IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: NSEKELA, J.A., KIMARO,J.A.,And MBAROUK, J.A.)

CIVIL APPEAL NO. 120 OF 2008

EDWARD LENGANASA.....APPELLANT

VERSUS

THE TRUSTEES OF TANZANIA

NATIONAL PARKS (TANAPA).....RESPONDENT

(Appeal from the ruling and order of the High Court of Tanzania at Arusha)

(Sheikh, J.)

dated the 25th October, 2007

in

Civil Case No. 7 of 2007

LABOUR
THERE IS NO
DISTINCTION BT
LABOUR DISPUTE
AND
TRADE DISP

JUDGMENT OF THE COURT

9th & 18th February, 2011

KIMARO, J.A.:

The appellant was employed by the respondent from 12th December 1979 to 8th April, 2002 when his employment was terminated. He started as an Accounts Clerk, but various trainings inside and outside the county earned him various promotions. At the time his employment was terminated, he was a Principal Park Warden Grade 11. Discontented by the

termination, the appellant though legal services of M/S IMBORU CHAMBERS filed a suit in the High Court of Tanzania praying for general damages, special damages, interest and costs. Mr. John Umbulla learned advocate represented him. On the part of the respondent he was represented by Mr. Ezra Mwaluko learned advocate. He raised a preliminary objection to the effect that the appellant's claim was essentially a labour dispute, and the proper forum for adjudication of the matter was not the High Court of Tanzania but the Industrial Court. The trial High Court upheld the objection. The learned trial judge, in upholding the objection said:

> "By challenging the legality of the termination, and claiming salaries until retirement it seems to me that the plaintiff is not only claiming that he is still legally an employee of the defendant , and that his status is that of an employee of the of the plaintiff, but indirectly claiming rein-statement without loss of salary and benefits. Clearly the dispute is connected with the "employment or non-employment" of the plaintiff by the defendant as defined in section 3 of the Act and hence in my view a trade dispute. I am inclined to agree with Mr.

Mwaluko learned counsel that in the light of the decision of the Court of Appeal of Tanzania in the **Tambueni** case this court has no original jurisdiction to entertain this suit which falls within the definition of trade disputes under S 3 of the Act."

Aggrieved by the decision of the High Court, the appellant has filed this appeal.

The appellant had initially filed five grounds of appeal, but on the way he abandoned ground three thus leaving four grounds which are:

1. That the learned trial judge erred in law in failing to take cognizance of the distinction between a labour dispute on the one hand and a trade dispute on the other.
2. That the Hon. trial judge erred in law in failing to appreciate the significance of the words "in employment of that employer" as appearing in the definition of the term trade dispute.

4. That the learned trial judge erred in law in failing to hold that the Court of Appeal decision in **Tambueni's** case was distinguishable having dealt with redundancy and not breach due to wrongful termination of the contract of employment.

5. The Hon. trial judge erred in law in failing to hold that the suit was properly before the High Court as the Industrial Court had no jurisdiction to award general damages claimed by the appellant in his plaint.

At the hearing of the appeal, the same advocates who appeared for the parties in the trial High Court appeared before us. The learned advocates took advantage of the Court of Appeal Rules, 2009, Rule 106, and filed written submissions. Since the appeal was filed long before the Rules came to effect, the learned advocates for an obvious reason, could not comply with the time limit allowed for filing the submissions. That also explains the omission by the advocates to cite the relevant rule allowing them to file the submission. On our part, we did not consider it reasonable under the circumstances, not to accept the submissions, because Rule 4(1) of the Court Rules, 2009 saves the situation. At the

hearing of the appeal the advocates only gave a brief elaboration of the contents of their written submission.

In his submission, Mr. Umbulla, learned advocate for the appellant, insisted that there is a distinction between a trade dispute and a labour dispute in that a labour dispute is wider than a trade dispute. In his considered opinion, a labour dispute may arise where either the employer or employee did or omitted to do any one of the actions mentioned in section 130 of the Employment Act, CAP 366, R.E. 2002. He said a labour dispute could arise during or after cessation of employment. It could be about the present or future rights of the employee, or obligations of the employer and the employee such as the increase or deduction of salaries, promotions, terminal benefits and such related matters.

Citing the provisions of section 3 of the Industrial Court Act, CAP 60 R.E.2002 which defines a trade dispute, the learned advocate said a trade dispute is narrower and a mere technical term. Going by the definition of the trade dispute as defined in Osborne's Concise Dictionary, 5th Edition the learned advocate said a trade dispute can occur only when the employee (s) are still in the employment of the employer. If the dispute occurs after the relationship has ended through termination or dismissal, then it becomes a labour dispute which has to be adjudicated under the

Employment Ordinance or the Security of Employment Act or the Contract Act in case of breach of contract and the proper forum need not be the Industrial Court. He prayed that this ground of appeal be allowed.

Responding to the submissions made by the learned advocate for the appellant, Mr .Mwaluko, and learned advocate said there is no distinction between a labour dispute and a trade dispute. He went through paragraphs 25 and 27 of the appellant's pleadings and said that the paragraphs are concerned with employment and non- employment of the appellant and therefore they are matters of labour dispute or trade dispute. Citing section 3 of the Industrial Court Act which defines a trade dispute, and the definition of a trade and labour dispute as given in Black's Law Dictionary 8th Edition, Bryan A Garner, Thomson West, and the case of **Tambueni,** the learned advocate concluded that the phrase trade dispute also means a labour dispute. The terms are not distinct but synonymous.

He further submitted that he does not subscribe to the opinion of his learned colleague that because the case of **Tambueni** dealt with the issue of redundancy, it can be distinguished from the facts of this appeal. To the contrary, said the learned advocate, what the Court said in the case of **Tambueni** was that, the definition of a trade dispute was wide enough to cover a labour dispute. Under the circumstances, said the learned

advocate, the appellant is bound by his pleadings. He prayed that this ground of appeal be dismissed.

On our part, we think, the main issue on this ground of appeal is whether there is a difference between a labour dispute and a trade dispute. The question is, are the phrases exclusive or inclusive of each other? The record of appeal at pages 8, 9, and 10 show that in paragraphs 25, 26, 27 and 28 of the plaint the appellant was complaining about termination of employment. That is what led him to file the case in the High Court. The High Court sustained the preliminary objection that the appellant's complaint was a dispute about his "employment and non-employment" and in terms of the definition given in section 3 of the Industrial Court Act, CAP 60 R.E. 2002 it was a trade dispute. The contention by the learned advocate for the appellant is that a trade dispute does not include a labour dispute.

Section 3 of the Industrial Court Act, CAP 60 R.E.2002 defines a trade dispute as :

> "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 employment, or with the condition of

any of those employees or such employee."

The learned advocates also referred to the definition of the phrases as given in law dictionaries, but in our considered opinion the definition given by the Industrial Court Act suffices to answer the issue at hand. As indicated above, according to the plaint, the appellant was not satisfied with the termination of his employment and he was contesting the lawfulness of such termination by his employer. Definitely the plaint shows a dispute about the appellant's employment. Did the dispute fall under section 3 of the Industrial Act? We take note of the fact that when citing section 3 of the Industrial Act, the learned counsel for the appellant omitted to include the word employee appearing in the definition, thus giving the impression that a trade dispute would only be concerned with a dispute between an employer and employees but not a single employee. Whether it was an oversight or a deliberate move, the section is clear that it covers a dispute between employer and an employee.

It is true the case of **Tambueni** dealt with redundancy, but the Court said categorically that "the word non –employment would also includes redundancy." Since the appellant's complaint was about his termination of

his employment by the respondent, then it was a trade dispute. In this respect, there is no distinction between the phrase trade dispute and labour dispute. The phrases can be used interchangeably. They are therefore not exclusive but inclusive of each other. The case of **Tambueni** is therefore not distinguishable from the facts of this appeal. Under the circumstances, the learned trial judge, in sustaining the preliminary objection that the appellant's dispute was a trade dispute and the High Court had no jurisdiction to adjudicate on the matter was proper. This ground of appeal has no merit and it essentially determines the appeal. We thus dismiss the appeal with costs.

DATED at **ARUSHA** this 14th day of February, 2011.

H.R. NSEKELA
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

M.S. MBAROUK
JUSTICE OF APPEAL

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

Z. A. Maruma
DEPUTY REGISTRAR