IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: MAKAME, J.A., LUBUVA, J.A., And MROSO, J.A.)

CIVIL APPEAL NO. 2 OF 1998

BETWEEN

RICHARD JULIUS RUKAMBURA ..... APPELLANT

AND

1. ISAACK NTWA MWAKAJILA ..... 1ST RESPONDENT
2. TANZANIA RAILWAY CORPORATION .... 2ND RESPONDENT

(Appeal from the judgment and decree of
the High Court of Tanzania at Mwanza)

(Mreina, J.)

dated 11th day of October, 1994
in
Civil Case No. 13 of 1994

JUDGMENT

LUBUVA, J.A.:

This is an appeal against the decision of the High Court (Mrema, J.) setting aside the order and decision of the Resident Magistrate's Court at Mwanza in favour of the appellant.

In order to facilitate an easy appreciation of the case we think it is desirable to preface the judgment with a brief historical background. The appellant, Richard Julius Rukambura, was employed as a parcel clerk by the second respondent, Tanzania

Railways Corporation, Marine Department, at Mwanza. The first respondent Isaack Ntwa Mwakajila, was the second respondent's Marine Manager, Mwanza South Port (TRC). In the course of duty, on 17.1.1991, the first respondent notified the workers' local branch then known as JUWATA, (now Trade Union Congress of Tanzania - TUCTA) that as a disciplinary measure the employer was intending to dismiss the appellant from service. The workers' local branch on behalf of the appellant pleaded for a lesser punishment. The appellant was first interdicted and then was dismissed from the service of TRC. The matter was taken to OTTU Conciliation Board which ordered the reinstatement of the appellant. The decision of the Conciliation Board was complied with, resulting in the appellant being paid his due entitlements during the period of interdiction and dismissal until 29.1.1991, when he was reinstated.

Though the appellant was reinstated, he claimed that the act of dismissing him from the employment of the second respondent had gravely affected his reputation and credit. He filed a suit in the court of Resident Magistrate for the sum of shillings 5,200,000/- damages for defamation, loss of service and consortium from his wife. The trial magistrate awarded the appellant shillings 2,500,000/= damages

for defamation, loss of consortium and loss of service by the appellant to his family during the period of dismissal.

Aggrieved by the decision of the trial magistrate, the respondent appealed to the High Court. As indicated earlier, the learned judge on first appeal was of the settled view that the appellant had not proved his claim. The appeal was allowed, the decision of the trial resident magistrate was set aside, and hence this appeal.

In this appeal the appellant was unrepresented and on the other hand, Professor L.P. Shaidi, learned counsel, represented the respondents. In elaboration of his seven-point memorandum of appeal, the appellant sought to fault the learned judge on a number of grounds. In the first place, he strongly contended that it was erroneous on the part of the judge to hold that the first respondent had the power to take disciplinary measures against him. He contended that had the judge properly directed himself on the evidence, he would have come to the conclusion that the appellant's claim was justified because the first respondent exercised power which he did not have. Secondly, that the judge also erred in

accepting and considering additional evidence based on an extract of the TRC Regulation of 1984. Thirdly, the appellant also alleged that the judge was in error in holding that the first respondent acted in good faith when, according to him, the evidence showed that there was malice.

On his part, Professor L. P. Shaidi, learned counsel for the respondents, went to great lengths in his submission in support of the decision of the learned judge. In essence, it was his submission that defamation had not been established. The reason, he said was that the first respondent acted lawfully and in good faith under privileged circumstances as held by the learned judge on first appeal. Furthermore, he submitted that as the appellant was an employee falling under the category of MSU3 scale, the first respondent properly initiated disciplinary measures against the appellant in terms of the Security of Employment Act, 1964. On the evidence as a whole, Professor Shaidi concluded his submission that the learned judge could not be faulted in his decision to set aside the trial court's decision as defamation could not be based on the act of the dismissal of the appellant from service in accordance with the laid down procedure.

The question of jurisdiction is paramount in any court proceedings. It is so fundamental that in any trial even if it is not raised by the parties at the initial stages, it can be raised and entertained at any other stage of the proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it. In this case, Professor Shaidi has contended that the matter pertaining to disciplinary measures against the appellant had been dealt with under the Security of Employment Act, 1964 (the Act). He did not, however, elaborate on the applicability of section 28 of the Act. Both the learned judge and the trial magistrate had also addressed this issue extensively and were of the view that the Act did not apply. We pause to consider first the propriety of the finding of both the courts below on this point. It touches centrally on the question of jurisdiction.

It is common ground that the appellant's issue regarding his dismissal had been dealt with under the Security of Employment Act, 1964. In the process, the Conciliation Board ordered his reinstatement which the employer, the second respondent, complied with. Thereafter, the appellant instituted the suit in the Court of Resident Magistrate at Mwanza, giving rise to this appeal. The issue

is whether the suit falls within the provisions of section 28 of the Act which provides:

> 28 – (1) "No suit or other civil proceeding (other than proceedings to enforce a decision of the Minister or of the Board on a reference under this part) shall be entertained in any civil court with regard to the summary dismissal or a reduction by way of a disciplinary penalty from the wages of an employee." (emphasis applied).

