

LABOUR DISPUTES HANDLING PROCEDURE IN TANZANIA

By Frank Mwalongo*

1.0 General Introduction

Among the key objectives of the enactment of the Employment and Labour Relations Act and the Labour Institutions Act, both of 2004, is to provide a framework for the resolution of disputes by mediation, arbitration and adjudication; and also to provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work¹. This explains that the current labour laws came in to address and resolve among other things the labour disputes handling procedure. Obviously due to the repealed laws being less effective, having multiple procedure, outdated and overlapping avenues, as well as high involvement of administrative authorities such as the Minister responsible for labour, the Commissioner for Labour, the labour conciliation board and labour Officers more than the proper courts of law. Some of these administrative bodies such as the Hon. Minister could conduct the whole trial or appeal without meeting the parties.

This paper is confined to the labour dispute handling procedure in Tanzania starting with an overview of the procedure in the repealed labour laws which was a reason for enactment of the current labour laws. Then focus is turned to the current labor laws focusing on the labor dispute as defined today, court hierarchy in handling labour disputes, unique procedural aspects in the current labour laws and the dilemma created by the current labour laws, practice and the proposed way forward to address and resolve the dilemma.

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¹ Section 3(b) & (e) of the Employment and Labour Relations Act no. 6 of 2004.

2.0 Overview of the Procedure in the Repealed Labour Laws

In the repealed laws², labour disputes were handled through five or more parallel avenues, all adjudicating labour disputes with apparent or very fine demarcations. The first avenue was the labour officers who were vested with power to mediate disputes based on termination of employment and claims for terminal dues among others, failure of which labour officer's report was prepared and filed at the magistrate's court which once filed was regarded as a plaint and hearing was conducted as if it were a civil suit³. Thereafter the normal appeals or review or revision would follow like in any other suit. The second avenue was through the labour conciliation board that was mandated to only deal with summary dismissal. Appeals thereto went to the Minister responsible for labour whose decision was final and conclusive, challengeable by way of judicial review only⁴. The Security of Employment Act was amended in 1975⁵ to vest the Labour Conciliation Board with authority to adjudicate issues of termination of employment over and above summary dismissal. Third avenue was through the Industrial Court of Tanzania on first instance before one chairperson and revision to the same industrial court but with a bigger composition of one chairperson plus two deputy chairpersons and assessors on second instance. Decision from revision lied to three judges of the high court of Tanzania⁶. The inquiries referred by the labour Commissioner would be concerning a group of employees or an individual employee if certified by the labour officer as to have been employed in the managerial position,

² Repealed Laws includes: the Employment Act Chapter 366, Regulation of Wages and Terms of Employment Act Cap 300, Wages and Salaries (General Revision) Act 1974, Trade Union Act 1998, Security of Employment Act Cap 574, Severance Allowance Act Cap 487, Industrial Court of Tanzania 1967, Worker's Compensation Act Chapter 263 R. E. 2002.

³ Sections 139, 140, 141, 142 & 143 of the Employment Act, Chapter 399 R. E. 2002

⁴ Sections 24, 25, 26, 27, 28 & 29 of the Security of Employment Act Chapter 387 R. E. 2002

⁵ Section 18 of the Labour Laws (Miscellaneous Amendments) Act No. 1 of 1975 amending section 40A of the Security of Employment Act, 1964.

⁶Written Laws (Miscellaneous Laws) Act No. 11 amending Section 27 IC of the Industrial Court of Tanzania Act, 1967

following the expansion of the meaning of trade disputes⁷ to cover individuals. The Commissioner for labour who received complaints from aggrieved parties through the labour officer determined the disputes on whether or not there was an issue to be referred for inquiry without meeting the parties. The Commissioner for Labour would write a letter to the industrial court directing an inquiry to be done on the dispute and identifying issues requiring to be inquired on. The fifth avenue was injuries under the Workmen's Compensation Act where the injured employee would file the incapacitation report filled in by a medical practitioner to the resident magistrate's court for adjudication and award of compensation. Alternatively, the injured employee would pursue a cause of action in tort to sue for compensation for injuries.

In some disputes handling avenues there were very fine line between two or more avenues to pursue. Multiple avenues for one cause of action in the labour dispute handling mechanism were always causing dilemma to the aggrieved parties. For instance , disputes of termination of employment could be pursued through three avenues: the labour conciliation board, or the labour officer or through the industrial court. We could say there was concurrent jurisdiction, and there are several instances of employees pursuing the same dispute in two quasi judicial bodies. These quasi judicial bodies handling labour disputes were mainly manned by non lawyer hence they could not, for instance, comprehend issues of *res judicata* or *res subjudice* and other basic principles of delivering justice.

3.0 Labour Law Reform

The Labour Law Reform goes as far back as 13th May 1986 when the Minister for Justice and Attorney General directed the Law Reform Commission (LRC) to review and report to him on the adequacy and effectiveness of the Permanent Labour Tribunal Act

⁷ "trade dispute" means any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of any of those employees or such an employee; under section 3 of the Industrial Court Act Chapter 60 R. E. 2002.

of 1967. The LRC reviewed the terms of reference and came up with six issues which were far beyond what was directed. The six issues included: that the labour laws are scattered in numerous statutes; the contradicting definition of an employee; the need for clear guideline for redundancy; the inadequacy machinery for settlement of industrial disputes; the need to rationalize workers' education and the state of the labour laws. The six issues were sent back to the Hon. Minister for Justice and Attorney General for his consent before working on them. The Commission appointed a committee that prepared a report⁸. The said report is the first detailed report on the position of the labour laws in Tanzania. It seems that the recommendations from this report were not implemented as there were no noticeable or significant action taken to amend the existing labour laws or enact new labour laws. Though it were not implemented directly, it was the significant step made towards labour law reform in Tanzania.

There were a series of amendments of the old Labour Laws Tanzania and enactments same few new acts but which caused even more confusion to the labour law regime because labour law acts are dependent on each other.

In 2001 a Task Force was formed under the Ministry of Labour, Youths Development and Sports, Chaired by Hon. Justice Mrosso of the Court of Appeal of Tanzania as he then was to review the labour policies, labour laws and institutions. Though the task force was not under the Law Reform Commission, but the reports of the LRC on labour laws were of great importance to the task force. The task force divided the assignment into two phases: Phase One covering employment laws, labour relations laws, disputes prevention and settlement machinery and legal structure and regulatory framework which has been implemented via enactment of the Employment and Labour Relations Act No. 6 of 2004 and The Labour Institutions Act No. 11 of 2004. Phase two covers occupational health and safety, workers' compensation; and employment promotions⁹.

⁸ Report of the Law Reform Commission available at www.lrc.tz also at www.ilo.public

⁹ Paper presented by Dr. Cornel Mtaki, at a Policy Dialogue Seminar on New Labour Laws in Tanzania at the Conference Hall of the Economic and Social Research Foundation, 12th September 2005 (Unpublished).

Phase two has been partly implemented in which, among others, Worker's Compensation Act No. 20 of 2008 has been enacted.

The shift from state owned economy to market oriented economy brought in by economic liberalization across the world and in Tanzania as well has been the major factor for labour Law Reform in Tanzania.

4.0 Labour Matters in the Current Labour Laws

What constitutes a labour matter is sometimes a straight forward issue and sometimes a complex issue depending on the nature of the relationship. In some instances, the courts have either moved suo motu or being moved to determine in the first place whether or not there exist a labour matter. In the case of *Mustafa Jumanne* the court established that there was no employment relation due to the fact that Jumanne¹⁰ was just allowed to conduct business in the Respondent's milling machines and that after sale of the milling machine no issues of transferring him arose. In *Labour Revision No. 154 of 2008*¹¹, the central issue was whether employment relation existed. The Labour Court, having examined the facts, concluded and held that as long as the applicants were engaged on daily-paid basis, they are casual employees hence not having the status of employees. In *Revision No. 154 of 2009*¹², the Commission determined that there was an employment relation because the Respondent was paid salary though was misleadingly called Commission agent. In the case of *Eliatosha Moshi*¹³, though it was determined under the repealed labour law but the interpretation of the position of the law is the valid under the new labour laws, the High Court held that there was no employment relation

¹⁰ Mustafa Jumanne Versus Mary Bora Labour Revision No. 172 of 2008 (unreported).

¹¹ Hussein Shabenga Versus Tanzania Ports Authority Labour Revision No. 154 of 2008 (unreported).

¹² Noble Motors Limited Versus Aveline Itatiro Labour Revision No. 154 of 2009 (unreported).

¹³ DPP V. Eliatosha Moshi and Another (1983) TLR 146

between a taxi owner and a taxi driver because the proceeds was shared percentage wise.

In the Employment and Labour Relations Act as well as the Labour Institutions Act, several words and phrases have been used to describe labour matters. Labour disputes have been defined to mean any matter relating to employment or labour relation, while complaints refer to any dispute arising from the application, interpretation or implementation of (a) an agreement or contract with an employee, (b) a collective agreement, (c) this act or any other written law administered by the Minister and (d) part VII of the Merchant Shipping Act, 2003¹⁴.

Disputes have also been used to mean several things: (a) means any dispute concerning a labour matter between any employer or registered employers association on the one hand and any employee or registered trade union on the other hand, and (b) includes an alleged dispute¹⁵. However, a dispute is given a different meaning when it comes to arbitration. Section 88 of the Employment and Labour Relations Act defines a dispute to include (a) a dispute of interest if the parties are engaged in the essential service, and (b) complaint over: (i) fairness or unfairness of termination of employee's employment, any other contravention of the Act or any other labour law or breach of contract in which the amount claimed is below the pecuniary jurisdiction of the High Court and (iii) any dispute referred to arbitration by the labour court¹⁶. Dispute of interest means any dispute except a complaint¹⁷. Employees have a right to strike and to lockout under disputes of interest¹⁸. Disputes of interest refers to labour matters to which the

¹⁴ Section 4 of the Employment and Labour Relations Act, No. 6 of 2004.

¹⁵ Ibid

¹⁶ Tamico Buzwagi Mine Vs Pangaea Minerals (LTD) Buzwagi Mine Misc. Application No. 3 of 2011 (unreported)

¹⁷ ibid

¹⁸ Ibid Section 75.

employee does not have a right to, but over which if resolved in the employee's interest may create a future right¹⁹.

Definition of labour matters entails disputes of right and disputes of interest. Disputes of right means matters arising from employees rights provided in the contract of employments or the law or employment policies or voluntary agreements, while disputes of interest means those which are not rights as they do not have a base in the contracts of employment or the law or policy but that employees want them. Disputes of interest may create future rights. The Labour Court has assisted to put more clarity on the disputes of right and of interest²⁰.

Apart from the definitions of labour matters/disputes, under section 61 of LIA, several criteria are used to presume the presence of the contract of employment or employment relation, should there be ambiguity on whether or not there exist employment are provided. These criteria are key in establishing whether there is a labour matter involved or not.

“For the purpose of a labor law, a person who works for, renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one of the following factors is present:

- (a) The manner in which the person works is subject to the control or direction of another person;*
- (b) The person's hours of work are subject to the control or direction of another person;*
- (c) In the case of a person, who works for an organization, the person is part of that organization*
- (d) The person has worked for the other person for an average of at least 45 hours per month over the last three months;*
- (e) The person is economically dependent on the other person for whom that other person works or renders services;*

¹⁹ General Manager Tanica Ltd Vs Robert Rugumbirwa Revision No. 38 of 2007 (unreported)

²⁰ Ibid

- (f) The person is provided with the tools of trade or work equipment by the other person; or*
(g) The person only works for or renders services to another person''

Under the quoted section 61 of LIA, employment is presumed by looking at the nature of the relations. The presumption of employment assist to define employment as it sets the tests of whether or not employment exists.

5.0 Disputes Handling under the New Labour Laws

Labour disputes handling machinery starts with the Commission for Mediation and Arbitration, then an aggrieved party may seek revision before the High Court Labour Division and further Appeals or revision go to the Court of Appeal of Tanzania. The High Court has powers to entertain appeals from administrative bodies such as the Registrar of trade unions or from the decisions of the Honourable Minister responsible for labour. Apart from the CMA, Labour Court and Court of Appeal, there is the District Court and Resident Magistrate's Court with power to handle contemptuous proceedings for any contempt committed before the Commission for Mediation and Arbitration.

5.1 Commission for Mediation and Arbitration

The commission is established under section 12 of the Labour Institutions Act of 2004. The conduct of mediation and arbitration is governed by the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64 of 2007 and Labour Institutions (Mediation and Arbitration Guidelines) Rules GN No. 67 of 2007 while the conduct of mediators and arbitrators is regulated by Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators) Rules GN. No. 66 of 2007.

The First stage in resolving labour disputes is mediation, failure of which the referring party can either give notice to commence a strike or lockout where the matter is a dispute of interest; or refer the matter to arbitration or to the High Court where the matter is a complaint/dispute of right²¹. The Mediator's power to mediate has to be exercised within 30 days, where the matter is not mediated within the said 30 days, the mediators cannot continue with mediation unless parties to mediation consent to such extension in writing or else the Complainant is at liberty to take a further step such as referring the dispute to Arbitration²².

The jurisdiction of the Commission is provided under several provisions which have to be read together. Section 14(1) of the Labour Institutions Act confers the Commission with the function to mediate any dispute through mediation and determine any dispute through arbitration. The provision is jurisdictional in nature as it states the powers of the commission to mediate and determine disputes. Section 88(1)(b)(ii) of the Employment and Labour Relations Act confers jurisdiction to the Commission to arbitrate matters whose pecuniary jurisdiction is below the pecuniary jurisdiction of the High Court. Section 94 (1) (d) of the Employment and Labour Relations Act empowers the Labour Court to adjudicate complaints other than those to be decided through arbitration. These provisions expressly indicate that there is a demarcation between complaints to be determined through arbitration and those through the labour court. That demarcation is the pecuniary jurisdiction of the high court which is pegged at One hundred fifty million Shillings and One hundred million shillings for immovable and movable property capable of estimation respectively²³. This position is also clearly stipulated under rule 20(3)(b)(ii) of the Mediation and Arbitration Guidelines Rules GN No. 67 of 2007.

²¹ Section 86(7) of the Employment and Labour Relations Act, 2004.

²² Sections 86(4) &(7) and 88(2) &(3) of the Labour Institution Act of 2004, also Revision No. 5 of 2008 between Namera Group Industries (T) Limited and Juma Zimbwe & 58 Others (unreported) and Revision No. 1 of 2008 between Enikon Limited and Peter Lukas (unreported).

²³ Section 40 of the Magistrate's Courts Act of 1984 s amended by Written Laws (Miscellaneous Amendments) Act No. 25 of 2002.

Rule 23(1) of the Labour Court Rules provides very categorically that a statement of complaint shall be presented straight to the Labour Court for matters within the pecuniary jurisdiction of the High Court. Of reference is the general pecuniary jurisdiction of the High Court which is pegged at One hundred fifty million and One hundred million as stated herein above.

Mediation is based on reconciling the parties and the parties can agree or refuse to be reconciled. The resultant decision from mediation is owned by the parties since it is their voluntary decision to end their dispute. Surprisingly, Section 87(3) (b) of the Employment and Labour Relations Act, contradicts the notion of mediation. In the first place, it mandates the mediator to decide a complaint where the respondent does not attend mediation hearing and it goes further to mandate the High Court labour division to enforce the said decision as if it were a decree of a competent court²⁴. In my view this provision is improper and very contradictory since it is at variance with the meaning of mediation where it is not the mediator who decides the complaint but parties themselves who agree on what should be their resolution. In fact, even when all parties attend mediation, still the mediator is not vested with powers to decide the complaint but to mediate parties until they voluntarily agree or otherwise. It is wondered how can the mediator decide the complaint in the absence of one of the parties while the same mediator is not mandated to decide the complaint even if all the parties attend.

The Court of Appeal of Tanzania has on several occasions being faced with an issue for determination on whether it is appropriate for the high court judge to issue default judgments or order *ex-parte* hearing after the Defendant has failed to attend mediation. The Court of Appeal has consistently held that where the Defendant has failed to attend mediation for whatever reason the judge can not issue a default judgment and also may not order *ex-parte* hearing. At most, the judge may adjourn the matter to another day or record mediation to have failed and matter to be reassigned to another judge for

²⁴ Berkely Electric Limited Vs Christopher Musa and Another Labour Revision No.236 of 2008 (unreported).

hearing. By way of *obiter* the Court of Appeal held that the default judgment may come from the judge assigned for hearing after mediation has failed. The *ex-parte* judgments entered during mediation due to absence of the Defendants were declared as premature and set aside²⁵.

The spirit of the decisions of the Court of Appeal is that the decision out of mediation is at the instance of the parties, meaning that it is the parties who own the decision and not the court. This position is in line with the definition of mediation in *Black's Law dictionary, 8th Edition* where mediation is defined as a method of non-binding dispute resolution involving a neutral party who tries to help the disputing parties reach mutually agreeable solution. Again the position of the Court of Appeal is also in line with the provision giving powers to the mediator to assist parties to agree.

Upon failure of mediation the mediator issues a certificate of non settlement for the same to be referred to arbitration.

The Second Stage before the Commission is the arbitration stage which comes after failure of mediation. The Arbitrator is appointed after the complainant has shown up at the Commission to follow up summons for the arbitration stage. In my view, there were supposed to be forms to be filled by a party who wishes to refer the dispute to the stage of arbitration. Unfortunately, a party wishing to pursue arbitration goes to request for a summons which may be issued timely or late, making the reference to arbitration out of time. The current practice of making reference to arbitration orally leaves a lot to be desired hence opening a loophole for abuse. Arbitration has five stages: introduction, opening statements, evidence, closing arguments and finally an award.

Rule 18 of GN No. 64 of 2007 provides for combined mediation and arbitration before the same person. This provision has received interpretations which have essentially

²⁵ Napkin Manufacturer's Limited Vs Charles Gadi & Joyce Gadi Civil Revision No. 2 of 2008 (Unreported), Also two other unreported decisions are referred in the judgment: Tanzania Harbour Authority V. Matthew Mtalakule & 8 Others Civil Appeal No. 46 of 1999 and Ignazio Messina & Another V. Willow Investments Limited & Another, Civil Appeal No. 105 of 1998.

nullified it. In instances where the same mediator converts himself into the arbitrator without an appointment, all the proceedings have been nullified²⁶. Also the law has been developed through case law to allow the parties to the dispute to consent in writing to allow the mediator to be their arbitrator, and where that happens the proceedings are deemed as valid and are associated with Rule 30 GN No. 67 of 2007²⁷.

Some decisions of the Labour court have suggested that the jurisdiction of the commission is only an issue when it comes to Arbitration, because it is only during arbitration where the amount claimed has to be below the pecuniary jurisdiction of the High court in order to be adjudicated²⁸. The pecuniary jurisdiction of the high court is used to determine which court to file a labour dispute²⁹. I am of the view that this is not proper because the Commission is one organ and there are no two organs, only that there are stages within the same organ just like in the Resident Magistrate's Court in which mediation cannot be distanced from trial. Also rule 15³⁰ requires the mediator to address any jurisdictional issue arising before conducting mediation. The requirement for the mediator to clear arising jurisdictional issues prior to mediation leaves no doubt that the jurisdiction of CMA as one organ binds both the mediator and the arbitrator. Under Rule 5(2) of the Third schedule to the Employment and Labour Relations Act, 2004 the labour court is vested with power to adjudicate on all disputes arising from voluntary agreement entered under the repealed laws³¹. Section 95 of the same Act

²⁶ Buzwagi Project Vs Antony Lameck Revision No. 297 of 2008 (unreported); TBL Vs Charles Malabona Revision No. 24 of 2007 (unreported); Bulyanhulu Gold Mines Ltd Vs James Bichuka Labour Revision No. 313 of 2008 (unreported)

²⁷ Ibid

²⁸ Section 88 (1) (b) (ii) of the Employment and Labour Relations Act, 2004.

²⁹ Rule 23(1) Labour Court Rules, 2007.

³⁰ Labour Institution (Mediation and Arbitration) Rules GN 64 of 2007.

³¹ Kariakoo Market Corporation Vs Otieno and Others Revision No. 101 of 2010 (unreported).

ousters the jurisdiction of the CMA in the event the voluntary agreement provides for another adjudicatory machinery³².

Section 88 of the Employment and Labour Relations Act was amended by Written Laws (Miscellaneous Amendments) Act No. 8 of 2006 to include tortious liability and vicarious liability. However reading the amendment in line with the Newspapers Act of 1976 as amended by Act No. 10 of 1994 that requires every proceedings based on libel to be adjudicated in the presence of not less than three assessors, there seem to be a conflict between the two statutes. As long as the composition of CMA does not include at least three assessors, then CMA seem to be disqualified from determining labour disputes based on libel. On 14th November 2008, Judge Reyemamu held that defamations that are not libel that are part and parcel of labour disputes may be determined through CMA³³. Eleven months later the same Judge Rweyemamu made a generalized holding the CMA is not vested with jurisdiction to determine defamation³⁴. While in Ruvakubusa case the judge is categorical that CMA is not vested with jurisdiction in libel, in *Rugumbirwa's case* the judge holds that CMA does not have jurisdiction of any kind on defamation and that defamation has to be pursued in the normal courts. With the case law cited the amendment to section 88 of the Employment and Labour Relations Act by Written Laws (Miscellaneous Amendments) Act No. 8 of 2006 does not extend the scope of labour matters to include defamation. The amendment to section 57 of the Newspapers Act by Written Laws (Misc. Amendments) Act No. 11 of 2010 that have made the requirement of assessors optional does not seem to have any impact to the jurisdiction of CMA on libel since still the CMA will not be positioned to exercise the option. To Judge Mandia even the Labour Court is not vested with jurisdiction on the tort of defamation³⁵. *In Complaint No. 13 of 2003 between Hemedi*

³² Stephano Elias Vs Mwanza Fishing Industries Limited Revision No. 118 of 2009 (unreported)

³³ Dar-es-Salaam City Council Vs Rafael Ruvakubusa Revision No. 149 of 2008 (unreported)

³⁴ General Manager Tanica Ltd Vs Robert Rugumbirwa Revision No. 38 of 2007 (unreported)

³⁵ Hemedi Omary Kimwaga Vs SBC Tanzania Limited Complaint No. 13 2008 (unreported)

Omary Kimwaga and SBC Tanzania Limited the High Court moved *suo motu* to rule very briefly that it does not have jurisdiction adjudicate on suitd who cause cause of action are defamation. In the said ruling the judge was expected at least to show how the Amendment to section 88 of the Employment and Labour Relations Act by Written Laws (Miscellaneous Amendments) Act No. 8 of 2006, which introduced torts as among the labour disputes, does not apply in the circumstance.

Recently, Judge Rweyemamu³⁶ had ruled that the jurisdiction and powers of different labour institution including the CMA and labour court is based on subject matter not pecuniary value of the matter and or dispute. She went further to rule that as the matter under her consideration was based on unfair termination, she directed it to be transferred to CMA to be resolved through arbitration, which means that matters of unlawful termination are reserved for CMA. In my view, the decision by Rweyemamu is erroneous In the first place, I would not expect a decision on jurisdiction to be as scant as it is. The judge has just made a blanket and sweeping statement without details. Among the contents of a judgment or any ruling is the reasoning of the judge leading to the decision which is made. The ruling has stated as a fact that section 88 of the Employment and Labour Relations Act has been amended by Written Laws Misc. Amendments No. 3 of 2010, which is not true. Ordinarily, I would have excepted a judge to quote the amendment for ease of reference and for clarity which she did not. No provision of the ELRA or LIA on jurisdiction of CMA has been amended as suggested by the judge. The sad thing is that there will be great suffering and confusion until it will be resolved.

However Judge Rweyemamu is strong enough to correct herself. She once misconceived the issue of place of suing as addressed in the new labour laws and she was quick and strong enough to issue a variation order thereby showing the error in her first decision and going ahead to correct it³⁷. In the said *Nkwama's case* the judge had

³⁶ George Lugembe Malyeta Vs NBC Ltd Labour Dispute No. 29 of 2009 (unreported) pg 3.

³⁷ Kwila Peter Nkwama Vs General Manager Marine Parks Services Co. Ltd Labour Revision No. 229 of 2008 (unreported)

ruled that the new labour law does not address the issue of the place of suing hence there was a lacunae and went ahead to apply the Civil Procedure Code, while there were clear provisions addressing the same. Immediately after her decision she became aware of rule 22(1) of the Labour Institution (Mediation and Arbitration) Rules GN 67/2007, so she issued a variation Order therein correcting her decision exercising powers under Rule 38(1)(b) of the Labour Court Rules GN 106/2007. Also on the issue of delivery of awards beyond thirty days after the filing of the closing submission, in the first place she nullified several awards delivered beyond thirty days from the date of filing the closing submission³⁸ but later on she decided to correct herself and clearly said that she believed her decisions were made *per incuriam*³⁹. In fact the judge took note of the objectives of the ELRA which among others is to expedite the resolution of labour disputes. I commend her for the boldness and strength to declare her own decisions as *per incuriam*. I would urge Judge Rweyemamu to correct herself *suo motu* so as to save the labour law regime from the controversy. I understand the judge's power to correct her own decision are so limited but this is also serious enough to require a correction.

In spite of the Government Proceedings Act that require all suits against the Government of Tanzania to be filed at the High Court, in relation to labour disputes, the high court has held that the Commission has jurisdiction to adjudicate disputes to which the Government is a party. Rule 23(2) of the Labour Court Rules 2007 was interpreted to mean that the Government can be a party to a dispute before CMA, a position which is not backed by any provision of the law⁴⁰. The decision by Judge Mandia is lacking reasoning as well. Both in the Employment and Labour Relations Act and in the Labour Institutions Act there is no any provision that seem to conflict with a clear provision in the Government Proceedings Act, but implied provision are taken to override a clear provision. There is no justification for Judge Rweyemamu to look

³⁸ Dar-es-salaam Yatch Club Vs Eliezer Musama & James Revision No. 263 of 2008 (unreported);

³⁹ Tanzania Revenue Authority Vs Justus Ndyeshumba Revision No. 304 of 2009 (unreported)

⁴⁰ The attorneys general Vs Marai Mselemu Labour Revision No. 270 of 2008 (unreported)

around for an implied provisions to contradict an express provision. Also the erroneous position that seem to be settled that requires all labour disputes to be filed at CMA first for mediation seem also to be used to solidify the position that the Government can be a party to the suit at CMA. It is my view, that if legislature had intended to vest the CMA with jurisdiction in labour matters to which the Government is a party then there could be an express provision both in the Employment and Labour Relations Act and in the Labour Institutions Act, but not a farfetched implication which could imply differently to different leaders. In my further views, matters of jurisdiction cannot be assumed and neither can they be simply implied.

5.2 The Resident Magistrate's Courts and District Courts

These are restrictively mandated to determine contempt proceedings for contemptuous conduct done before mediators and Arbitrators and to adjudicate offences under the Labour Institutions Act⁴¹. Also, these courts are mandated to enforce compliance orders of the Commissioner for Labour or his delegate⁴². Mandia J., in *Revision No. 21 of 2007 between Destefanos Hotel and Domina Marusu*, by way of *obiter*, confirmed that district court have jurisdiction to try and impose penalties for offences under the labour Institutions Act. However the Magistrate's courts are not in the hierarchy to adjudicate labour matters on merit.

5.3 High Court of Tanzania Labour Division

The Labour Division is established under section 50 of the Labour Institutions Act, 2004 where a judge may or may not sit with assessors and, under section 51, is vested with exclusive jurisdiction over labour matters.

⁴¹ Sections 20(3), 63 & 64 of the Labour Institutions Act

⁴² Section 45(1)(i) of the Labour Institutions Act, 2004.

General powers of the labour division are provided under section 94 of the Employment and Labour Relations Act of 2004. These include powers to hear and determine: Appeals from the decision of the registrar of trade unions, employers associations and federations; Review and Revisions of the arbitrator's awards and decisions of the essential service committee; Reviews of decisions, codes, guidelines or regulations made by the Minister; Complaints other than those that are to be decided by arbitration; Any dispute reserved for the decision of the Labour Court; Applications including for declaratory orders in respect of any provision of the Employment and Labour Relations Act or an injunction. The labour division is also generally vested with all the powers of the high court⁴³ and powers to execute the awards and decisions of the Commission for Mediation and Arbitration as if were decrees⁴⁴.

The procedures of the Labour Division is governed by the Labour Court Rules, 2007 and in case of a *lacuna* resort is made to the Civil Procedure Code Cap 33 R. E. 2002 or any other procedure deemed proper⁴⁵. So all the powers vested in the labour Division have corresponding enabling provisions in the Labour Court Rules which must be quoted. The Court of Appeal of Tanzania had the opportunity to interpret the enabling provisions for moving the Labour Division to exercise its powers. The court held that section 94 of the Employment and Labour Relations Act of 2004 was never intended to be an enabling provision for instituting any proceedings before the Labour Court and that it only spells out the powers of the labour court⁴⁶.

Statement of Complaint is the form of initiating proceedings when the Labour Court exercises original jurisdiction, which in the other court would take the form of plaint. This is provided for under Rule 6 of the Labour Court Rules, 2007. After failure of

⁴³ Section 52(1) of the Labour Institutions Act, 2004.

⁴⁴ Rule 49 of the Labour Court Rules, 2007.

⁴⁵ Rule 55(1) Labour Court Rules, 2007

⁴⁶ between Chama cha Waalimu Tanzania and The Attorney General, Rutakangwa J.A; Kimaro J. A; & Luanga J. A Civil Application No. 151 of 2008 (unreported) Pgs 19, 20 & 21.

mediation, the Complainant, not the commission *suo motu*, has to refer the dispute to the high court in the event the pecuniary jurisdiction requires so⁴⁷.

Case law has determined that a Complaint has to go through the Commission for mediation and arbitration before it is filed before the Labour Court. Under rule 10 of the Labour Court Rules the Registrar of the Labour Court or the mediator attached to the Labour Court is vested with powers to mediate the dispute before adjudication. This defeats the essence of filing complaints before the Commission i.e. those reserved for the Labour Court. The Labour Court rules provide for mediation which, according to the current practice, is conducted at CMA. There is no point for the matter reserved for the labour court to be mediated at CMA and, after filing a complaint, it goes through mediation under the registrar or through another mediator attached to the labour court.

The requirement of a dispute going through the Commission for Mediation and Arbitration for mediation before being filed before the Labour Court is viewed as incorrect and illogical because the registrar attached to the labour Court can conduct mediation like the mediator which sounds much more in compliance with the law than the current practice⁴⁸. The mediator is required by law to satisfy himself that he/she is vested with jurisdiction before conducting mediation⁴⁹. Judges have interpreted rule 15 of GN No. 64/2007 as referring to condonation only and not the value of the claim. Unexpectedly, matters whose pecuniary jurisdiction is above the limit of the Commission are still entertained by the Commission for Mediation⁵⁰. In my considered view, that is misdirection and a misconception. The value of the subject matter at issue determines jurisdiction and it cannot be said that the mediators are vested with unlimited jurisdiction. As mediators can decide a complaint if the respondent does not

⁴⁷ Sudi Ramadhani and 67 Others Vs Simba Plastic Co. Limited Labour Dispute No. 38 of 2008 (unreported), also Frank Kananda Vs Tanzania Railways Co. Reli Asset Labour Dispute No. 30 of 2008 (Unreported).

⁴⁸ Sections 86(7)(b) and 94(2)(a) of the Employment and Labour Relations Act, 2004

⁴⁹ Rule 15 of Labour Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007

⁵⁰ Fabian Makoye Vs Knight Support (T) Limited Labour Revision No. 200 of 2010 (unreported), also in Salim Kitojo Vs Vodacom (T) Ltd Complaint No. 4 of 2008 (unreported)

attend, it means that any complaint pending for mediation can be decided in that style, which makes the mediators as powerful as judges, which in any event cannot be the case.

Application for Revision⁵¹ is the main avenue to challenge decisions of the Commission for Mediation and Arbitration and constitutes the majority of matters pending before the labour court. There has been some controversy on the format of revision applications. Some judges maintain that there has to be a notice of application and supporting affidavit while others maintain that it is the same format like the one provided in the Civil Procedure Code. Judge Rweyemamu appreciated both the two positions and accepted either of the two provided that the enabling provisions are quoted⁵². Revision in labour matters is open to parties and interested parties, though there are controversial decisions disallowing the same⁵³. In the decision under reference the judge made a sweeping statement that the Applicant was not a party before the commission hence lacks locus in the proceedings, without digesting the provisions.

Application for Review are of two types; the First one is the review of decisions or proceedings of a responsible person or body performing a reviewable function which is instituted by way of chamber application supported by an affidavit⁵⁴. The responsible person or body performing a reviewable function is considered to be an inferior body to

⁵¹ Enabling provisions are Rules 24(1), (2), (3); 28 (1) of the Labour Court Rules GN NO. 106 of 2007 and Sections 91(1),(2)&(4) of the Employment and Labour Relations Act, No. 6 of 2004.

⁵² Salum Ngatunga Vs KK Security (T) Ltd Labour Revision No. 106 of 2010 (unreported)

⁵³ TIOT and Ayoub Juma Vs 18 Others Revision No. 4 of 2008 (unreported)

⁵⁴ Section 26 of the Labour Institutions Act, 2004.

the Labour Court⁵⁵. The second type of review is against judgments, decrees or orders and is filed via notice of review and memorandum of review⁵⁶.

Appeals are very much limited, they are not against the decisions of the commission for mediation and arbitration i. e awards are not appealable, this is the interpretation of section 94(1)(b)(i) of the Employment and labour Relations Act, 2004⁵⁷.

Application for Execution of decisions of the labour court itself and of CMA are done by the labour court under Rule 49 of the Labour Court Rules, 2007 and the labour Court enforces them as if they were decrees.

Application for Prerogative Orders against quasi judicial bodies determining labour matters are entertained by the labour division as well because the Labour division has all the powers of the high court.

5.4 The Registrar of the High Court Labour Division

The Registrar of the Labour Division is appointed and posted as the Chief Executive Officer of the Labour Court answerable to the Judge in Charge⁵⁸. Also the Deputy registrars are appointed to work under the Registrar. The main role of the registrar is to deal with supervisory role of the staff, office logistics and on the part of cases, to admit documents sent for filing, number them, make sure each document is filed in the respective file, request a party to correct any apparent error and in the event of refusal, to forward them to the judge for direction and another role is to keep records⁵⁹.

⁵⁵ TUICO and Attorney General Vs two others Misc. Civil Application No. 1 of 2008 (unreported)

⁵⁶ Ibid Section 27.

⁵⁷ Remigius P. Kagaruki Vs Kom Secondary School Labour Revision No. 4 of 2010 (unreported)

⁵⁸ Section 54(1) of the Labour Institutions Act, 2004 as amended by Act No. 8 of 2006.

⁵⁹ Rule 7 of the Labour Court Rules, 2007

The pre-trial conference at the labour court is done by the Registrar or the mediator attached to the court. During pre-trial conference mediation is done, matters in dispute and matters not in dispute are sorted out, issues drawn, witnesses and evidence are stated and where a settlement is reached, the Registrar or Mediator draws a consent settlement order or award respectively, signed by parties and their advocates and the Registrar or Mediator and this shall be deemed to be the decree of the court. Where non settlement is reached, the non settlement order shall be drawn and the matter shall be sent to the judge in charge for assignment to a presiding judge⁶⁰.

In principle, the registrar is not vested with any adjudicatory powers, and where any issue arise which requires a decision, he has to forward the case file to the judge for determination.

The definition of the Labour Court under section 4 of the Employment and Labour Relations Act and section 2 of the Labour Institutions Act refers to the Labour Division of the High Court established under section 50 of the Labour Institutions Act, 2004. Section 50 of the labour Institutions Act, 2004 establishes the Labour Division of the High Court to be constituted by the Judge with an option of assessors. So, without doubt, the Registrar does not fall in the definition of the Labour Court.

The powers of the registrar to conduct pre-trial conference can also be exercised by the mediator attached to the Labour Court. The registrar or the mediator is attached to the labour court to conduct preliminaries in the court case file prior to adjudication reserved for the judge.

The Labour Court is vested with execution powers of not only its own decisions, but also decisions of the CMA, labour Commission and any other body making enforceable decisions but without execution powers⁶¹. Together with execution, the Labour Court is vested with powers to interpret the decisions of the CMA, Labour Commissioner and

⁶⁰ Ibid Rule 10

⁶¹ Rule 48(3)& (4) of the Labour Court Rules GN NO. 106 of 2007.

other bodies making executable decisions⁶². The powers to execute goes hand in hand with the powers to interpret, obviously because without interpretation powers no execution can be rationally conducted. As the definition of the court does not include the registrar, it is obvious that executions presided over by the Registrars are done in contravention of the law.

Judge Rweyemamu has maintained and defined that the Registrar is vested with powers to execute CMA awards as they are and that in case of vagueness in the awards before them for execution or unexecutable awards parties can apply for revision or necessary orders from the Labour court which can order the CMA to clarify the decree. The judge went further to quash and set aside registrar's orders made without authority⁶³. The holding of the Judge showed very clearly and in line with the definition of the Labour court that the registrar is not covered in the definition of the Labour Court, but of surprise is that the Hon. Judge still maintains that the Registrar has powers to execute the CMA's awards, a function reserved for the Labour Court. It is inconceivable to maintain that the Registrar has powers to execute the CMA awards and at the same time maintain that he has no powers of determining issues arising from and during execution. The position of the law is that the registrar has no powers of executing CMA awards and has no powers to adjudicate any matter. If the law intended to empower the registrar to do execution it would have said so explicitly.

An interesting issue has arisen in regard to challenging decisions of the registrar executing CMA award. Since the registrar is not covered in the definition of the labour court it is improper to appeal to the court of appeal of Tanzania and since the registrar's executing powers are so limited, according to Judge Rweyemamu, that is not empowered to determine issues arising during execution, there is now a dilemma at the Labour Court where it has been held that the resultant decision of the registrar in

⁶² Ibid Rule 48(8)

⁶³ Distributors Nufaika Vs Charles Tafsiri Revision No. 185 of 2009 (unreported), Also in Mary Mwalufunga Vs TPC Ltd Execution No. 186 of 2010 (unreported).

execution is appealable and the Hon. Judge abstained from examining the order of the Registrar⁶⁴. In some other matters the Labour court moves *suo motu* to examine the decisions of the registrar and quash and set them aside when he acted without authority but when moved by parties, the labour court defines registrar's orders as appealable, by implication to the court of appeal of Tanzania⁶⁵. As the judge has been moving *suo motu* to determine correctness of what is done by the Registrar in the court case file and quash them or set them aside, it is expected that he/she could do the same when moved by parties. In fact, according to the establishment of the office of the Registrar as per amendment to Section 54 of the labour Institutions Act, the registrar is answerable to the judge in charge.

Judge Wambura seem to have a different standing on how to deal with decisions of the registrar while executing CMA decisions or decisions of the court. *In Misc. Application No. 75 of 2011 between Hemed Omary Kimwaga and SBC Tanzania Limited* (unreported) Judge Wambura, having been moved by a party went ahead to review the decision of the Registrar who, while executing the decision of the labour court, confirmed the award that ordered reinstatement as per the executed decision contrary to the wishes of the Applicant who wanted to be compensated. The Hon. Judge reviewed the decision of the Honourable registrar and affirmed it. However, the ruling is not prefaced with the enabling provision moving the court to do so, which if done could assist the readers to read the mind of the judge. Also the application being numbered as miscellaneous application means a formal application was lodged. In my view, Judge Wambura is right on the act of being able to review what the registrar do in the court case file. But judge Wambura does not seem to be disturbed by the Registrar's power to execute CMA's awards, which is also the stand of Judge Rweyemamu.

Here again there are two conflicting positions while Judge Rweyemamu maintains that those aggrieved by decisions of the registrar of the labour court should appeal to the

⁶⁴ Total (T) Ltd Vs Godliver Massawe Execution No. 405 of 2009 (unreported)

⁶⁵ LAPF and Isaack Holela Vs 2 others Execution No. 266 of 2008 (unreported)

court of Appeal of Tanzania, Judge Wambura maintains that the Registrar's decision during execution are reviewable by the Judge, of course because the registrar is accountable to the judge. Well, I wish to associate myself to the stand of Judge Wambura but again disassociate with her on the stand that the registrar has power to entertain execution, which in my view transgresses the law.

In another application for revision⁶⁶, after the court had granted parties the order to proceed to argue the application for revision by way of written submission, one party defaulted and to remedy the default, wrote to the registrar seeking extension of time which was entertained by the registrar *ex-parte* and an extension of time was granted. It was held that since the Registrar has no powers to hear application for revision, he had no power to order for the extension of time to file the written submission.

The Court of Appeal of Tanzania can receive appeals from decisions of the labour Court by aggrieved parties or the labour commissioner may make reference on points of law in case of conflicting decisions and where parties have not appealed⁶⁷. In my view, I find that the powers exercised by the registrar's at the labour court and blessed by the judge in charge of the labour court calls for interpretation by the court of appeal .

Order XLIII Rule 1 of the Civil Procedure Code Chapter 33 R. E. 2002, provides:-

“ subject to any general or special direction of the Chief Justice, the following powers may be exercised by the Registrar or any deputy Registrar or District Registrar of the High Court in any proceeding before the High Court-

(a) to appoint and extend the time for filing the written statement of defence, to give leave to file a reply thereto and to appoint and extend the time for filing such reply under Order VIII Rules 1, 11 and 13;

(b) to order that a suit be dismissed under Order IX, Rules 2, 3 and 5;

⁶⁶ Simba Steel Limited Vs William Geoffrey & 4 Others Revision No. 30 of 2011 (unreported)

⁶⁷ Section 58 of the Labour Institutions Act, 2004.

- (c) to make an order or give the judgment on admission under Order XII Rule 14;
- (d) to sign decrees under XX, Rule 7;
- (e) to admit, reject or allow the amendment of an application for execution of a decree under O XXI, Rule 21;
- (f) to issue notice under Order XXI, Rule 20;
- (g) to order that a decree be executed under Order XXI, Rule 21;
- (h) to issue process for execution of a decree under Order XXI, Rule 22;
- (i) to stay execution, restore property, discharge judgment-debtors and require and take security under Order XXI, Rule 24;
- (j) if there is no judge at the place of registry, to issue a notice to show cause and to issue a warrant of arrest under Order XXI, Rule 35;
- (k) if there is no judge at the place of registry, to order attendance, examination and production under Order XXI, Rule 40; and
- (l) to order that an agreement, compromise or satisfaction be recorded under Order XXIII, Rule 3".

It is key to take note that the Registrar at the Labour Court does not exercise the general powers of the registrars and deputy registrars of the High Court under Order XLIII Rule 1. In fact the Civil Procedure Code is not applicable at the Labour Court, and it may be applicable at the option of the labour Court as a departure. So far the Labour Court has not yet departed from its rules to apply the CPC⁶⁸.

5.5 The Court of Appeal of Tanzania

⁶⁸ Kwila Peter Nkwama Vs General Manager Marine Services Co. Limited Labour Revision No. 229 of 2008 (unreported) also Jonathan Loilangwaki Eliahu Vs Managing Director SDV Tansami Complaint No. 11 of 2007 (unreported)

From the labour court, appeals and revisions go to the Court of Appeal of Tanzania with leave for matters originating from the Commission for Mediation and Arbitration and without leave for matters determined by the labour court exercising original jurisdiction.

Leave to appeal to the Court of Appeal of Tanzania has to be sought under section 57 of the LIA in addition to the enabling provision in the Appellate Jurisdiction Act and the Tanzania Court of Appeal Rules of 2009⁶⁹.

5.6 Quasi-Judicial Bodies

There are Quasi Judicial Bodies making some decisions not on labour disputes but on labour law regulatory issues, worth noting. These are: the Labour Commissioner, Deputy Labour Commissioner & Labour Officer, Director of CMA, The Minister Responsible for labour, Registrar of Trade Unions, Employers' Associations and Federations. Appeals from decisions of the Registrar of Trade Unions and Employers' associations go to the Labour Court⁷⁰.

5.7 Labour Disputes in the Repealed labour laws

The third schedule to the ELRA provides for the arrangements during the transitional period moving from the repealed labour laws to the application of the new labour laws. All the organs were given a time frame of three years within which to accomplish finalizing the backlog of disputes that were pending⁷¹. Via section 42 of the Written laws (Miscellaneous Amendments) Act of 2010 paragraph 13 of the third Schedule to

⁶⁹ Director Usafirishaji Africa Vs Hamis Mwakabla and 25 Others Misc. Application No. 28 of 2010 (unreported)

⁷⁰ Section 57 of Employment and Labour Relations Act, 2004

⁷¹ Rule 13 of the 3rd Schedule to the Employment and Labour Relations Act, 2004

the ELRA was amended to encompass the following: that all disputes arising from the repealed labour laws shall be determined in accordance with the substance of the repealed labour laws, executions pending before magistrate's courts were to proceed in the same court, matters pending under the defunct industrial court were to go to the labour court those on first instance before one judge and those on revision before three judges. All judicial reviews would continue before the high court. The CMA has been vested with power to mediate and determine matters referred to it by the labour commission, matters before the Hon. Minister responsible for labour for retrial would continue before him to the point of determination while appeals before the Minister have to be transferred to the Labour Court and the arrangements have to be given a life span of three years.

The transition provisions have been tested in a number of decisions. *In Revision No. 1 of 2010 between OTTU/TUICO and TANESCO* a three judge-bench of the high court general registry ordered the matter to be transferred to the Labour Court for determination on first instance before the industrial court. *In Revision No. 11 of 2011 between Consolidated Holding Corporation V. Michael Mbonea Mnandi and 305 others*, the Labour Court held on the preliminary point that applications that were to be before the defunct Industrial court are to be filed before the labour Court but the provisions to be cited are those applicable to the Industrial court.

6.0 Other Jurisdictional Issues

Section 35 of the Employment and labour Relations Act, 2004, ousters the jurisdiction of the Commission and the High Court to adjudicate disputes of unfair termination to employees with less than six months employment⁷². By this provision, any termination of employment to an employee with less than six months whether procedure was not adhered to and whether the reason for termination was not justified cannot constitute a cause of action under unfair termination. This does not mean that such employee may

⁷² Magic Kingdom Co. Limited Vs David Mtae Revision No. 236 of 2009 (Unreported), also in Jane Chabruma and NMB Labour Revision No. 159 of 2010 (unreported)

not file a labour dispute. The dispute can be filed based on other causes other than unfair termination of employment.

Section 95 (1), (2) & (3) of the Employment and Labour Relations Act allows the trade unions and employers to enter into voluntary agreements providing for resolution of disputes that is independent, neutral, expeditious and in a professional manner different from the dispute resolution machinery provided in the labour laws⁷³. This provision allows parties to have more control over the proceedings and own the award.

7.0 Unique Procedural Aspects in Labour Disputes

The new labour laws have introduced some procedural aspects which are new in the court system worth noting.

Before CMA the party making reference fills the Referral form and serves the Respondent before filing it before the CMA but the Respondent does not lodge any document. A practice is now developing, though some mediators and Arbitrators do not accept it, where the Respondent lodges the memorandum of facts to lay down their version of the matter to be supported by evidence during trial. It is interesting that under schedule Form No. 1 paragraph C, of the Employment and Labour Relations (Forms) Rules GN No. 65 of 2007, the referral forms to be filed at the CMA are served upon the other side before filing them to the Commission. This is a new scenario not common in the normal courts of law and also not common in other tribunals such as District Land and Housing Tribunal.

⁷³ Stephano Elias Vs 2 others and Mwanza Fishing Industries Ltd Revision No. 118 of 2009 (unreported)

Section 39 of ELRA has shifted the burden of matters of unlawful termination, the burden of proof shifts to the Employer (Respondent), contrary to the general rule in the law of evidence that tasks the one alleging to prove.

The pre-trial conducted before the registrar includes mediation in which, where parties agree, a consent settlement is prepared and when parties disagree, a non settlement order has to be prepared jointly between the two sides. This is problematic because it requires two opposing sides to sort out issues in dispute and issues not in dispute and finally draft the non settlement order and file it in court.

Section 56(a) of the LIA has introduced representation by personal representative. These personal representative do not undergo any formal training hence are laypersons in the legal fraternity. These laymen who represent employees or employers cause a lot of trouble as they do not have any formal knowledge of the adjudication procedure⁷⁴.

Another procedural aspect is under rule 46 of the Labour Court Rules which requires the party initiating the proceedings to prepare an index and paginate all the documents filed.

The labour laws have also provided time limits within which to institute disputes. For referring disputes to CMA on unlawful termination is 30 days, on others disputes 60 days, revision to the Labour Court within six weeks, review 15 days, appeal within 15 days, reference from mediation to arbitration or Labour Court 30 days⁷⁵.

9.0 Controversies and Dilemma in Labour Dispute Handling Procedures

The current labour laws being relatively new, a complete shift from the colonial set of law, there are several controversies and dilemma some resulting from erroneous

⁷⁴ Section 56(b) of the Labour Institutions Act, 2004

⁷⁵ Rule 10 of GN. No. 64/2007, Complaint No. 47 of 2008 between Dr. Noordin Jella and Mzumbe University (unreported)

interpretation of the law, some because of little expertise in the field and other causes unknown to the author of this article. These include the following:

9.1 Preliminary objections cannot be filed separately- they must be included in the pleadings⁷⁶. This position is no longer strong since the current presiding judges of the labour court do not associate themselves with the position of Judge Mandia.

9.2 The Registrar's powers to execute CMAs decisions and decisions of the Labour Court is ambiguous because that is the power of the labour court. The position is yet to be settled.

9.3 The requirement to go through CMA for matters reserved for the jurisdiction of the high court vests the mediator with some powers of the judge when the Respondent does not attend, but also it denies the labour court of full original jurisdiction to receive disputes without having passed through other bodies.

9.4 Whether defamation between the employer and employee is a labour matter or not⁷⁷ is still a dilemma. In spite of the amendment, the position of case law still deny CMA jurisdiction to entertain labour matters involving defamation.

9.5 Jurisdiction of the CMA to entertain suits to which the Government is a party is still problematic because there is no provision yet to override the Government Proceedings Act.

9.6 Mediator's Power to decide Complaints in the Absence of Respondents defeats the essence of mediation and it converts the mediator into an arbitrator.

9.7 Mediator's Powers to Mediate Matters beyond its Jurisdiction i.e mediate matters reserved for the labour Court and while mediating where the Respondent does not

⁷⁶ Jonathan L. Eliahu Vs SDV Tansami Complaint No. 11 of 2007 (unreported)

⁷⁷ Hemedi Omary Kimwaga Vs SBC Tanzania Limited Complaint No. 13 of 2008 (unreported)

attend the mediator may decide in favour of the Complainant. This situation becomes more delicate where the mediator is not even a lawyer.

10 .0 Recommendations and Way Forward

It is recommended to TLS or any proactive association such as ATE to move the Labour Commissioner to make reference to the Court of Appeal of Tanzania to resolve the conflicting decisions which have created dilemma to both the bench and the bar as well as the community at large. As long as the Labour Commissioner is not bound by the time limits, TLS may explore this avenue to commission preparation of references for commissioner's reference to the Court of Appeal of Tanzania.

11.0 Conclusion

The dilemma stated herein and others not covered in this paper need to be resolved in order to expedite the current labour dispute handling procedure. Intensive training to judicial officers as well as participation in forums, seminars and conferences to discuss various burning and controversial issues in labour laws is required in order to reduce and or do away with unnecessary dilemma and controversies in the handling of Labour Disputes.