

IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM

CIVIL APPEAL NO..... 3 OF 1998

LEO K. LEKULE..... APPLICANT

Versus

J.V. LIMITED..... RESPONDENT

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J U D G M E N T:

NSEKELA, J:

This is an appeal from a decision of the Industrial Court of Tanzania in Trade Dispute No. 6 of 1997 delivered on 12.12.97. The appellant one Leo K. Lekule was aggrieved by the said decision, hence this appeal to this court. On 7.4.98 the learned advocates for the parties namely Mr. Mushumba for the applicant and Mr. Kariwa for the respondent requested to submit written submissions. In his submissions, the learned advocate for the appellant has written and I quote:-

" Last, but not least, this appeal has been brought in this court by virtue of the High Court decision (full Bench) in Civil Case No. 53 of 1994 P.P Magasha V. Attorney General and another (unreported): . - - - - "

I was intrigued to say the least when I read this sentence and this prompted one to have a closer look at Magasha's case to see if the High Court conferred upon itself jurisdiction to hear and determine appeals from the Industrial Court of Tanzania. Magasha's case dealt with the question as to whether or not section 27 (IC) of the Industrial Court of Tanzania Act 1967 (the Act) was constitutional. This court then was construing the constitutionality of section 27 (IC) of the Act. After close scrutiny this court declared, and I quote:-

" We are amply satisfied that section 27 (IC) of the Industrial Court of Tanzania Act, 1967 is unconstitutional and invalid to the extent that it deprives a person of his basic right of appeal or another remedy except on grounds of lack of jurisdiction".

So section 27 (IC) of the Act was declared ~~un~~ constitutional. This section when it was on the statute books read as follows:-

" 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 on grounds of lack of jurisdiction in which case the matter shall be heard and determined by a full bench of the High Court."

Put differently, a decision of the Industrial Court as was final and conclusive save on grounds of lack of jurisdiction. There was no appeal to this court or any other organ. Therefore, according to Mr. Mushumba, if I have correctly grasped what he has submitted, that since section 27 (IC) of the Act is now non-existent in the statute books, then an appeal from a decision of the Industrial Court lies to this court. It is my considered view that I have to decide on the issue as to whether or not an appeal lies to this court from a decision of the Industrial court, before I venture to consider the grounds of appeal. Section 27 (1) of the Act reads as follows:-

" The court shall have power, in any proceeding before it, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the dispute involving injustice revise the proceedings and make such decision or award in the matter as it sees fit; save that no decision or award shall be made by the court in exercise of its jurisdiction under this sub-section, increasing the liability of any party to his detriment unless such party shall first been given an opportunity of being heard".

This subsection empowers the court either of its own motion or by being moved by one of the parties to the dispute to have a second look at any proceeding determined by it and revise the proceedings and make an appropriate decision. This is indeed not an appeal, but in my view the subsection strongly suggests that an appeal to a higher organ was not in contemplation of the legislature. More importantly however in civil matters, generally speaking the appellate jurisdiction of the High Court is to found in section 70 (1) of the Civil Procedure Code which provides:-

" Save as where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed by a court of a resident magistrate or a district court exercising original jurisdiction."

Quite clearly this section does not confer appellate jurisdiction from a decision of the Industrial Court, and the Industrial court of Tanzania Act, 1967 does not confer such appellate jurisdiction. In effect, before the decision in Magabha's case section 27 (IC) of the Act ousted the jurisdiction of this Court save in jurisdictional matters. In the case of Attorney General v. Shah (No.4) (1971) E.C 50, Spry, Ag. P Stated thus:-

" It has long been established and we think there is ample authority for saying that appellate jurisdiction springs from statute. There is no such thing as inherent appellate jurisdiction".

The Industrial Court of Tanzania Act is silent on this issue. This court can only exercise appellate jurisdiction where that jurisdiction is given by the laws of the Land. In the final analysis, I strike out this appeal as incompetent with costs. It is so ordered.

NSEKELA

JUDGE

8.6.98

16.6.98:

Coram : Mshote - DR/HC  
Mr. Mshumba- For the Applicant  
Mr. Kariwa - For the Respondent.  
C/C Komba.

Ruling delivered in chambers on 10th June, 1998  
in the presence of Mr. Kariwa for the Respondent.

NSEKELA

JUDGE

16.6.1998.

Certified true copy of the original.

  
F.S. Mshote  
DISTRICT REGISTRAR.