Addressing this issue, the learned judge held *inter alia*:

> "It is clear from the facts of the case that the kernel issue touching "dismissal" was well taken care of by JUWATA branch (within TRC), and later by the Conciliation Board. So that issue was closed. But the respondent, as I do observe, felt that there were other grievances which were the result of that alleged "unlawful dismissal," which could not have been the role and duty of the labour organs to hear and adjudicate upon. The respondent claiming, *inter alia*, that the appellants defamed him by

> "unlawfully" kicking him from the employment, and he was therefore asking for compensation on this ... I am satisfied, as I do, that since the respondent did not come to the question the decision of his employer for removing him out of the employment or of any disciplinary action against the respondent's conduct in the course of his employment, the respondent's suit was one competently triable by any court under civil jurisdiction." (emphasis supplied).

At the trial, the issue of jurisdiction was also raised in the respondents' written statement of defence and the submission by counsel for the respondent. The trial magistrate also held that a party to a labour dispute under the Act is not barred to seek remedies under the law of tort if the dismissal was wrongful.

It is to be observed that the nexus of the suit is premised on paragraph 3 of the plaint which states:

> On or about the 29th January, 1991, the defendant, wrongfully and in breach of the Security of Employment Act, and Tanzania Railways Corporation Service Regulations, unlawfully terminated the plaintiff's

> employment from Tanzania Railways Corporation – a copy of Form No. 10, Ref. No. MM 37864 dated 29/1/91 is annexed hereto and marked "A" to form part of this plaint.

It is further to be noted that Form No. 10 shown in paragraph 3 of the plaint relates to "Annexure A" which is formulated in terms of the provisions of the Security of Employment Act, 1964. It is dated 29/1/1991 and signed by the first respondent on behalf of the employer, the second respondent. It was copied to the then JUWATA Branch (now TUCTA) on the basis of which the matter was deliberated by the Conciliation Board resulting in the appellant's reinstatement.

So, there is no gain saying that the cause of action giving rise to the suit subject of this appeal, is the same as that which was dealt with by the Reconciliation Board. It is also trite, and as correctly held by the learned judge and the trial magistrate, that Section 28 (1) of the Security of Employment Act, 1964, ousts the jurisdiction of any civil court on matters falling under the Act. Decided cases on this by this Court and its predecessor, the Court of Appeal for East Africa are numerous. See for instance, **Kitundu Sisal Estate v. S. Shiringo**

(1970) E.A. 557, **Mwanza Textile Limited v. A. Masatu,** Civil Appeal No. 8 of 1988 and **S. M. Msisi v. Tanzania Railways Corporation,** Civil Appeal No. 39 of 1995 (both unreported). In our view the crux of the matter is whether under the law as provided under section 28 (1) of the Act, certain matters based on the same cause of action can be separated in order to circumvent the application of the Act as the learned judge did in this case. With respect, we do not think so. From our reading and construction of section 28 (1) of the Act, it is plain to us that the section is an inclusive one. It simply provides to the effect that no suit or other civil proceeding except those relating to the enforcement of the decision of the Minister, shall be entertained in any civil court with regard to the summary dismissal etc.

In that situation in order for the civil court to entertain the suit, the criterion is whether the cause of action in the suit relates to summary dismissal. Once the answer is in the affirmative, that would be the end of the matter, the court would have no basis for entertaining the suit. There is no room for separating the claims based on the same cause of action. To sever or separate the claims as the courts below did in this case, was not, in our view, the

intention of the legislature in its wisdom. If it was the intention of the legislature to allow certain claims based on the same cause of action to be entertained by the civil courts, it would have been stated so in the law. In the absence of such provision in the law, we are settled in our minds that the learned judge interpreted the law wrongly. So long as the suit was based on the dismissal of the appellant from the service of the second respondent, it was a matter which squarely falls within the purview of section 28 (1) of the Security of Employment Act, 1964. Consequently, the court's jurisdiction to entertain the suit was ousted. Therefore, the trial court in this case had no jurisdiction to entertain the claim. It follows as night follows day that the proceedings both in the trial court and the subsequent appeal to the High Court were a nullity.

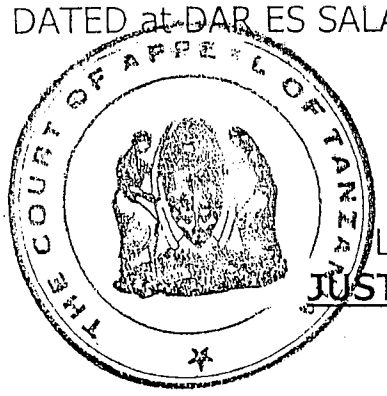
In the event, for the foregoing reasons, the proceedings in the trial court and the High Court are declared a nullity and are set aside together with the orders thereto.

Having taken this view of the matter, it is unnecessary for us to deal with the grounds on merits of the appeal in which we had useful

and detailed submission by Professor L. P. Shaidi to whom we are grateful.

Each party to bear its costs.

DATED at DAR ES SALAAM this 19th day of January 2004.



L. M. MAKAME
JUSTICE OF APPEAL

D. Z. LUBUVA
JUSTICE OF APPEAL

J. A. MROSO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S. A. N. WAMBURA)
SENIOR DEPUTY REGISTRAR