWARD. A. GWIMO MICHAEL. N. AMANI. " %
JAMILA MGALUSI & 60 O TH ER S..... APPELLANTS VERSUS TANZANIA BREWERIES
LIMITED.,.....^../RESPONDENT

RULING

Date of Last Order: 29 / 08 / 2024 Date of Ruling: 17 / 09 / 2024 B.E.K. Mqarma, 3. It is a
lleged that, Edward. A. Gwimo, Mchael INI. Amani, Jamila A. Mgalusi and 6
0 Others, the abovenamed Appellants, were employees of Tanzania Bre
weries Limited, the abovenamed Respondent. It is said that, the Appella
nts were stationed at Arusha and Dares Salaam. In 2005, the Respondent
terminated employment of the Appellants by way of retrenchment. Empl
oyees who were retrenched were aggrieved with the said termination. It
is undisputed by the parties that, employees who were stationed in Arus
ha filed Trade Dispute No. 1 of 2006 before the Industrial Court of Tanzania, the
parties being Andrew Champhene and 121 Others v. Tanzania Breweries Lim it
ed. It is further undisputed that, employees who were stationed in Dares
Salaam filed Trade Dispute No. 11 of 2006 before the Industrial Court of Tanzani
a, the parties being Isack Kisanga and 113 Others v. Tanzania Breweries Lim ite
d. At the time of hearing, the Industrial Court of Tanzania v / V" •. ' consolidated
the aforementioned trade disputes, After conclusion of hearing, the Ind
ustrial Court of Tanzania delivered the ^ judgement and decree that ag gri
eved the Appellants. With a ^ view of challenging the judgement and decre
e of the Industrial Court of Tanzania, the Appellants filed Reference No. 60A of 2
008 before the Industrial Court of Tanzania, but the said reference was, d
ismissed for want of merit. Still aggrieved, though after a | very long proces
s, the Appellants filed this appeal before the Labour Court to challengeth

e judgement and decree of the Industrial Court, of Tanzania, In the memorandum of appeal, the "vt' ^ Appellants ^ is eckl total of eight grounds (8) which we feel unnecessary to reproduce in this ruling. When the appeal was called on for hearing, before giving the parties the floor to argue the grounds of appeal raised by the Appellants, we probed learned counsel to address the Court on competence of the appeal after noting that; (i) there was uncertainty on names of the Appellants as names of the Appellants were not annexed to the appeal hence difficult to ascertain whether the Appellant were party to the above mentioned Consolidated Trade Inquiry that was heard and determined by the Industrial Court of Tanzania and (ii) no copy of proceedings annexed to the memorandum of appeal. Responding to the issues relating to the names of the Appellants raised by the Court, Mr. Barnaba Luguwa, learned counsel for the ^v Appellant submitted that the procedure of filing the ^afore mentioned Trade Disputes was in compliance with Section, .27 of the Industrial Courts Act of Tanzania, Cap 60 Revised 'Edition 2002. He submitted further that the said provision allowed the \labour Commissioner to file Labour disputes on behalf of the Parties. He went on to submit that pleadings of the afore mentioned Consolidated Trade Inquiry were initiated to the Industrial? Court of "Tanzania through a letter of the 'a\$. ' 'V? Labour Commissioner with reference No. KZ/U10/MG/1156/8 dated 14th December-2005 e J He added that; the list of names of the employees who were aggrieved with retrenchment was submitted by the Labour Commissioner to the Industrial Court through the above cited letter. It was further submitted by Mr. Luguwa that; after the said letter was forwarded before the Industrial Court of Tanzania, the said Court issued a form that was assigned by the parties. Counsel for the Appellants strongly submitted that the list of the names of the employees who were aggrieved with termination is part of the records of the Industrial Court. When probed by the Court as to who are the Appellants in this appeal, Mr. Luguwa responded that there are 63 Appellants only who were aggrieved with the decision of the Industrial Court of Tanzania. He was, therefore, of the prayer, if there is a necessity, the Appellants be allowed to amend the memorandum of appeal by annexing their names. .vy Upon being further probed by the Court, Mr. Luguwa submitted that, to be open, the records are confusing, he further submitted that, Trade Inquiry No. 1 of 2006 that was filed in Arusha had only nine (9) employees who signed the said ^ispute f- But it is written Andrew Chamfwene and 121 Others. He also submitted that, Trade Inquiry No. 11 of 2006 that was filed % Dares Salaaminvolved Isack Kisanga and 113 Others, but the 'list has 114 people instead of 113 while it was 1;; '> supposed to be. I ^ack Kisanga and 112 Others. He further submitted that the ^ ^ esp | 6) names of person in the present appeal who are not in the original records. On absence of the copy of proceedings annexed to the memorandum of appeal, Mr. Luguwa submitted that there is no specific

rules providing what should be annexed if a person is aggrieved with the decision of the Industrial Court of Tanzania. He strongly submitted that our laws do not state as to what should be annexed to the memorandum of appeal. He added that, if the copy of proceedings is needed, the Appellants will seek leave of the Court and apply for amending the memorandum of appeal and attach it. On his turn, as regards to the first issue on list of names of Appellants, Mr. Rahim Mbwambo, learned counsel for the Respondent admitted the list was not attached. He then submitted that, the Appellants are challenging the decision delivered on 12th May 2008 in Reference No. 60A of 2008 originating from consolidated Trade Inquiry No. 1 of 2006 and 11 of 2006 filed at Arusha and Dar es Salaam respectively wherein applicants were 234. He strongly submitted that there is no evidence proving that the 63 Appellants in this appeal were part to Reference No. 60A of 2008. That, the Appellants were supposed to prove to the Court that they were parties to Reference No. 60A of 2008. He added that; by reading Reference No. 60A of 2008, it is not known whether the herein Appellants were parties to the said reference as there is no proceeding or any document which shows that the Appellants were parties to Reference No. 60A of 2008. On the prayer to amend the memorandum of appeal, Mr. Mbwambo submitted that since it is difficult for the Appellants to establish that they were parties to the Reference No. 60A of 2008, even if the Court allows them to amend the memorandum of appeal by bringing the list of 63 names, still, that cannot prove that they were parties to Reference No. 60A of 2008. He submitted further that; the Court is not an Angel of the door to sense that the Appellants were parties to Reference No. 60A of 2008 rather it is bound by the adversarial system. Hence, it is the Appellants who are supposed to *v. prove on what they allege because the Court stands as a referee. He concluded by stating that a nullity cannot be amended (*r' and that Appellants were supposed to come to Court with clean hands. In rejoinder, Mr. Luguwa, submitted that those who were in the consolidated dispute are the same who were in Reference No. 60A of 2008 and that issue can be cleared by the original records. He added that; it is the duty of the Court to issue calling for original records and 'k." that the record of Reference No. 60A of 2008 speak for itself. "Shja ftpr, Rearings ubmission son behalf of the parties, we called the original records of the consolidated Trade Inquiry No. 1 of 2006 and Trade Inquiry No. 11 of 2006 and Reference No. 60A of 2008 to satisfy ourselves as to who were the parties with a view of disposing the issue relating to the names of the Appellants in this appeal. It was correctly submitted by Mr. Luguwa that Trade Inquiry No. 1 of 2006 was filed before the Industrial Court of Tanzania by the Labour Commissioner. Having perused the original record, we found that, on 14th December 2005, R.A. Teemba, the Labour Commissioner, signed a letter with reference No. KZ/U.10/MG/156/8 forwarding a Trade Dispute between Andrew Champhene and 9 Others v. Tanzania Breweries Limited to the Chairman of the Ind

ustrial Court of Tanzania. The said letters show the nature of the dispute and the reliefs claimed thereof was received at the Industrial Court of Tanzania on 30th December 2005. The said letter reads in part: 'SHERIA YA MAHAKAMA YA KAZI, 1967 UCHUNGUZI WAMGOGORO 14⁴ KIKAZI :V KATI YA ANDREW CHAMPHENE NA WENZAKE 9..... W A I A I A M I K A J I ' T ' - t * N A T A N Z A N I A ' B R E W E R I E S L T D M L A L A M I K I W A ' % J t v ; ' ' W e : h a v e . p o t e d t h a t t h e a b o v e q u o t e d l e t t e r a u t h o r e d b y t h e L a b o u r C o m m i s s i o n e r d i d n o t m e n t i o n t h e n a m e s o f t h o s e N i n e (9) e m p l o y e e s o f t h e R e s p o n d e n t w h o w e r e a g g r i e v e d w i t h r e t r e n c h m e n t . T h a t n o t w i s t a n d i n g , i t i s c l e a r f r o m t h e s a i d l e t t e r t h a t , t h e t h e L a b o u r C o m m i s s i o n e r f o r w a r d e d t o t h e I n d u s t r i a l C o u r t o f T a n z a n i a a T r a d e I n q u i r y i n v o l v i n g T e n (1 0) e m p l o y e e s a g a i n s t t h e R e s p o n d e n t . I t i s a l s o r e v e a l e d i n t h e r e c o r d t h a t , o n 1 6 t h J a n u a r y 2 0 0 6 , H o n . K . M . M . S a m b o , t h e D e p u t y C h a i r m a n o f t h e I n d u s t r i a l C o u r t o f T a n z a n i a , i s s u e d a s u m m o n s c a l l i n g t h e c o m p l a i n a n t s t o f i l e d o c u m e n t s r e l a t i n g t o t h e c o m p l a i n t (k u m b u k u m b u z a m a d a i) . T h e s a i d s u m m o n s r e a d s a s h e r e u n d e r : ' M A H A K A M A Y A K A Z I U C H U N G U Z I W A M G O G O R O 1 W A 2 0 0 p B a i n a y a A N D R E W C H A M P H E N E N A W E N Z A K E 9 7 W A L A T A M I K A J I N a T A N Z A N I A B R E W E R I E S L T D ; , ^ ± , M I A L A M I K I W A A K U M B U K U M B U Y A M A D A I N A . H O J A Z A M W A J I R I ' ' ' V i - . M g o g o r o w a k i k a z i u l i o t a j w a u m e l e t w a n i b e j e y a M a h a k a m a y a K a z i c h i n i y a S h e r i a y a M a h a k a m a y a K a z i n a W a z i n ^ a K a z i . / K a b l a h a u j a p a n g w a k u s i k i l i z w a ' * . m l a l a m i k a j i / w a l a l a m i k a j i u n a t a k i w a / w a n a t a k i w a k u i e t a k u m b u k u m b u z a m a d a i (M e m o r a n d u m) k u f i k i a s a a 9 . 3 0 a / a s i r i t a r e h e 2 / 2 / 2 0 0 6 r i a ^ u p e i e k e / w a p e l e k e n a k a i a y a m a d a i h a y o k w a m l a l a m i k i w a m o j a k w , , a m o j a . \ A I t n e t o l e w a j i a m i l e o t a r e h e 1 6 / 1 / 2 0 0 6 S 9 d % ; K M . M S A M B O N ^ I B U M W E N Y E K I T I J M A H A K A M A Y A K A Z I . . / (E m p h a s i s i s o u r s) . W e s h o u l d t a k e a r e s t h e r e a n d c o m m e n t t h a t , t h e r e i s n o l e t t e r o r e v i d e n c e s h o w i n g t h a t t h e L a b o u r C o m m i s s i o n e r f o r w a r d e d t h e d i s p u t e b e t w e e n A n d r e w C h a m p h e n e a n d 9 7 O t h e r s v . T a n z a n i a B r e w e r i e s L t d s h o w n i n t h e q u o t e d s u m m o n s , r a t h e r , t h e L a b o u r C o m m i s s i o n e r f o r w a r d e d t h e d i s p u t e b e t w e e n A n d r e w C h a m p h e n e a n d 9 O t h e r s v . T a n z a n i a B r e w e r i e s L t d . I t i s u n k n o w n a s t o w h e r e a t o t a l o f E i g h t y - E i g h t (8 8) c o m p l a i n a n t s c a m e f r o m . T h e l e a s t w e c a n s a y i s t h a t , a t t h e t i m e o f t y p i n g t h e s a i d s u m m o n s , n u m b e r S e v e n (7) w a s a d d e d I n f r o n t o f N i n e (9) t o m a k e i t N i n e t y - S e v e n (9 7) . W e a r e o f t h a t c o n s i d e r e d v i e w b e c a u s e , t h e r e i s n o a n y o t h e r ^ e t t e r t h a t w a s a s s i g n e d b y t h e L a b o u r C o m m i s s i o n e r s h o w i n g t h a t c o m p l a i n t s w e r e N i n e t y - S e v e n (9 7) a n d n o t N i n e (9) . T h a t i s w h e r e . t h e c o n f u s i o n s t a r t e d . • ' S . x : ~ ; ' I n o u r f u r t h e r p e r u s a l o f t h e o r i g i n a l • r e c o r d , w e f o u n d a l e t t e r d a t e d 3 0 t h J a n u a r y 2 0 0 6 b y B a r n a b a L u g u f t / a ; A d v o c a t e , w i t h r e f e r e n c e N o . B L / A D V / V O L . 2 7 / 0 2 t o t h e C h a i r m a n o f t h e I n d u s t r i a l C o u r t o f T a n z a n i a t i t l e d ' Y A H : K U M B U K U M B U Y A M A D A I - W A D A I 9 ' g i v i n g b a c k g r o u n d o f t h e T r a d e I n q u i r y a n d t h e r e l i e f s c l a i m e d t h e r e o f . T o t h e i f " s a i d l e t t e r , M r . % L u g u w a a t t a c h e d v a r i o u s d o c u m e n t s i n c l u d i n g " v v :

- V;V.re trenchment packages paid to Nine (9) complainants. It is through the .-Ov said, documents, we noted the names of the complainants as; (1) Andrew John Champhene, (2) Wilson Mafit Natal, (3) Richard Kuwese Tarimo, (4) Abtwalib Ismail Msuya, (5) Peter Francis Sempombe, (6) Paulo Kirit a Tarimo, (7) Albinus Senga, (8) Alex Tito Fungo and (9) Ally Hamis Pelly. We have pointed herein above that, the letter by the Labour Commissioners showed that the said Trade inquiry was involving Andrew Champhene and Nine (9) Others on one hand and Tanzania Breweries Ltd on the other. In other words, the said Trade Inquiry involved Ten (10) complainants but the letter by Luguwa advocate indicated a total of nine (9) complainants only. The record shows further that, on 15th March 2006, Tanzania Breweries Ltd, filed "answer to the memorandum of claim" that reads in part: 'IN THE INDUSTRIAL COURT OF TANZANIA ATARAUSHA \; ENQUIRY NO. 2 of 2006 Xsic) ANDREW CHAMPHENE AND 97 OTHERS COMPLAINANTS VERSUS TANZANIA BREWERIES LTD..... RESPONDENT ANSWER TO THE MEMORANDUM OF CLAIM / . - N ?. In the said | answer ^ to the memorandum of claim, among other matters, the Respondent raised three preliminary objections namely, (i) the inquiry is bad in law and cannot be maintained in that the other
- v. I"--S/f Complainants, with the exception of Andrew Champhene, are unknown, *!• V?"*
- (11) the inquiry is hopelessly time barred and (iii) the memorandum of Claim is incurably defective. On 3rd April 2006, Mr. Barnaba Luguwa, advocate filed a reply to the preliminary objection. The said reply reads in part: IN THE INDUSTRIAL COURT OF TANZANIA ATARAUSHA ENQUIRY NO. 1 OF 2006 ANDREW CHAMPHENE AND 97 OTHERS COMPLAINANTS VERSUS TANZANIA BREWERIES LTD..... RESPONDENT REPLY TO THE PRELIMINARY OBJECTIONS S'*
- 3. That, the Preliminary Objection is misconceived due to the fact that the names of all 9 Employees have been forwarded to this Court. In actual fact the employees who, are Contesting are only 9. These are ;;
- i. ANDREW JOHN CHAMPHENE ii. WILSON MAFITANATAI ^ Hi. RICHARD KUWESE TARIMO ^ iv .ABUTWALIB ISMAIL MSUYA V. PETER SEMPOMBE FRANCIS Vi. PAULOKIRITATARIMO vii. ALBINUS SENG A viii. ALEXANDER TITOFUNGO ix . ALLY HAMIS PELLY . See the attached document marked collectively "P3" this document ^ ,nVt^ w'i'a s forwarded to the Commissioner. See also letter K2/uJo/MG/156/8 (sic) dated 14th December 2005 marked P.4 /' /- (Emphasis is ours) We wish to point out albeit briefly that, we have carefully perused the original record and found only rulings that dispo

