

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM.

MISC.CIVIL.CAUSE.NO. 51/93

RAJANI INDUSTRIES LTDAPPLICANT

VERSUS

THE MINISTER FOR LABOUR RESPONDENT

R U L I N G:

MSUMI, J.

This is an application for the prerogative orders of Certiorari and Mandamus against the appellate decision of the Minister for Labour setting aside the decision of Temeke District Conciliation Board, hereinafter referred as the Board. Prior to their dispute which gave rise to these proceedings the applicant and one Wilfred Watson Chikoya, who in this ruling will be conveniently referred as the appellant, were in the relationship of employer and employee. The appellant filed an appeal to the Board after the applicant had terminated his service by a letter dated 17/5/91. After full hearing of the said complaint, the Board upheld the termination. Dissatisfied with this finding appellant decided to appeal to the Minister for labour who allowed the appeal and ordered for reinstatement of the appellant. In the present proceedings the applicant is challenging the legality of the said decision of the Minister.

Besides the affidavit, the grounds upon which the application is based are provided in paragraph 5 of statement which, for convenience's sake is hereby reproduced.

5. The grounds upon which the said reliefs are sought are as follows:-

(a). The Minister for labour/Labour Commissioner failed to follow the principles of natural justice in that,

(i) He failed to hold due and judicially proper enquiry and or hearing by acting on memorandum of the appellant alone contrary to section 43 of the Security of Employment Act No. 62 of 1964 Cap 574.

(ii) He failed to hold due and judicially proper enquiry and or hearing by not calling any evidence or eliciting any information pertaining to the circumstances under which the conciliation Board ordered the employment of the second respondent (appellant) to be terminated.

(b). The Minister for Labour/Labour Commissioner failed to act judicially in that he denied and/or neglected to give the applicant an opportunity of submitting his reply to the memorandum of appeal submitted by the second respondent to him.

(c). The decision of the Minister for Labour/Labour C Commissioner displays manifests errors of law on the face in that :-

- (i) It holds that the Minister for Labour (Labour Commissioner) can act on memorandum of the appellant alone.
- (ii) It gives no reasons for reversing the decision of the Conciliation Board.
- (iii) It is an abuse of the administrative and statutory powers.

Except for containing some evidential factual assertions, in addition, the above mentioned grounds are substantially repeated in the applicant's affidavit. Significantly in his affidavit the applicant deposes among other facts, that he could not reply to the memorandum of appeal because he was not supplied in time with the proceedings and decision of the Board despite his written application for them.

Through the counter affidavit of one Abraham I. Mdamo who identified himself as Labour Commissioner, respondent - made general denial of these contentions and demanded for strict proof of the same.

The applicant is attacking the Minister's decision essentially on two grounds. First the failure by the Board to supply him with a copy of its decision together with the proceedings has denied him of his right to prepare his defence against the appeal in question. And secondly that the Minister has not given any reason in support of his decision.

With respect, both complaints are quite valid. Annexure D to the affidavit is a letter dated 25/8/92 vide which the Board sent the proceedings to the applicant. However, on top of the said letter is imprinted with a receipt stamp of the applicant showing that the said letter together with its enclosure were received on 10/11/92, that is about seven days after the decision of the Minister was delivered on 3/11/92. This Contention is one of the assertions deposed by the applicant in his affidavit. In his counter affidavit, respondent made no attempt to controvert this allegation except offering general denial. As the matter stands it is very likely that the said letter was received on the stamped date. Again there is an unchallenged piece of evidence demonstrated by the applicants letter of 6/8/92 requesting the Board to supply him with a copy of the proceedings. There is no specific denial by the respondent that the said letter was never received by the Board. It is thus a fact that the Board failed to supply the applicant with a copy of the proceedings thereby denying him reasonable opportunity to prepare his defence to the appeal. For this reason the act of the Minister of proceeding

With the appeal and eventually issue the judgment in question amounted to condemning the applicant unheard which is contrary to the principles of natural justice.

The copy of the decision of the Minister produced as Annexure C to the applicant speaks loudly and clearly in support of the complaint. It contains no reason for the said decision. In his submission the learned State Attorney contended that annexure C was just a summary of the decision and that there is a **detailed** judgment supported by reasons. Surprisingly this contention was never deposed in the counter affidavit and even more surprisingly the learned State Attorney never availed the court with said copy for perusal. I am of the respectful opinion that in upsetting the well argued decision of the Board, the Minister took no pain to give reasons why he decided the way he did. It is definite that this is a misuse of the statutory power conferred on him. This court has a duty, under its prerogative power, to correct this legal malpractice. Accordingly the prayer for order of certiorari is granted hence the decision of the Minister issued on 3/11/92, is hereby quashed. And furthermore the Minister is directed to re-admit the appeal and determine it in accordance with the law.

H.A. MSUMI

JUDGE.

6/5/97.

For the Applicant : Mbuya.

For the Respondent : Kamba.