IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 74 OF 1991

JIMMY DAVID NGONYA ..... APPLICANT

versus

NATIONAL INSURANCE CORP. LTD ..... RESPONDENT

R U L I N G

BAHATI, J:-

This is an application for orders of certiorari and mandamus to remove into this Court and quash the decision of the Board of Directors of the National Insurance Corporation, and to compel the Board of Directors of the respondent Corporation to reinstate the applicant and thereby direct it to act with fairness.

Mr. Mwaknsungula, learned counsel for the applicant submitted that the application was for the orders mentioned above and it was supported by an affidavit of the applicant. He went on to state that the main thrust of the application was that the respondent in determining the fate of the applicant was in breach of the rules of natural justice, namely that a party should not be condemned unheard and that no one should be a judge in his own cause. He elaborated that the Board of Directors in its letter of 25/7/91 through the General Manager stated that the applicant had been dismissed because the Board of Directors found him guilty and the finding was according to the audit report. But the audit report from Tanzania Audit Corporation was never presented to the applicant to contradict the findings in it. The applicant was therefore not accorded the opportunity to comment or see the report nor did he appear at the Probe Committee. Mr. Mwaknsungula submitted that as a branch Manager, the applicant was entitled to know the nature of the investigation at his branch. He argued that the applicant was therefore condemned unheard which was a breach of the rules of natural justice. Mr. Mwaknsungula referred the court to the cases of Local Government Board v Arlidge (1915) AC 120 and Board of Education v Rice (1911) AC 179 in support of his argument.

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The second limb of Mr. Mwakasungula's contention was that the Board of Directors when deliberating upon the case of the applicant was going against the 2nd rule of natural justice in that the Board was a Judge in its own cause. He referred to annexture R2 and continued that since it is the General Manager who initiated the proceedings and commissioned Tanzani Audit Corporation to carry out investigations at Singida Branch it was wrong for the General Manager and the Management Committee to deliberate the case of the applicant on 25/7/91, because, he submitted, any decision of the Board of Directors taken in the presence of the General Manager but in the absence of the applicant amounted to the fact that the General Manager and the Management Committee took part in the deliberations of the Board. Mr. Mwakasungula referred to the cases of The King v. Hendon Rural District Council Ex part Chorley (1933) 2 KB 692, and Cooper v. Wilson (1937) 2 KB 307, and R v Barnsley Metropolitan Borough Council ex parte Hook (1976) 3 A II ER.452. He submitted that the General Manager and his team were present in the Board Meeting which decided the fate of the applicant and that on the authorities cited above he was praying for the grant of the application by the Court.

In reply, Dr. Mapunda, learned Counsel for the respondent submitted that a charge was served on the applicant which contained several disciplinary offences. The applicant was given an opportunity to reply to the charge and he did actually reply. Then on the basis of the charge and reply the Board of Directors Commissioned auditors to verify the contradictions between the charge and reply. The auditors submitted their report to the Board and the Board considered the charge, reply and the auditors' report and decided to dismiss the applicant. Dr. Mapunda contended that although the applicant was not given the opportunity to reply to the audit report, the audit did not contain anything new which the applicant was not aware of, and that the report only confirmed allegations in the charge. Dr. Mapunda submitted that there was therefore no contravention by the Board of the rules of natural justice of the right to be heard.

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With regard to the presence of the General Manager in the Board meeting, Dr. Mapunda submitted that it was true that the General Manager attended the board meeting of 25/7/91 but that he was only there as part of the management and did not take any part in the Board's deliberations since he is not a Board Member. He said that his presence was only procedural because the management was always invited in the Board meeting. He submitted that the decision to dismiss the applicant summarily was made by the Board members only. Dr. Mapunda, however, conceded that he was aware of the rule that mere presence of an interested party in the absence of the other party would vitiate the proceedings. He said that he had read the authorities cited by his learned friend and that he was in agreement with them.

In a further reply, Mr. Mwakasungula said that according to the minutes of 25/7/91 the General Manager was present together with his management team when the fate of the applicant was being discussed but that the minutes were silent as to who took active part in the deliberations. He prayed that the minutes be quashed on the basis that the applicant was not there. Mr. Mwakasungula also submitted that the letter of dismissal has 2 links, one concerning the charge and the other concerning the findings of the audit, and this audit report is the one which weighed most on the Board in coming to the conclusion to dismiss the applicant. He submitted further that if there was nothing new then the Board should have acted on the charge and reply only.

The questions to be answered in this application are mainly 2. These are, (I) whether the applicant was given the opportunity to present his case properly and (2) whether it was in order for the General Manager to attend the Board meeting in the absence of the applicant. With regard to the first question it is my opinion that the applicant was not given an opportunity to present his case in full before the Board because he was not shown the audit report for him to comment on. Since the audit report formed the basis of the decision of the Board of Directors, it was necessary to serve a copy of the report to the applicant for his comments. Then the comments of the applicant would be taken to the Board so that the Board would then

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look both at the audit report and the comments of the applicant. The cases of Board of Education v Rice, and Local Government Board v. Arlidge cited above are relevant in this case more so because they clearly state that the parties in the controversy should be given a fair opportunity to correct or contradict any relevant statement in any information obtained by a Board which is prejudicial to their view. Certainly in this case the audit report was prejudicial to the view of the applicant. It ought to have been given to him for his comments. The Board, therefore, contravened the rule of natural justice namely the right of the applicant to be heard.

Secondly, with regard to the second question, the Board was again in breach of the rules of natural justice since the Board deliberated on the case of the applicant in the presence of the General Manager who was in the position of a prosecutor. The case of Rv Barnsley Metropolitan Borough Council, ex parte Hook cited by Mr. Mwakasungula is relevant. That case held inter alia that "the local authority was in breach of the rules of natural justice since the Committee heard the market manager's evidence in the absence of the applicant or his representative, and the market manager, who was in the position of a prosecutor, had been present at the deliberations of the committee when it came to its decision."

It has been stated from the bar that there is no evidence of any participation in the deliberations of the Board by the General Manager who was not a member of the Board. But the case cited above does not make it necessary that the General Manager should participate in actual fact. It is enough if he is in the nature of a prosecutor and he is present during the deliberations of the Board.

I agree with the decisions reached in the cases of Rv Barnsley M.B.C. ex parte Hook and Local Government Board v Arlidge and Board of Education v Rice cited above. Indeed Dr. Mapunda for the respondent said that he too agreed with the decision in R v Barnsely M.B.C. which held that proceedings would be vitiated by presence of an opposing party.

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For the above reasons, I grant this application. I hold that the decision of the Board of Directors was vitiated by a breach of the rules of natural justice. I therefore quash the Board's decision of dismissing the applicant. The applicant is to be regarded still the employee of the respondent corporation and to have been such employee all the time because the decision to dismiss him has been quashed. I command that the respondent reinstate the applicant forthwith and pay him all his salaries and other benefits because the applicant is and has always been the employee of the respondent.

A. BAHATI
JUDGE
15/9/92

Delivered to the parties.
Mr. Mwakasungula for applicant
Dr. Mapunda for the respondent.

A. BAHATI
JUDGE
15.9.92

Dr. Mapunda - We intend to appeal against the ruling. We are apply for a copy of the ruling.

Court: Intention to appeal is noted.

A. BAHATI
JUDGE
15.9.92

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

J. H. MSOFFE
REGISTRAR