sed preliminary objections relating to limitation of time and the memorandum of claims raised by the Respondent. In short, there is no ruling relating to the identity or names of the complainants. It is our firm view that, the said preliminary objection was not disposed as there is no record showing that it was withdrawn. It is our further view that, had that preliminary objection disposed of, or else shown to have been withdrawn after Mr. Luguwa's reply/J" v » admitting that there were only Nine (9) Complainants, the problem we have encountered in this matter would have been cleared from the start of hearing consolidated Trade Inquiry No. 1 of 2006 and No. 11 of 2006. That aside, amongst the documents marked as P3 in the reply to the preliminary objection quoted herein above, is (i) a letter dated 8th January 2005 signed by ^ Nine (9) complainants directed to Barnaba Luguwa, a dvocate titled "YAH: KUPUNGUZWA IDADI YA V..'' WALALAMIKAJIvWA KESI NO MG. 1156 and (ii) a letter signed by Barnaba 4Lug Uw3Jv with reference No. MG/1156/3 dated 14th March 2005. f'r,- to Kamisha Mkuu, Wizaraya Kazi, Maendeleo ya Vijana na Michezo, P.O. Box 9014 Dares Salaam. In the letter dated 8th January 2005 titled "YAH: KUPUNGUZWA IDADI YA WALALAMIKAJI WA KESI NO MG.1156" signed by the complainants it was made clear that, there were only Nine (9) complainants who were aggrieved with termination intended to proceed with the dispute. The said letter read in part: ...Hivy o Kika ok ilif anyika tarehe 6/1/2005 nawa lalamikaji walio amua kuendef ana KESI YA MADA Iliyo fungu liwa upya kwa Kamish na Kazi D S M (sic) kuwa TISA TU kama majina ya liyo orodhesha hapachini: JIN A SAHIHI

1. ANDREW JO H N CHAMPHENE ...signed
2. WILSON MAFUA NATAL..... *MAREHEMU-20-02-2005 not signed*
3. RICHARD KUWESE TARIMO..... signed
4. ABUTWALIB ISMAIL MSUYA..... signed ,; \
5. PETER SEMPOMBE FRANCIS..... signed \.
6. PAULO KIRITA TARIMO..... signed, ^ Z ALBINUS SENG A..... signed
8. ALEXANDER TITO FUNGO..... signed
9. ALLYHAMIS PELLY..... i; signed s H a o n d i o w a l a l a m i k a j i w a K e s i y a M a d a i N o . M G 1 1 5 6 i l i y o p o k w a K a m i s h n a w a / r a z / z ? 5 M . / (E m p h a s i s i s o u r s) . I t i s s u r p r i s i n g t h a t , i n t h e l e t t e r d a t e d 8 t h J a n u a r y 2 0 0 5 q u o t e d s h o r t l y h e r e i n a b o v e , a s t a r ' w a s p u t i n f r o n t o f t h e n a m e o f W i l s o n M a f i t a N a t a i f o l l o w e d b y , t h e w o r d s " M a r e h e m u - 2 0 - 0 2 - 2 0 0 5 . W e h a v e p o i n t e d o u t h e r e i n a b o v e ^ t f i a t / t h e d i s p u t e w a s f o r w a r d e d t o t h e I n d u s

trial Court '1' i? of Tanzania by* the Labour Commissioner on 14th December 2005, through a letter with reference No. KZ/U.10/MG/156/8. It is our finding that, at the time of forwarding the dispute to the Industrial Court of Tanzania by the Labour Commissioner, the said Wilson Mafita Natai had died, yet it was indicated that Wilson Mafita Natai was amongst the employees who filed the dispute. That itself, though not a subject of our discussion would invalidate the complaint. Again, the above mentioned letter authored by Barnaba Luguwa on 14th March 2005 was titled: 'SHERIA YA MAHAKAMA YA KAZI 1976 MGOGORO WA KIKAZI BAINA YA ANDREW JOHN CHAMPHENE NA WENZAKE 97..... WALALAMIKAJI NA TANZANIA BREWERIES LTD..... MLALAMIKIWA :P YA H: MAELEZO YA WALALAMIKAJI' 1 v- In the said letter, Mr. Barnaba Luguwa stated "... Nima tumaini yangu ofisi yako ita watendea haki walalamikaji 'vV. wake shii bilaya ucheleweshajf wowote, pia ofisi yako ita mbue kwambaku anzia leotare he 14/03/2005 idadi yawaliobakia x:\kwenyekeshiini walalamikaji; TISATU. KIAMBATANISHOE / (Emphasis ours). " Wonders are many and indeed, we have wondered, as to how the number of complainants in Trade Inquiry No. 1 of 2006 that was filed before the Industrial Court of Tanzania at Arusha continued to increase from Ten (10), to Ninety-Eight (98). But, that was not the end because, summons issued by the Court on 23rd October 2007 shows that there were One Hundred Twenty-Two (122) complainants. From that date, all documents including Court Rulings cited the parties as Andrew Champhene and 121 Others v. Tanzania Breweries Ltd. There is no document in the records showing how the number arose from Ten Complainants. We should point out that, a nexture E to the said letter is a piece of paper showing the names of the above mentioned Complainants, their address in Arusha, their title and monthly salary. We should further point out that, a nexture P4 to the said letter is a letter that was assigned on 14th December 2005 by R. A. Teaba, the Labour Commissioner forwarding the dispute to the Industrial Court of Tanzania showing that, the dispute relates to Ten (10) Complainants only as discussed herein above. From the foregoing, it is our considered opinion that, the dispute that was filed as Trade Inquiry, No. 1 of 2006 in the Industrial Court of Tanzania at Arusha involved Ten (10) Complainants, namely Andrew John Champhene and 9 Others as reflected in the letter by the.. 'f' bi, V. Labour Commissioner that forwarded the dispute to the Industrial Court of Tanzania after considering the letter authored by Barnaba Luguwa.

- fi Wenovkturn to the Trade Inquiry No. 11 of 2006 that was instituted in the Industrial Court of Tanzania at Dares Salaam. We painstakingly, perused the records to ascertain the names of the complainants in this

Trade Inquiry and found that, there is neither a letter by the Labour Commissioner forwarding the dispute between Isack Kisanga and 113 Others v. Tanzania Breweries Limited to the Court, nor Memorandum of claims and answers to the memorandum of claims. The only documents available is a letter dated 4th May 1999 signed by Isack Kisanga directed to Executive Director (Utumishi) TBL titled "YAH. MALALA MIKODHIDI YAMA LIPONAMA FAOKWA WAFANYAKAZI 2127 ULIOPUNGUZWA TAREHE 30/04/1999" and a letter with reference No. BL/ADV/VOL47/06 dated 6th April 2006 signed by Barnaba Luguwa, advocate, directed to the Honorable Chairman of the Industrial Court of Tanzania applying for Consolidation of Trade Inquiry No. 1 of 2006 between Andrew Champhene and Eight, Others v. Tanzania Breweries Ltd and Trade Inquiry No. 11 of 2006 between Isack Kisanga and Others v. Tanzania Breweries Ltd. The aforementioned letter seeking consolidation of the aforementioned two Trade Inquiries was titled:

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'Y/H: KUSIIQ^IZW A PAM OJA (CONSOUDATION) MAOMBI YA MGOGORO NA MBA 1 YA 2006 KATI YA ANDREW CHAMPHENE NA WENZAKE WANANEDK ffbI YA TANZANIA BREWERIES LTD NA MAOMBI YA -MGOGORO/NO. 11 YA 2006 KATI YA ISACK KISANGA NA WENZAKE DHIDI YA TANZANIA breweries Z.7Z>/(Emphasis is ours). The aforementioned letter seeking application for consolidation was received by the Industrial Court of Tanzania on 10th April 2006. We have pointed out a while that, the only letters showing that Isack Kisanga and 212 Others were complaining against the Respondent is a letter signed by Isack Kisanga on 4th May 1999 directed to Executive Director (Utumishi) TBL. We should make it clear that, the said letter did not forward the dispute to the Industrial Court of Tanzania. We are of that firm view because, in terms of section 6(2) and 8(a), (b), (c) and 10 of the Industrial Court of Tanzania, Act No- 2 of 1993, it was the Labour Commissioner or any labour officer, authorized by the 'labour Commissioner who was mandated to forward ^disputes to the Industrial Court of Tanzania. In absence of the letter or a certificate by the Labour Commissioner forwarding the dispute between Isack > Kisanga and 212 Others v. Tanzania Breweries, we cannot conclude that the said Trade Inqui i y was properly filed before the Industrial Court of Tanzania. With that in mind, we are of the view that, an appeal arising from Reference No. 60A of 2008 originating from rff' ,!' proceedings of the Consolidated Trade Inquiry No. 1 of 2006 and No. 11 £ ^ 0 O < L cannot be competently before this Court. It is ote considered opinion that, submissions by Mr. Luguwa, that pleadings of the aforementioned Consolidated Trade Inquiries were initiated through a letter with reference No. KZ/U10/MG/1156/8 dated 14th December 2005 signed by the Labour Commissioner cannot be valid. We are of that settled opinion as we have pointed herein above that

t, in the said letter, the Labour Commissioner indicated that the complainants were Andrew Champhene and Nine (9) Others only. There is no evidence whatsoever in the records showing that the Labour Commissioner forwarded to the Industrial Court of Tanzania the dispute between Isack Kisanga and 212 Others against the Respondent. Moreover, submissions by counsel Luguwa that, upon receipt of the letter from the Labour Commissioner, the Industrial Court of Tanzania issued a form that was assigned by the parties, is not supported by the record of the said Court. In the record of the said Consolidated Trade Inquiry No. 1 of 2006 and 11 of 2006 there is no record that was assigned by the parties showing the names of the complainants. We also perused the record of the Court in relation to Reference No. 60A of 2008 and found that, applicants in the said Reference application did not disclose their names, save for Isack Kisanga and Andrew Champhene. We are of that considered opinion because, documents in the said Reference shows that, parties were Isack Kisanga and 4, v Andrew Champhene and 234 Others v. Tanzania Breweries Ltd. Apart from the names of Andrew Champhene and Isack Kisanga, there are no other names of the applicants who filed the said Reference No. 60A of 2008 before the Industrial Court of Tanzania, which is the subject of this appeal. Mr. Luguwa after had a glimpse of the above facts when he submitted after being probed by the Court that, names of the Appellants in this appeal are confusing and his findings that Six Appellants in this appeal were not part to the original Consolidated Trade Inquiry. In our view, that tells all as to why we raised the issue relating to the names of the Appellants. The admission by Mr. Luguwa that Six (6) Appellants in this appeal were not party to the original Consolidated Trade Inquiry either No. 1 of 2006 and No. 11 of 2006 leads, us to conclude that, there "is uncertainty on the names of the Appellants; It is therefore our view that, hearing this appeal with this much uncertainty, will be giving a room to persons who were not parties to the Consolidated Trade Inquiry No. 1 of 2006 and No. 11 of 2006, hence, not part of Reference No. 60A of 2008 from which this appeal emanates, to form part of what they were not originally part of." v, " Apart from the foregoing, in the Electronic Case Management System (eCMS), Appellants indicated that, the appeal is by Edward A. Gwimo against the Respondent. At the time of filing this appeal, it was not indicated that the appeal is by Edward A. Gwimo and Others against the Respondent. It is only in the memorandum of appeal where it was indicated that the appeal was filed by Edward A. Gwimo and Others. This leads to our considered view that; the appeal was improperly filed. Assuming that it was properly filed and that, the error is curable, the most important issue is; whether the Appellants were parties to Reference No. 60A of 2008 that was filed before the Industrial Court of Tanzania, the subject of this appeal, as we have pointed out here in above. Our venture in the matter did. Not end there. We also read the judgement of the Industrial Court

rt of Tanzania in Reference No. 60A of 2008 dated 18th September 2009 and find that, tfyg parties are Andrew Champhene and Isack Kasanga and Others v. Tanzania Breweries Limited. There is no proof that; the Appellants were part to the said proceedings. Without proof that the Appellants were part to the Consolidated Trade Inquir^No. 1 of 2006 and 11 of 2006 and Reference No. 60A of 2008, it can not be said that they have locust to file this appeal. We are of ^ha|:firm view because the names of the parties in the judgement ^the; Industrial Court of Tanzania in Reference No. 60A of 2008 are different from the names of the Appellants in this appeal. Assuming that Appellants were party to the said Industrial Court of Tanzania Reference No. 60A of 2008, of which evidence is wanting, in the appeal at hand, the Appellants were supposed to maintain the names of the parties as they appear in the judgement of Industrial Court of Tanzania in Reference No. 60A of 2008. Change of names were supposed to be done by leave of the Court as it was held by the Court of Appeal in the case of Board of Trustees of the Public Social Security Fund (PSSSF) vs William Mwakitalu & Others (Civil Application No. 713/01 of 2022) [2024] TZCA 361 (15 May 2024) and Inter Consult Limited vs Nora Kassanaa & Another (Civil Appeal No 79 of 2015) [2019] TZCA 633 (8 February 2019),. In . Inter Consults case (supra), the Court of Appeal held inter-alia that: 7/7 this case a party to the suit has been changed/without an order of the I1?' trial Court...Be it as it may we agree with Mr. Vedasto that substitution of the appellant's name from International Engineering Consultancy Services Ltd to Inter Consult Ltd without any specific order of the trial Court was an irregularity which was fatal.. We, therefore, find the appeal is incompetent liable to be struck out/ Emphasisiadded i, l'r In the appeal at hand, there is no proof that, leave was sought and granted by the Court, for the Appellants to change the names that was it used in the's. Industrial; Court of Tanzania Reference No. 60A of 2008 to «V* the names; used; *iri this appeal. Guided by the above quoted decision of l' the Court, of Appeal, we conclude that, this appeal is incompetent because, there is no proof that Appellant ssought and were granted leave by this Court to change the names of the parties from the one appearing in the judgement of the Industrial Court of Tanzania in Reference No. GOA of 2008X. o the names used in this appeal. In addition to the foregoing, the Appellants have indicated in the memorandum of appeal that, the appeal is by Edward. A. Gwimo, Michael N. Amani, Jamila Mgalusi and 60 Others against Tanzania Breweries Limited. The issue is, who are the 60 Others undisclosed? We are of the view that, this has left a room for any other person from any angle of the country or world, to come at any time in future and. ci aim that he/she is one of the 60 Other undisclosed persons. l This Court can not hear and determine this appeal with, uncertain names of the Appellants as that can be an invitation for other persons who were not parties to the Industrial Court of Tanzania. Reference No. 60A of 2008, if the appeal is allowed, to claim that they were parties and fuel more cases and claims against the Respondent. We are not prepared to create such chaos. In fact, the Court o

An appeal was confronted with a similar circumstance in the case of *Hsu Chin Tai & 36 Others v. The Republic*, Criminal Appeal No. 345 of 2009 (unreported). In *Hsu Chin Tai's* case, the notice of appeal read: **TAKEN NOTICE that HSU CHIN TAI & 36 OTHERS** appeals to the Court of Appeal of Tanzania... In *Hsu Chin Tai's* case (supra), the Court of Appeal discussed the competence of the quoted Notice of Appeal and held as follows: A question we ask ourselves, is this a joint notice of appeal? With respect, we think not. It is only one appellant *Hsu Chin* who has been identified by name. The rest are referred to as "OTHERS", but who are they? How do we know that the "36 others" were desirous of appealing to this Court? With respect, this is not a joint notice of appeal. The names of all Appellants should have been mentioned in the notice of appeal. [Emphasis added] Consequently, the Court of Appeal found the Notice of Appeal incompetent and struck it out. This Court has taken a similar stance in the case of *Ally forodha & 1673 Others vs The Permanent Secretary Ministry of Finance and Attorney General* (Misc. Application No. 421 of 2022) [2022] TZHC LD 1096 (12 December 2022) and *Justus Mazenao & 41 Others vs Tanzania Portland Cement Pic* (Misc. Application No. 2 of 2022) [2022] TZHC LD 53 (25 February 2022). For the foregoing, we hereby nullify proceedings of the consolidated Trade Inquiry No. 1 of 2006 and No. 11 of 2006 because there was violation of the provisions of section 6(2) and 8(a), (b), (c) and 10 of the Industrial [Court of Tanzania, Act No. 2 of 1993. We further nullify proceedings of Reference No. 60A of 2008 that emanates from proceedings of the said Consolidated Trade Inquiry No. 1 of 2006 and No. 11 of 2006, the subject of this appeal. We have reached that conclusion for the reason that, no appeal can stem on a nullity as it was held by the Court of Appeal in the case of *Ismail Rashid vs Mariam Msati* (Civil Appeal No. 75 of 2015) [2016] TZCA 786 (29 March 2016). After finding that all what we have discussed herein above has disposed the appeal, we will therefore, not discuss other issues that were raised in this appeal. Dated at Dar es Salaam this 17th September 2024 JUDGE M. P. Opiyo JUDGE If B. E. K. Mganga JUDGE Ruling delivered and dated this 17th September in Chambers in the presence of Barnaba Luguwa, Advocate for the Appellants and in the absence of the Respondent. JUDGE M. I JUDGE

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