

**IN THE HIGH COURT OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA  
DC CIVIL APPEAL NO. 05 OF 2018**

**SAMSON MKOTYA AND 8 OTHERS ..... APPELLANTS**

**VERSUS**

**THE REGISTERED TRUSTEES OF**

**TANZANIA TEACHERS UNION ..... RESPONDENT**

*[Originating from the decision of the District Court of Dodoma in Civil Case No. 39 of 2016 and dated 5<sup>th</sup> April 2018, P. G. Mushi, RM]*

**JUDGMENT**

*18<sup>th</sup> May, 2021 & 20<sup>th</sup> August, 2021*

**M. M. SIYANI, J.**

Samson Mkotya, Neema G. Mkobalo, Mdanga Yusuph Mdanga, Kessy Y. Lusinde, Rehema S. Kasegu, Paulo J. Sudai, Joel J. Buzuka, Izack J. Macha and Swamwel J. Chihamilo, were the plaintiffs at the District court of Dodoma in a suit against the Registered Trustees of Tanzania Teachers Union. Having heard the suit on merits, the trial court dismissed the same on the reason that the plaintiff have sued a wrong party. Dissatisfied with that decision,

the instant appeal which contains three grounds has been preferred as follows.

- 1. That, the trial court erred in law and in fact by entertaining a written statement of defense which was void ab initio.*
- 2. That, the trial court erred in law and in fact by dismissing matter as the plaintiffs sued the wrong party the fact which was not true.*
- 3. That, the trial court erred in law and fact by delivering a judgment which is against, justice, equity and good conscience.*

Subject to my order dated 17<sup>th</sup> February, 2021, hearing of the appeal was done by way of filing of written submissions. While the appellant's written submissions were prepared and filed by counsel Fredy Kalonga, those of the respondent were filed by Ms Queen Augustino, the learned advocate. Briefly counsel Kalonga's arguments in respect of the first ground of appeal was that the trial court wrongly entertained a written statement of defence signed by one Maswi R. Munada who despite not being an advocate, did so as an advocate, a fact which he admitted during trial of the case. The learned counsel therefore believed the written statement of defense presented by

the respondent's herein, contravened the provision of Order VI Rule 14 of the Civil Procedure Code Cap 33 RE 2019 for being signed by an unqualified person and that having been moved, the trial court ought to have determined its fate instead of entertaining the same.

On the second ground of the appeal, the learned counsel argued that the presiding magistrate evaded his role of determining the suit by resorting to dispose the second issue only. According to him the respondent did not deny being capable of being sued and no objection was raised to that effect. In view of the learned counsel the defendant was a proper person to be sued and that's why he appeared and defend the suit. Counsel Kalonga contended that the holding by the trial court that the Registered Trustees of Tanzania Teachers Union was incapable of being sued, violated article 25 of the Tanzania Teachers Union (Katiba ya Chama cha Walimu CWT) and Regulation 27 of the CWT (Kanuni za Chama). It was his opinion that having entered appearance in court and defend the suit, the question whether or not the respondent was a proper party, was overtaken by events.

In response to Mr. Kalonga's submission, counsel Queen Augustino argued that Maswi R. Munada signed the written statement of defense on behalf of his advocate who was not present on the particular date and that in whatever case such an issue ought to have been raised at an earliest stage of the suit but not during the defence hearing as it was in the instant matter. With regard to the second ground of appeal, it was submitted that Tanzania Teachers Union being a trade union registered under section 48 of the Employment and Labour Relations Act Cap 366 RE 2019, is a body corporate capable of suing and being sued in its own name under section 49 (1) (b) (i) of the law above.

The learned counsel for the respondent went on to contend that by suing the Registered Trustee of the Tanzania Teachers Union, instead of the Tanzania Teachers union, the appellant contravened section 49 (1) (b) (i) (supra) and that is notwithstanding the fact that the respondent entered appearance and defend the suit. To support her stance, Ms Queen Augustino cited this court's decision (High Court of Tanzania Tabora Registry) in the case of **Deonatus Nkumbo & Others Vs District Executive, Bariadi District Council**, Civil Case No. 14 of 2009 (unreported) and argued that since Tanzania Teachers Union is a registered organization capable of being

sued in its own name, it was mandatory and not an optional to sue the organization instead of its Registered Trustees.

Having revisited the record and the submissions from the learned counsels as above, I will start with the second ground of appeal. As noted, the complaint in this ground is that the trial court erred by dismissing the suit on the reason that the plaintiff has sued a wrong party. The trial court's record, shows the appellants are teachers by professional. Paragraph 8 of the plaint filed at the trial court shows, the gist of the appellant's complaint is that the secretary of the Tanzania Teachers Union Dodoma Municipality one Maswi R. Munada, summoned a general meeting on 13<sup>th</sup> August, 2016 which they believed, violated both CWT's Constitution and its Regulations on the reason that the District Steering Committee of the same union had already scheduled such a meeting in December, 2016.

As it can be seen, the dispute was therefore between the appellants as members of the union and the secretary of the Tanzania Teachers Union Dodoma Municipality. The question was therefore who should be sued. In my considered opinion, by simply being a secretary of the Tanzania Teachers Union Dodoma Municipality, Maswi R. Munada was representing Tanzania

Teachers Union when convening the complained meeting. Admittedly, Tanzania Teachers Union is a registered trade union. In the course of hearing at the trial evidence of such registration including a certificate of registration No. TU-0004, was tendered and admitted. As correctly submitted by Ms. Queen Augustino, trade unions are registered under section 48 of the Employment and Labour Relations Act (supra) and it is obviously that by being issued with certificate No. TU-0004, Tanzania Teachers Union meet the qualifications under the above provision. Section 49 of the Employment and Labour Relations Act, provides the effect of a registered an organization which in terms of section 4 of the same Act, includes a trade union that is it become a body corporate capable of suing or being sued in its own name. For easy of reference, section 49 (1) of the Employment and Labour Relations Act provides:

*49: (1) On registration, an organization or federation shall be a body corporate:*

- (a) with perpetual succession and a common seal;*
- (b) with the capacity, in its own name, to (i) sue and be sued; (ii) contract; and (iii) hold, purchase or otherwise acquire and dispose of movable or immovable property.*

From the above provision, upon its registration, Tanzania Teachers Union acquired the status of a body corporate capable of suing and be sued in its own name.

Through his submission, counsel Kalonga was of the view that since the Registered Trustees of the Tanzania Teachers Union entered appearance in court and defended the suit without raising an objection as to their legal status, then the question whether or not they were capable of being sued, was taken by event. While admitting that such an issue ought to have been raised at an earlier stage of the suit, but with due respect, the question of who can sue or be sued, cannot be overtaken by event by entering appearance and defend a matter in courts of law. In my view, that was one among matters for determination and that is why the same was framed as an issue. By framing it as an issue, the appellants were given a chance to prove that the respondent has been registered in accordance with the law hence capable of being sued. I am keenly aware that for societies or organizations which have registered trustees, power to sue and be sued are vested in such bodies. But when these organization have acquired the status of body corporate like the Tanzania Teachers Union, the later retains such powers.

The above said, decision of the trial district court therefore cannot be faulted. The appellants being members of the Tanzania Teachers Union ought to have sued such organization and not it's Board of Registered Trustees. I hold that neither article 25 of the Tanzania Teachers Union's constitution nor its regulations, vest the Board of Registered Trustees with mandate to sue or being sued. The appellants therefore sued a wrong party and the trial court rightly dismissed the suit for that reason.

For the reasons above, since the suit was brought against a wrong party, determining the remaining grounds of appeal will be a mere academic exercise which will serve no useful purposes. The appeal therefore has no merit and the same is hereby dismissed. The respondent shall have the costs of this appeal. It is so ordered.

**DATED** at **DODOMA** this 20<sup>th</sup> Day of August, 2021



**M.M. SIYANI**  
**JUDGE**