

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: NDIKA, J.A., KITUSI, J.A. And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 240 OF 2019

KHADIJA LUMBI.....APPELLANT

VERSUS

TANZANIA REVENUE AUTHORITY.....RESPONDENT

**[Appeal from the ruling and order of the High Court of Tanzania, (Labour
Division) at Dar es Salaam]**

(Muruke, J.)

dated the 5th day of July, 2019

in

Misc. Labour Application No. 384 of 2019

JUDGMENT OF THE COURT

14th February, & 7th March, 2022

KITUSI, J.A.:

Khadija Lumbi, the appellant, was an employee of Tanzania Revenue Authority, the respondent, by virtue of which she was occupying one of her employer's housing facilities in the City of Dar es Salaam. Somewhere during the subsistence of the employment, the appellant was charged with and convicted of a disciplinary offence, but she successfully challenged it at the Commission for Mediation and Arbitration (CMA). Vide an award in CMA/DSM/KIN – ILA/106/09 dated 7th January, 2010, the CMA ordered the respondent to reinstate the employee with no loss of entitlements. However, the respondent stood

her ground and opted to pay the appellant salaries for twelve months instead of reinstating her. Therefore, it drew a cheque for an amount equal to 12 months salaries.

Since then there have been pending issues regarding the satisfaction of the above award of the CMA, but when those issues were said to be pending, the respondent served the appellant with a letter requiring her to give vacant possession of the house she has been occupying. As a result, the appellant instituted Miscellaneous Labour Application No. 384 of 2019 resisting the intended eviction pending satisfaction of the CMA award. Thereafter, the application was handled in the following style: -

"Date: 05/07/2019

Coram: Hon. Muruke, J

For Applicant: } *Absent*

For Respondent: }

Order: *Upon filing application under certificate of urgency, let order dated 2nd July, 2019 be vacated for interest of justice.*

Sgd

Z.G. Muruke

JUDGE

05/07/2019

Date: 9/07/2019

Coram: Hon. Z. G. Muruke, J

Applicant: Veneranda Kiwori (Advocate)

For: Applicant

Respondent

For Respondent: Jacqueline Chunga (Advocate)

Court: *Reading affidavit in support of the application and counter affidavit filed today by respondent, application lacks merits. Applicant had service tenancy with respondent. Tenancy came to an end by virtue of applicant termination from employment. Having cases with respondent doesn't bar respondent from evicting applicant from the house in dispute.*

Sgd:

Z. G. Muruke

JUDGE

09/07/2019

Order: *(i) Application is dismissed, for lack of merits.*

(ii) For interest of justice and to prevent respondent from using more money to pay

*Tambaza Auction Mart and Court Brokers,
applicant to vacate in house No. 38 TRA Kurasini
Quarters on her own by 15th July, 2019 at 4:00
PM and handle the keys to the Respondent
Estate Manager.*

*(iii) Jacqueline Chunga, respondent's legal counsel to
be present at the handing over of keys to ensure
compliance".*

Sgd:

Z. G. Muruke

JUDGE

09/07/2019

The above orders are the essence of this appeal which raises three grounds. The first and third grounds of appeal challenge the merits of the orders, while the second ground of appeal raises a procedural issue. Initially, we asked the parties to address us on the second ground of appeal which faults the High Court judge for making the impugned orders without hearing the parties. However, on reflection, we invited them to address us on whether the impugned orders of the learned judge are appealable.

The appellant, who had earlier filed written submissions prepared by an advocate, prosecuted the appeal personally at the hearing, by simply adopting those written submissions and chose not to address us orally. Ms. Jacqueline Chunga learned advocate, continued to represent the respondent as she had done before the High Court.

The appellant did not have much arguments in her written submissions, other than criticizing the learned judge for imposing the decision on the parties who were not heard. She referred to the error allegedly committed by the learned judge as "*res ipsa loquitur*" suggesting that it was too obvious to need any substantiation. On the issue we raised, whether the orders are appealable or not, she stated that she was leaving the matter to the Court. On the other hand, Ms. Chunga responded very briefly on the point, submitting that the parties were heard, although it was clear that she was not very passionate about her position. Responding to our probing, she submitted that the orders the subject of this appeal are not appealable because they are interlocutory.

In our deliberations, we start with the Notice of Application in Miscellaneous Labour Application No. 384 of 2019, which gave rise to the

impugned orders. It sought to move the High Court in the following terms: -

"1. This court be pleased to issue a temporary injunction restraining the respondent herein, his agents, servants or any other person working under him from forcefully evicting the applicant from the respondent's premises being lawfully occupied by the applicant by virtue of her reinstated employment; premises comprised in house No. 38 Block "C" Kurasini Flats pending final satisfaction of the award of the Commission of Mediation and Arbitration".

The law on the point is provided by section 5 (2) (d) of the Appellate Jurisdiction Act, Cap 141, (the AJA), that: -

"No appeal or application for revision shall lie against or be made in respect of any preliminary or interlocutory decision or order of the High Court unless such decision or order has the effect of finally determining the suit".

The issue now for our resolution is whether the impugned orders are preliminary or interlocutory. The Court has in quite a number of its decisions, developed tests for determining whether an order is interlocutory or not. To mention a few of them, they are: - **Vodacom**

Tanzania Public Limited Company v. Planetel Communications Limited, Civil Appeal No. 43 of 2018, **Murtaza Ally Mangungu v. The Returning Officer for Kilwa and 3 Others**, Civil Application No. 80 of 2016, **Junaco (T) Ltd and Another v. Harel Mallac Tanzania Limited**, Civil Application No. 473/ 16 of 2016 and; **Celestine Samora Manase & 12 Others v. The Tanzania Social Action Fund and Another**, Civil Appeal No. 318 of 2019 (all unreported). The answer to the issue depends on the answer to the question posed in **Bazon v. Attrinchan Urban District** (1903, 1KB 948) cited in **Murtaza Ally Mangungu** (supra): -

“ does the judgment or order as made, finally dispose of the rights of the parties? If it does then ...it ought to be treated as a final order, but if it does not it is then...an interlocutory order”.

In this case, the appellant’s right was a claim for final satisfaction of the CMA award. In our view, the order by the learned judge refusing to grant her an order of temporary injunction against the intended eviction, had nothing to do with the said settlement of the award. In that sense, that order, even if prone to criticism, is not appealable because it did not bring to finality the issue of the settlement of the award.

For the reason discussed above, it is our conclusion that this appeal is barred by section 5 (2) (d) of the AJA, therefore improperly before us. We strike out the appeal, but make no order for costs because it arises from an employment dispute.

Order accordingly.

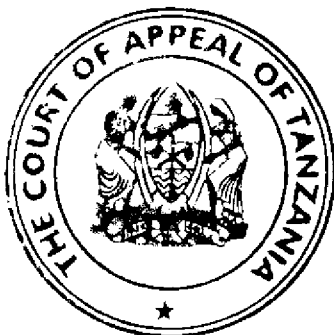
DATED at DAR ES SALAAM this 3rd day of March, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 7th day of March, 2022 in the presence of appellant in person and Ms. Winfrida Mahanga, learned Principal State Attorney for the respondent is hereby certified as a true copy of the original.




G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL