IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: LILA, J.A. MWANDAMBO, J.A AND FIKIRINI, J.A.)

CIVIL APPEAL NO. 10 OF 2020

SAIDA KAUMO .....APPELLANT

VERSUS

TANZANIA TELECOMMUNICATION,

CORPORATION ..... RESPONDENT

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

(Nyerere, J)

dated the 29th day of August, 2018

in

Misc. Application No. 240 of 2017

.....

JUDGMENT OF THE COURT

20th April, & 26th May, 2023

LILA, J.A.:

The appellant, Saida Kaumo, is appealing against the interpretation given by the High Court (Nyerere, J.) in Miscellaneous Application No. 240 of 2017. In that application the appellant had sought an interpretation of the award by the Commission for Mediation and Arbitration (the CMA award) in Labour Dispute No. KZ/U.10/MG/1927/05 in order to ascertain her entitlements after being re-instated into her employment with the respondent.

The CMA award was to the effect that "*...mlalamikaji arudishwe kazini kama team leader wa Kibaha na kuthibitisha zoezi lilifanyika kimakosa kwa kumuondoa kazini bila kuzingatia msingi ya haki na alipwe stahili zake zote kama inavyostahili...*" literally meaning that the appellant should be reinstated to her former position as Team Leader for Kibaha as her termination was unfair and she should be paid all her entitlements.

The applicant has lodged a two-point memorandum of appeal complaining that:

> "*1. The Hon. High Court Judge erred in ordering the appellant to be paid twelve months salaries under section 42(5) and section 36 of the Security of Employment Act, Cap. 387 R. E. 2002, instead of her entitlements from the date of termination to the date of retirement.*
>
> 2. *The High Court Judge erred in holding that the CMA decision cannot stand given the fact that appellant has attained statutory retirement age since July, 2015.*"

Before we tackle the grounds of appeal, we propose to give the relevant background of the matter which, we think, will be useful to us in the course of determining the issues embraced in the grounds of appeal. It

was common ground that the appellant's employment with the respondent started on 08/12/1976 and she was elevated to the rank of Team Leader Financial Services on 12/09/2002. She was then transferred to Kibaha and, for some reasons which are not relevant here, the appellant's transfer was cancelled. She was removed from her title something she treated as a demotion. While being represented by her workers association "Chama cha Mawasiliano na Uchukuzi (COTWU), she successfully challenged that decision before the then Industrial Court (William, Vice Chairman) through Inquiry No. 7 of 2006.

The respondent unsuccessfully applied for Revision before the Industrial Court constituted by a Panel of High Court Judges in Application No. 7 of 2008. The Industrial Court sustained the decision of the Vice Chairman. However, before she could realize the fruits of her litigation, she was, on 30/11/2005, served with a letter dated 28/11/2005 retrenching her from service. Aggrieved by that action, she accessed the Industrial Court again in Inquiry No. 76 of 2007 in which She lost and preferred an application for Revision No. 13 of 2010. A panel of Judges of the High Court sitting as a revisional court observed that at the time Inquiry No. 76 of 2007 was lodged

on 01/08/2007, the Employment and Labour Relations Act, had already become operational right from 05/01/2007 according to Government Notice No. 1 of 2007. Accordingly, the proceedings and decision in Inquiry No. 76 of 2007 were nullified for want of jurisdiction as well as the proceedings and decision in Revision No. 13 of 2010 because they emanated from a nullity. It was ordered that the dispute be remitted to the Labour Commissioner for him to refer it to the CMA. The High Court pronounced itself thus: -

> *"...Jopo linaelekeza kuwa mgogoro urejeshwe kwa Kamishna wa kazi ili auwasilishe kwenye Tume ya Usuluhishi kwa mujibu wa Sheria, Sura ya 366."*

In compliance with the High Court's order, Inquiry No. KZ/U.10/MG/1927/05 was instituted before the CMA and its award was issued on 2/3/2015 in favour of the appellant. It was in respect of such an award the appellant sought for interpretation before the High Court (Nyerere, J) in Misc. application No. 240 of 2017 the decision of which aggrieved the appellant hence, the present appeal. It is noteworthy here that an attempt by the respondent to challenge the CMA award failed as the respondent's application for extension of time to file the application for

revision (Misc. Labour Application No. 209 of 2015) was dismissed by the High Court Labour Division (Aboud, J.) on 05/02/2016.

We shall pause here and interject two observations. **One**; the award by the CMA in Inquiry No. 7 of 2006 is still intact and valid and, according to the parties, its execution was completed by the appellant being paid her entitlements. **Two**; that the decision by the panel of judges of the High Court in Revision No. 13 of 2010 has not been challenged hence still valid to date, too.

Upon institution of Inquiry No. KZ/U.10/MG/1927/05 initiated through the Commissioner's letter Ref. No. KZ/M/10/MG/1927/5, the matter was dealt with by the CMA and in its award, the arbitrator prefaced the award in these words:

> *"Mgogoro huu ni mmoja kati ya migogoro iliyoletwa mbele ya Tume kutoka kwa Kamishna wa Kazi kwa mujibu wa barua yenye kumbukumbu Na. KZ/M/10/MG/1927/5 ya tarehe 26/07/ na mujibu wa sharia.*
>
> *Mgogoro huu unaamuliwa na Tume hii kwa mujibu wa kifungu cha 42 cha sheria Na. 2 Na 11 ya marekebisho ya mwaka 2010 kinachosimama badala*

ya aya ya 13 ya jedwali la 3 sehemu ya 5 ya sharia hiyo inayoelekeza kuwa migogoro yote iliyoanzia kwenye sheria za zamani (repealed laws) itachukuliwa kama sheria hizo hazijafutwa ninanukuu:

"All disputes originating from the repealed laws brought before the Commission shall be determined by substantive laws applicable immediately before the commencement of this Act.

The Commission shall have power to mediate and arbitrate all disputes originating from the repealed laws brought before the Commission by Labour Commissioner and all such disputes shall be deemed to have been duly instituted under section 86 of the Act.

Mgogoro huu ulikuja mbele yangu kwa ajili ya kuamuliwa baada ya hatua nyingine za awali zikiwemo usuluhishi kumalizika bila kupata suluhu..."

For all intents and purposes, the above extract makes it clear, and rightly so in our view, that Inquiry No. KZ/U.10/MG/1927/05 before the CMA was among the disputes which originated from the repealed laws and was transferred to the CMA by the Labour Commissioner for inquiry in accordance

with the laws applicable immediately before the ELRA became operational. That fact is made plain as the arbitrator took cognizance of existence of another dispute on retrenchment, that is Inquiry No. 76 of 2007 and what followed thereafter as explained above, in these words:

> *"Mlalamikaji aliendeiea kupinga uamuzi au kitendo cha mlalamikiwa* ***kumpunguza kazi na kufungua tena mgogoro wa kikazi*** *idara ya kazi kupinga kuachishwa kazi kwa mgogoro na. KZ/U.10/MG.1925/5 uliosajiliwa kwa Na. 76/2007."*
> (Emphasis added)

The CMA cemented the above when explaining what was before it and stated:

> *"Mgogoro uliyopo mbele ya Tume nl wa kupunguzwa kazi kwa mlalamikaji zoezl lililofanyika 2005."*

We have ventured to narrate the above details for a purpose; just to establish the origin of the labour dispute between the parties which resulted in the CMA award for which its interpretation by the High Court is being questioned originated. It is vivid that the CMA award originated from Inquiry No. KZ/U.10/MG/1927/05 which was instituted following the High Court

order nullifying the decisions of the defunct Industrial Court in Inquiry No. 76 of 2007 and Revision No. 13 of 2010 by its decision dated 31/5/2011.

Apparently, the parties are at one that the dispute, the subject matter of this appeal arose before operationalization of the new labour laws (The Employment and Labour Relations Act and the Labour Institutions Act) regard being to the fact that the appellant was retrenched by a letter dated 28/11/2005 which was served to her on 30/11/2005. The crucial issue arising from the above is whether the High Court was right to decline adjudicating on the application for Revision No. 13 of 2010 preferred to it by the appellant. Since the parties did not address the Court on this issue on 26/10/2022 when the appeal was first heard, the Court resummoned the parties to appear before it and address it on that particular issue.

At the resumed hearing, the parties were in agreement on the date of retrenchment and the steps taken thereafter to the Labour Commissioner that, the appellant was retrenched. They were also at one that the course taken to prosecute the matter up to the High Court was also proper. As to the propriety of what followed, parties parted ways. Mr. Emanuel Mkonyi, learned Principal State Attorney who was assisted by Ms. Debora Mcharo,

learned State Attorney to represent the respondent faulted the High Court for nullifying the proceedings and decisions of the Industrial Court exercising, respectively, its original and revisional powers for want of jurisdiction. Relying on paragraph 13(3) of the Third Schedule to the ELRA (the Schedule), he submitted that all disputes which existed before the new labour laws became operational were supposed to be dealt with in accordance with the repealed laws. For that reason, he insisted that the revision application was properly before the High Court. Going forward, he proposed that the decision of the High Court be revised and the matter be remitted to the same court for it to determine Revision No. 13 of 2010 on its merit.

For her part, that being a legal issue, the appellant left it for the Court to determine in accordance with the law and was ready to abide by the Court's order.

In our view, the result of this appeal hinges on the answer to the legal issue we raised. We shall, therefore, begin our deliberation on it. Our reading of paragraphs 9 and 13 of the Schedule makes it clear to us that, in Tanzania the labour laws recognize two types of labour disputes; contemplated

disputes and existing disputes. The former refers to disputes which are in existence but are yet to be reported to dispute resolution machineries and the latter refers to disputes already reported. In the present case, the appellant was retrenched on 28/11/2005 which was well before 05/01/2007 when the new labour laws became operational vide Government Notice No. 1 of 2007. In the instant case, a contemplated dispute arose on 28/11/2005 when the letter of retrenchment was issued. In terms of paragraph 9 of the Schedule, the dispute was required to be dealt with in accordance with the repealed laws. That paragraph states: -

> *"9. Any dispute contemplated in the repealed laws arising before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed."*

Section 23(a)(i) to (v) of the Industrial Court Act; one of the repealed laws, empowered the defunct Industrial Court to inquire into a dispute referred to it either by the employer or employee or on their behalf. It stated: -

"Where any trade dispute or other matter is referred to the Court, the Court shall proceed to inquire into such dispute or matter without undue delay and-..."

In view of the above, we entirely agree with the learned Principal State Attorney that the High Court strayed into error to hold that the defunct Industrial Court wrongly admitted the dispute (Inquiry No 76 of 2007) and inquired into it for want of jurisdiction.

The record bears out that, upon being dissatisfied with the Industrial Court's decision, the appellant preferred a revision before the High Court, that is; Revision No. 13 of 2010 which was presided over by three judges which was found to be incompetent before it for having emanated from Inquiry No. 76 of 2007. It is plain, as was rightly argued by the learned Principal State Attorney that, that was not correct. In the first place, section 28(4) of the Industrial Court Act provided that the award by the Industrial Court which is otherwise final, may be challenged by an aggrieved party before the High Court where it shall be heard and determined by a full bench of the High Court. It provided that: -

"(4) Subject to the provisions of this section, every award and decision of the Court shall be final and not

liable to be challenged, reviewed, questioned or called in question in any court save ion the ground of lack of jurisdiction in which case the matter shall be heard and determined by a full bench of the High Court."

There can be no doubt that the High Court sat as a Labour Court to determine a labour revision which was well within its mandate. In that revision, the High Court was invited to exercise its jurisdiction in terms of the above quoted law. Secondly, the ELRA enacted a saving provision regulating the procedure for dealing with revisions which were pending in the Industrial Court at the time the new labour laws commenced. Paragraph 13 of the Schedule, in its wide context, is relevant here and it states: -

"13.-(1) All disputes originating from the repealed laws shall be determined by the substantive laws applicable immediately before the commencement of this Act.

(2) All disputes pending and all applications for executions filed arising from the decisions of the minister in the subordinate courts prior to the commencement of this Act shall proceed to be determined by such courts.

(3) All disputes pending-

(a) revision of the defunct Industrial Court of Tanzania shall be determined by a panel of three Judges of the Labour Court;

(b) hearing before the Industrial Court of Tanzania shall be determined by the Labour Court."

In the light of the above provisions, we are of the decided view that Revision Application No. 13 of 2010 was properly before the panel of three Judges of the High Court sitting as a Labour Court. The learned High Court Judges had the requisite mandate to hear and determine the application. With respect, the learned judges misapprehended the above provision thereby declining jurisdiction which they had.

For the reasons we have endeavoured to demonstrate, the High Court made an error to nullify the proceedings and decisions of the Industrial Court and striking out Revision No. 13 of 2010 that was before it. We are accordingly compelled to invoke our powers of revision under section 4(2) of the Appellate Jurisdiction Act and quash and set aside those orders. We remit the record of Revision No. 13 of 2010 to the Labour Court for it to hear and determine it according to law. Expedited adjudication will serve the best interests of justice given the time parties have been pursuing the matter.

Definitely, the above finding makes it unnecessary to address the grounds of appeal lodged by the appellant.

We, accordingly, allow the appeal on the above reason and make no order for costs.

DATED at **DAR ES SALAAM** this 25th day of May, 2023.

S. A. LILA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

The Judgment is delivered this 26th day of May, 2023 in the Absence of Appellant though dully served and Mr. Saleh Manoro, learned State Attorney for the respondent is hereby certified as a true copy of the original.

R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL