

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: KOROSSO, J.A., KENTE, J.A., And MGONYA, J.A.)

CIVIL APPEAL NO. 170 OF 2023

**CHAMA CHA KUTETEA HAKI NA MASLAHI APPELLANT
YA WALIMU TANZANIA (CHAKA MWATA)**

VERSUS

REGISTRAR OF ORGANIZATIONS 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Mbeya)**

(Ebrahim, J.)

Dated the 11th day of November, 2023

in

Labour Application No. 13 of 2022

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JUDGMENT OF THE COURT

10th & 27th February, 2025

KOROSSO, JA.:

The appeal is against the decision of the High Court Labour Division sitting at Mbeya that determined an application for cancellation of the appellant's registration as a Trade Union, lodged by the respondents. The main reason for the said prayer was the allegation of failure to comply with the requirements for registration under section 55(1)(a),(b), (2)(a), (3)(a) and (b) of the Employment and Labour

Relations Act, Cap 366 (ELRA), rule 24(2) of the Labour Court Rules, 2007, GN No. 106 of 2007, section 95 of Civil Procedure Code, Cap 33 (CPC) and section 6(a), 8(1)(f) and 17(1)(a) of the Office of Attorney General (Discharge of Duties) Act, Cap 268.

In brief, the background giving rise to the instant appeal as derived from the affidavit evidence from the contending parties is that the 1st respondent, who is mandated to register and supervise the organizations was dissatisfied by the appellant's non-compliance with the mandatory directives. First, failure to submit documents that expound its framework and the conduct of its activities, a legal requirement; second, failure to form and register a Board of Trustees; and third, failure to have and maintain only one bank account as provided for by the financial regulations governing such organizations. It transpired that the first respondent in March 2018 made directives to trade unions, including the appellant, to remind them of compliance with the laws governing the conduct of trade unions, particularly on the submission of financial statements and auditing reports.

Upon receiving the financial report of the appellant, believing there was mismanagement of members' financial contributions, the 1st respondent decided to form an inquiry committee under section 52(2) of ELRA tasked to inquire into the financial affairs of the appellant. The

Committee conducted a Special Audit and presented its report in October 2019 revealing that Tshs. 421,491,532.00 derived from contributions of its members was embezzled. It also showed that the appellant operated 33 bank accounts in several regions in contrast to its regulations and Constitution.

With the Special Audit Report in hand, in April 2022, the first respondent formally notified the appellant of her intention to apply for cancellation of its registration as an organization. The notification gave two reasons; **One**, allegations of operating without the Board of Trustees contrary to Article 29(4) of its Constitution. **Two**, claims of embezzlement by its leaders amounting to Tshs. 421,491,532.00 between 01/6/2018 and 31/6/2019 contrary to Article 29(4) of the Constitution and Regulation 5(1) and (2) of its Regulations.

The appellant responded to the notice stating that as a body corporate they were no longer legally required to register a Board of Trustees under section 19(1) and (2) of the ELRA. On allegations of embezzlement, this was denied stating that the alleged funds were used for official functions and duties such as payment of salaries, allowances, overhead costs, purchase of pieces of equipment and procurement of office supplies, communication activities, marketing and bonuses. Dissatisfied with the response from the appellant, the respondents filed

an application to the High Court, whose content and prayers had already been discussed earlier.

In the counter affidavit, the appellant averred similar to what is stated in the reply to the notification and emphasized that they duly complied with the provisions of their Constitution and regulations and governing labour laws. The assertion that registration of the Board of Trustees is not mandatory was reiterated, adding that notwithstanding that, steps have been taken to register the same; however, the process has been derailed due to a lack of cooperation from the first respondent.

The High Court Judge, after hearing submissions from the rival parties, found in favour of the respondents, holding that the appellant's responses were unsatisfactory and that on balance of probability, the respondents proved non-compliance and observance of the standards of accepted accounting practice, procedures and principles putting the organization at risk, as sufficient reasons to cancel the appellant as a trade union under section 55(2)(a) and (3)(a) and (b) of ELRA and proceeded to do just that.

It is against this decision that the appellant is before this Court, having lodged two memoranda with a total of twelve grounds of appeal.

The memorandum of appeal filed on 7/3/2023 is premised on six grounds of appeal, while the one filed on the day of the hearing with the leave of the Court contains six additional grounds of appeal. At this juncture, we refrain from reproducing all the grounds for reasons to come to light in the cause of this Judgment.

On 10/2/2025, when the appeal came for hearing before us, the appellant enjoyed the services of Messrs. Peter Kibatata, Boniface A. K. Mwabukusi, Luka Ngogo and Isaya Mwanri, learned Advocates, whereas the respondents were represented by Ms. Jesca Joseph Shengena, Principal State Attorney assisted by Mr. Mjahidi Kamugisha and Ms. Edina Mwamlima, learned State Attorneys.

Before the appeal of the appeal commenced in earnest, Mr. Kibatata sought and was granted leave to abandon all the grounds of appeal in the substantive memorandum of appeal except for ground six thereto, which he intimated would be argued together with the grounds found in the supplementary grounds of appeal. Flowing from that, the grounds of appeal for the Court's deliberation, paraphrased are as follows:

1. That the High Court erred in Law in holding that proof of embezzlement, an issue that initiated prompt for cancellation of

the appellant's registration was on the threshold on balance of probabilities instead of beyond reasonable doubt.

2. The High Court erred in law and fact in failing to hold that the 1st respondent had an interest in the Special Audit Report and, thus, negating their impartiality, and the court failed to accord the requisite weight to the said itself or warn itself of the dangers of accepting the same without question.
3. The High Court erred in law in failing to consider the appellant was denied the right to be heard in the Special Audit Report there being no proof that any official or member of the appellant was heard.
4. The High Court erred in law and fact in the evaluation of the evidence, as emphasized by summarily rejecting the evidence on oath from SILAS & ASSOCIATES without advancing any reasons.
5. The High Court erred in law and fact to order the cancellation of the appellant without taking into account the interest of its wider membership, thus compounding the member's misery.
6. The High Court erred in law in proceeding with a fatally defective affidavit in support of the application for orders of cancellation.
7. That after the cancellation of the registration of the appellant, the trial Judge grossly erred in law by failing to Order the dissolution

procedures as per section 5(3) and (6) of ELRA (ground six from the memorandum of appeal).

Understanding the importance of first determining the threshold grounds, we shall commence our deliberation with ground six which was also the ground that kicked off the submission by the appellant counsel. In this ground, the appellant laments against the High Court for proceeding to determine the application before it, notwithstanding the fact that it was supported by a fatally defective affidavit.

In this regard, Mr. Kibatala vehemently argued that paragraphs 5, 10, 11, 12, 13, 15, 16 and 17 of the affidavit supporting the chamber summons lodged by the respondents before the High Court, which is subject to this appeal and found on pages 9-12 of the record of appeal are wanting hence rendered the said affidavit defective. In his submission, he undertook to address each of the paragraphs to highlight the alleged defects in the affidavit supporting the application deposed by Pendo Berege, the Registrar of Organizations in the Ministry of Labour, Employment and Youth Development. With respect to paragraph 5, he contended that the word "*supposed*" does not presuppose averment of a fact but supposition. In paragraph 10, he argued that the words "*established without doubt*" should not be part of the averments since it is argumentative and go to a conclusion. He

further submitted that were the Court to grant their prayer and expunge paragraph 10 for being defective, it would render Annexure SG-3, the Special Audit Report, redundant.

Expounding further on paragraph 11, Mr. Kibatata was at war with the words "*the respondent has failed*", imploring the Court to find the paragraphs argumentative and draw a conclusion. Paragraph 12 was also challenged for being argumentative, concern being with the words, "*unreasonably and arbitrarily*". The learned counsel further questioned the propriety of the affidavit, in light of the words "*unsatisfactory explanations*" found in paragraph 15, contending that they are argumentative.

The learned counsel for the appellant was also not appreciative of the words "*failure to comply*" and "*lack of justification*" in paragraph 16, asserting that they were argumentative and conclusive. Addedly, he also challenged paragraph 17, stating it was argumentative and suggestive of being a prayer, alluding to the words "*demands that this application be heard and determined...*"

According to Mr Kibatata, it was the duty of the High Court to assess whether the application before it was supported by proper documents; therefore, it was improper to proceed to rely on it when

determining the application without addressing the defects in it. He submitted that, taking account of the settled position of the law where an affidavit contains defective paragraphs, such paragraphs may be expunged; he urged the Court to proceed in that line and expunge the defective paragraphs highlighted above. He further implored us that, upon expunging the said paragraphs, the Court should find that the paragraphs left in the affidavit will not sustain the application, because once the Audit Report is removed in tandem with expunging paragraph 10 of the affidavit, the application will have no legs to stand on. He thus prayed for us to grant the prayer by quashing the judgment of the High Court and setting aside its orders for being based on a defective application.

In reply to the submissions on ground 6 of the supplementary grounds, Ms. Shengena, upon adopting the written submission filed by the respondents, argued that this being an application grounded on labour matters, its adjudication is not guided by the Civil Procedure Code, Cap 33 by virtue of Regulation 24(3) of the Labour Court Rules, GN No. 106 of 2007 (the Labour Court Rules). The learned Principal State Attorney argued that in any case, this Court is not a proper forum to raise this, as such concerns should have been raised and addressed in the High Court. She, however, conceded that paragraphs 10, 11, 12, 13,

16 and 17 are problematic and wanting in terms of the legal requirements for averments in affidavits supporting applications.

Mr. Kamugisha, who took over submitting for the respondents, argued that notwithstanding the anomalies in the affidavit in those paragraphs as conceded, where the Court to expunge the same, the affidavit should still stand because the paragraphs that will remain can support the application, especially paragraph 5. He thus prayed for the ground to be found unmeritorious.

Mr. Kibatala had a brief rejoinder on this complaint, stating that upon the concession made by the respondents regarding the defects in the affidavit supporting the application before the High Court and having also reconsidered some of the defects, what remained unrebutted is that all the expounded paragraphs except for paragraph 5 of the affidavit are defective and render the affidavit defective since the remaining paragraphs cannot ground the application in question.

In determination of this ground, we have taken into account the submissions from the counsel of the rival parties, the cited authorities and the record of appeal. At this juncture, the underlying issue for our determination is whether the application before the High Court was

maintainable having regard to the alleged defects in the supporting affidavit.

The contents of an affidavit have been discussed extensively in various decisions of the Court, mostly drawing or expounding on what was stated by the erstwhile Court of Appeal for Eastern Africa in the case of **Uganda v. Commissioner of Prison Exparte Matovu** [1966] EA 514 and reiterated in **DP Shapriya & Co. Ltd v. Bish International**, [2002] I EA 47 and **Phantom Modern Transport (1985) Ltd v. DT Dobie (TZ) Ltd**, Civil Reference Nos. 15 of 2001 and 3 of 2002 (unreported). In the latter case, it was held:

*"As a general rule of practice and procedure on the affidavit for use in Court being a substitute for oral evidence, it should only contain a statement to which the witness **disposes either of his own knowledge** or such an **affidavit should not contain extraneous matters by way of objection or prayer or legal argument or conclusion.**" (Emphasis added)*

In the case of **DP Shapriya & Co. Ltd** (supra), it was held:

"An affidavit has been defined as a written document containing material and relevant facts or statement relating to the matters in question or issue and sworn or affirmed and signed by the

deponent before a person or officer duly authorized to administer any oath or affirmation or take any affidavit.”

Indeed, guided by the various decisions and writings all of which we need not go through, it goes without saying that an affidavit is governed by established rules and requirements that are expected to be followed and applied without question. It is thus without saying that an affidavit, as a substitute for evidence, has to contain facts which outline what the deponent disposes of either out of his own knowledge and should not have extraneous matters, prayers, legal arguments or conclusions.

In the instant matter, the counsel for the respondents has conceded that there are some paragraphs in the affidavit supporting the application subject to this appeal that contain legal arguments, prayers and conclusions. Mr Kamugisha further argued that notwithstanding, the general rules applying to affidavits under the rules governing civil procedure do not apply to labour matters and referred us to Regulation 24(3) of the Labour Court Rules, GN No 106 of 2007 published 18/5/2007 (the Labour Court Rules). The learned counsel for the appellant rejected this assertion.

We find it pertinent to reproduce the relevant provision, Rule 24 (3) of the Labour Court Rules states:

"The application shall be supported by an affidavit, which shall clearly and concisely set out—

(a) the names, descriptions and addresses of the parties;

(b) a statement of the material facts in a chronological order, on which the application is based;

(c) a statement of the legal issues that arise from the material facts; and

(d) the reliefs sought".

Apart from the anomalies we had discerned in the affidavit as discussed above, we have also perused the above-cited provision, being aware of the settled position of the law that in adjudicating labour matters discouraging the application of strict rules of procedure and that an affidavit in support of an application filed in Labour court is governed by rule 24(3) of the Labour Court Rules. In the case of **Michael Mahende Shell Exploration and Production (T) Limited**, Civil Appeal No 24 of 2011 (unreported), when discussing the format of an affidavit in support of an application filed in the Labour Court, the Court stated:

"It is clear that, an affidavit in support of an application filed in the Labour Court is distinct from that which is made under O. XIX r. 3 of the CPC requiring a deponent to state matters of facts only, which facts must be from his own knowledge."

(see also, **Adnan Mehboob Sadiq, Adil Mehboob Sadiq and Abid Mehboob Sadiq (Legal Representatives of the late Mehboob Sadiq T/A M/S Mehboob M. Sadiq & Company) v. Aloyce Felix Maro and Another**, Civil Appeal No. 467 of 2022 (unreported).

Moreover, we are of the view that rule 24(3) of the Labour Court Rules has not opened doors for affidavits that support applications under labour matters, to comprise extraneous matters. Essentially, the provision makes it mandatory for such an affidavit to have legal issues that arise from the material facts of the case and to put with clarity the reliefs sought. In a decision of the High Court in **Aidan Amon v. Mwananchi Communication Ltd**, Revision No. 841 of 2018, it made an observation on what are the legal issues expected in such scenario:

"Statement of legal issues and reliefs sought by a party in the supporting affidavit to the application before this Court's proceedings is so vital that failure of which renders the affidavit incompetent

before the Court, thus leaves the application with no legs to stand, hence incompetent".

Considering the above, upon review of paragraphs 10, 11, 12, 13, 16 and 17 of the contested affidavit, we agree with the learned counsel for the appellant that the words therein infer a conclusion and are argumentative. Notwithstanding that, in our further perusal of the affidavit, we have failed to see any statements of legal issues arising from the material facts therein, as required of an affidavit supporting an application in the Labour Court under rule 24(3) of the Labour Court Rules.

In those circumstances, we shall not dwell much on the defects in the highlighted paragraphs, which essentially meant there was no evidence to prove the allegations therein. Our concern, therefore, as observed herein, is the fact that the affidavit supporting the application leaves a lot to be desired, in that by failing to advance a statement of legal issues arising from the material facts of the case, it has not complied with the mandatory requirements under rule 24(3) of the Labour Court Rules. Therefore, we find the ground one to have merit.

In light of our finding above, we are of the firm view that the above ground is sufficient to dispose of the appeal and find no

compelling reason to proceed with the determination of the remaining grounds of appeal.

In consequence, we allow the appeal and set aside the decision of the High Court and its subsequent orders. Considering the circumstances of this appeal, we make no orders as to costs.

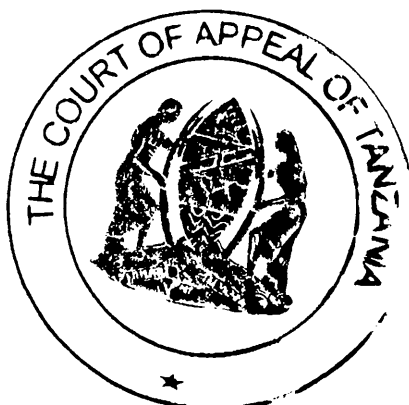
DATED at **MBEYA** this 27th day of February, 2025.

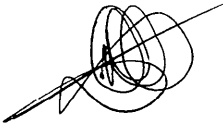
W. B. KOROSSO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Judgment delivered this 27th day of February, 2025 in presence of Mr. Isaya Mwanri, learned counsel for the Appellant and Mr. Joseph Tibaijuka and Edina Mwamlima both learned State Attorneys for the Respondent through virtual court, is hereby certified as a true copy of the original.




W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL