



**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT DAR ES SALAAM**

**LABOUR DISPUTE NO. 48 OF 2008**

**BETWEEN**

**EUGINE ALOYCE KAZOKA 87 OTHERS - COMPLAINANT**

**AND**

**ABDALLAH MSAGAMA & 3 OTHERS - RESPONDENT**

**S.C. MOSHI,J:**

**RULING**

The Respondents raised Preliminary Objection on points of Law (Pos) in respect of an application for temporary injunction lodged by the applicant seeking an interim injunction order for restraining the respondents and their fellow self imposed and or illegally elected leaders, from interfering with the management of TUPSE pending hearing and determination of the Complaint. Three points of law were raised as follows:-

1. The application for Temporary injunction is improperly brought before the Court for contravening rule 24(1)(2) of the Labour Court Rules, 2007.
2. The matter is improperly before the Court for contravening rule 44 (2) of the Labour Court Rules, 2007.

3. The applicant, Mr. Eugene Kazoka is not a member, therefore he can not institute/ dispute under Section 53(1) of the Employment and Labour Relation's Act; 2004.

The parties, through their advocate requested to make their submission in writing. The Court, granted their request.

I have considered both sides submissions affidavit, counter affidavit and the application as a whole, and I have the following considered opinion and observations:-

(i) Rule 24(1) of the Labour Court Rules, G.N. No.106/2007 requires that any application before the Court should be made on notice to all persons who have an interest in the application. However the same Rule i.e. 24 under sub-rule (11) specify applications which ought to be brought by way of a chamber summons supported by an affidavit; which include in paragraph (a) interlocutory applications. As the law is, it is apparent that all categories of applications falling under Rule 24(11) are supposed to be made by way of a chamber summons supported by an affidavit as opposed to other applications which ought to be brought on notice also supported by affidavit.

(ii) Kazoka E.A signed on the complaint for the applicant or duly authorized representative. The affidavit was Sworn by Eugene Aloyce Kazoka. In the affidavit, the deponent, states of himself

and 87 others; he refers to the applicants, himself inclusive as, "we". However there's no Courts leave to represent the others. It's my view that he was supposed to seek Courts permission to act on behalf of the others i.e. the 87 in compliance with R.44(2) of the Labour Court Rules, G.N. No.106/2007.

- (iii) Whether Mr. Eugene Kazoka, can apply to the Labour Court under S.53(1) of the Employment and Labour Relations Act, Act No.6/2004. The respondents submitted that he's not a member of TUPSE. On the other side the applicants stated that he is a member by virtue of Act 6(2) of TUPSE Constitution. The Article reads thus "Watendaji Wakuu waanzilishi wa TUPSE watahesabiwa kuwa ni wanachama wa TUPSE na watahusika na masharti yote ya wanachama" whether Eugene Kazoka is a founder executive. Office bearer of TUPSE is a matter of evidence and it's an issue in the main suit, hence it can't be decided as a point of law.

Basing on the above observations, I dismiss the 1<sup>st</sup> (first) and 3<sup>rd</sup> (third) POS. The second P'Os is uphold; I hold that the matter is bad for contravening Rule 44 (2) of the Labour Court Rules, G.N. No. 106/2007; hence it's improperly before this Court. I strike it off accordingly.

  
S.C. Moshi  
**JUDGE**  
19/04/2010

Date: 30/04/2010  
Coram: Hon. S.C. Moshi, J.  
Complainant: Eugene  
For " Absent  
Respondent:  
For " Mr. Nzowa  
CC: Happy

**Court:**

Delivered on this 30<sup>th</sup> day, of April, 2010 in presence of the complainant and Mr. Nzowa Advocate for Respondent.

  
S.C. Moshi  
**JUDGE**  
30/04/2010

**Copies to:**

1. Nzowa E.R., Advocate,  
Plot No.65 Block 13,  
TUICO Head Office,  
P.O. Box 5680,  
**DAR ES SALAAM.**
2. Mluge Karoli Fabian, Advocate,  
Jessie Mnguto & Co. Advocates,  
NIC Life House 5<sup>th</sup> Floor,  
Sokoine Drive/ Ohio Street,  
P.O. Box 76722,  
**DAR ES SALAAM.**