IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM MAIN REGISTRY)
AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 67 OF 2002

In the matter of an application for the Orders of
Certiorari and Mandamus

AND

In the matter of the decision of the Minister for Labour and Youth Development in Inquiry No.3 of 1995 under the Industrial Court Act

BETWEEN

SAID A. MARINDA & 30 OTHERS ..... APPLICANTS

AND

1.	THE MINISTER FOR LABOUR AND YOUTH DEVELOPMENT	
2.	THE ATTORNEY GENERAL	..... RESPONDENTS
3.	BANK OF TANZANIA	

RULING

BUBESHI, J.:

The applicants have filed this application for the following orders:-

- That this Honourable Court be pleased to issue the orders of certiorari and mandamus so as to call for and quash the decision of the Minister dated 2/5/1996 and that delivered by the Industrial Court of Tanzania on 2/8/96 in Trade Inquiry No.3/1995.

The application was supported by joint affidavit of Samson Magoti and Khalfan Juma as well as the statement.

The applicants are represented by M.A. Ismail and Co. Advocates. While the 1st and 2nd Respondents are represented by the Attorney General, the 3rd Respondents are advocated upon by Law Associates & Co. Advocates.

It is pertinent to observe that pursuant to that application for prerogative orders the advocate for the 3rd Respondent, did on 12/9/2002, raise preliminary points of objection that the same is hopelessly time barred; it being a public law remedy cannot issue against the 3rd Respondent bank that the deponents affidavit filed in support thereto have no authority from all 30 applicants.

This Court had ordered that the 3rd Respondent file his submissions in support of the preliminary objections raised. As of 29/10/2002 the 3rd Respondents had not complied with the order. We could only assume that the objections raised had been abandoned without notice to the Court or the applicants. We therefore go straight to the applicants application.

The background facts are briefly that:

> The applicants are former employees of Bank of Tanzania (hereafter to be cited as BOT) who were employed at different times and held various posts at different branches of the said BOT.

The applicants received letters of retrenchment on 31/10/93 issued purportedly under Voluntary Agreement dated 28/9/1993 between BOT and OTTU Branches on behalf of the applicants.

It is the applicants contention that the OTTU Branch leaders who signed the Voluntary Agreement had no mandate from all the applicants. They argue in short that since the Voluntary Agreement had no mandate from all the applicants through the Workers Committee, the purported Voluntary Agreement lacked validity.

They argue further that even if the Voluntary Agreement 19/93 was valid yet it was not operative because the 3rd Respondent bank flouted the terms and conditions contained therein which was also not registered as required by law. The applicants complain that not only were the terminal payments less but were made on discriminatory grounds.

The applicants have further complained that they did not apply to be declared redundant. The applicants are challenging decision by the Minister for Labour and Youth Development which is dated 29/5/96 and successfully challenged vide High Court Misc. Civil Cause 57/96 only that the 3rd

Respondent was not a party to the proceedings then Now the 3rd Respondent has been formally joined.

The grounds for objecting to the Ministers decision are two fold. That where there is more than one branch of a Trade Union in a working place, all the branches must be involved in the negotiation leading to an agreement otherwise the subsequent redundancy based on the said agreement will be invalid. The applicants Counsel has referred this Court to the case of **Tanzania Elimu Supplies Vs OTTU – Misc. Civil Appeal 12 of 1997** [unreported] to support their argument. The applicants contend that the end result of such an invalid agreement is that it is a nullity as it flies in the face of the provision as stipulated in **Section 6(1)(g) of the Security of Employment Act.** The applicants have further argued that there is no evidence that the management of the BOT was involved to negotiate the **Voluntary Agreement No. 19 of 1993.**

The second ground hinges on the allegation that this Voluntary Agreement No. 19/93 had not been registered when the Minister made his decision relying on the same. The applicants have referred this Court to the cases of:

- **Michael Kapeta on Behalf of 684 Others Vs. Tanzania Shoe Company Ltd. and Another; and**
- Civil Case No. 48/1994 Dar es Salaam Registry – decision by Late Kyando J.

where the effects of non registration of such an agreement were amply discussed. They argue that as Agreement No. 19/93 was not registered, the third Respondent ought to have applied the Voluntary Agreement No. 2/91 instead.

The third ground raised is that apart from the Voluntary Agreement No. 19/93 being invalid, on the reasons explained herein above, even the Labour Commissioners Report, the first requirement before asking for registration in the Industrial Court had not been obtained in terms of **Section 39(2) of the Permanent Labour Tribunal Act,** as amended. That provision, they contend, sets out the particulars which ought to be contained in the said report.

The applicants Counsel has submitted that the end effect of non participation, lack of the Labour Commissioners' Report and non registration of the Agreement 19/93 with the Industrial Court is to make the Agreement invalid and inoperative hence the application for prerogative orders. That the omissions raised above ousts the jurisdiction and powers not only of the Management but also of the Minister for Labour and Youth Development; that the consultation that was done is a different type of consultation as envisaged by **Section 6(1)(g) of the Security of Employment Act.** Counsel referred this Court to the Case of:

Hamisi Ally Ruhando & 115 Others Vs. Tanzania
Zambia Railway Authority – Civil Appeal No.1 of 1986

which decision discussed consultation within the meaning of Section S6(1)(g) of Security of Employment Act.

It was the applicants submission that in the light of the above arguments, the Minister for Labour lacked jurisdiction to entertain the dispute and his decision of 29/5/1996 was based on the wrong premises, viz, the Voluntary Agreement was invalid for want of registration and was obtained contrary to the conditions stipulated under S 39 of the Industrial Court Act. That the Minister has no powers to deal with matters concerning redundancy – see the Case of

> **Njombe/Ludewa/Makete Co-operative Union Ltd. Vs.**
> **Minister for Labour and Youth Development –**
> **Misc. Civil Cause No. 8 of 1994**

In consequence therefore the applicants prayed for their application to be granted.

The Honourable Attorney General represented both the 1st and 2nd Respondents started off by the submission that the two deponents have no locus standi to swear the affidavit on behalf of the 30 other applicants. The learned State Attorney referred this Court to the provisions of Order 1 Rule 8 of the Civil Procedure Code. He termed the application as bad in law for lack of a proper affidavit in support of it.

The representative of the Attorney General has submitted further that before the 1993 Agreement came into force, there existed Voluntary Agreement No.2 of 1991. That during the pendency of that voluntary agreement, parties had to enter into a joint agreement as to how to effect the redundancy exercise in the 3rd Respondent's work force. They argue that thorough consultations took place between BOT and Workers Committee, in terms of the provisions of S 6(1)(g) which consultations culminated into the Joint Agreement of 1993. That the Minister was satisfied that consultations between BOT and the workers had taken place, in terms of the requirements of S 6.

On the issue of registration, the learned State Attorney holds the view that the 1993 agreement was not a voluntary agreement but a joint agreement to implement the provisions of the 1991 Voluntary Agreement hence the need to register it did not arise. That, it is only a voluntary agreement which ought to be registered and not a joint agreement, added the learned State Attorney.

On non participation/consultation of the workers, the learned State Attorney stated that all the workers in their BOT/OTTU branches had been consulted and their branch chairpersons had signed the Joint Agreement.

He prayed for the application for prerogative orders of mandamus and certiorari to be dismissed.

BOT the 3rd Respondent was represented by the firm of Law Associates Advocates. In their elaborate submissions Dr. Tenga has stated that the Inquiry Court was satisfied that consultations had taken place before reaching that agreement, and that the Minister was equally satisfied and he signed it as an award. Dr. Tenga has strongly argued that what the Minister was requested to do was to enquire into the dispute referred to him through OTTU. That the complaints regarding the validity or enforceability of the Voluntary Agreement were never at issue. That it would be contrary to principles of judicial review if this Court will be moved to quash proceedings of an inferior Court on grounds of issues which did not form part of proceedings, argued Dr. Tenga. He added that certiorari cannot lie where the provisions of S 6(1)g) of Security of Employment Act were complied with.

On registration Dr. Tenga stated that the redundancy agreement of 25/9/93 is not registrable as it arose out of the registered **Mkataba wa Hiari** No.2 of 1991 where Item 7 of the same deals with issue of redundancy. Dr. Tenga was of the firm view that in the circumstances of this case, the order of certiorari will not lie.

Regarding the order of mandamus, Dr. Tenga was of the same opinion that it cannot lie because the application by the applicants have to survive the following conditions, namely:

- demand for performance must precede the application;
- that the application must be made in good faith, and
- that there is no other legal remedy.

He prayed for the order of mandamus prayed for to be equally dismissed with costs.

It is not in dispute that prior to the 1993 agreement there was in existence a Voluntary Agreement No. 2/91 which was registered by the Industrial Court on 16/9/1991. It is also not in dispute that the applicants found that Voluntary Agreement 2/91 wanting in certain aspects and including non compliance with the FILO rule, and a machinery set in motion to have another agreement signed instead. There is also evidence or record that pursuant to the applicants complaints Trade Dispute No.3 of 1995 was instituted.

The applicants were issued with letters of retrenchment on 31/10/1993 purportedly under a Joint Agreement made on 28/9/1993. The Attorney General's representative has submitted with much force that the above agreement arose out of Voluntary Agreement No. 2/1991 hence there was no need to register it. That that the Voluntary Agreement No. 19/93 was not registered is not in dispute. But if it was indeed a joint agreement as contended by the Nangela why have the parties not agreed to have those terms registered to date? It is also not in dispute that the Ministers decision delivered on 29/5/1996 was successfully challenged by this Court vide Civil Cause 57/96, only that the 3rd Respondent had not been joined to those proceedings.

Was the provisions of **Section 6(1)(g)** of the Security of Employment complied with before that decision was handed down? The applicants have contended that the procedure was flawed in that not all branches of the Trade

Union had been involved in the negotiations hence the Voluntary Agreement 19/1993 and the subsequent redundancy based on the same was invalid. The respondents stand is that all the workers had been consulted by the Employer throughout the BOT branches and had agreed to implement the modalities of the redundancy exercise and this therefore led to the Joint Agreement. The respondents concur with the Ministers decision. The elaborate decision by this Court handed down on 2/10/98 was to the effect that even a joint agreement/collective agreement has to be registered before a redundancy exercise could be carried out under it. The submissions made by the Attorney General that this was none other but a joint agreement requiring no registration are well answered by that judgment – see pages 18 and 19. We find therefore that the voluntary agreement or the Joint Agreement as Mr. Nangela calls it was a nullity for lacking registration. The Minister's decision was based on naught, and we stand by that decision and see no reason to depart from it.

And if that was not enough the Report by the Labour Commissioner in terms of S 39(2) of Permanent Labour Tribunal Act, 1967 as amended had not been obtained and submitted to the Minister what appears from the record is annexture 'K', a letter written by the Commissioner for Labour dated 27/1/1995 notifying the Minister of the intended enquiry and the subsequent report to him (Minister) in terms of S 9B(1) of Act 41/67. We cannot therefore agree with both Respondents assertion that the Minister's decision was proper.

Can the order for certiorari lie in the matter at hand? We say yes because there was clearly an illegality of procedure as observed above – see the Case of:

SANAI MRUMBE and ANOTHER

VERSUS

BRUHEHE CHACHA [1990] TLR 54.

where His Lordship Ramadhani, JA laid down considerations to be taken into account when considering whether or not to issue the orders of certiorari. Accordingly, we quash the Minister's decision for being a nullity and quash both the Minister's decision and the award of the Industrial Court.

A.G. BUBESHI

JUDGE

K.K. ORIYO

JUDGE

N.M. MWAIKUGILE

JUDGE

10/10/2003

Coram:	Mwaikugile, J.
For the Applicant	Dr. Twaib H/b for Mr. Kalolo
For 1st Respondent:	
For 2nd Respondent:	Miss Sehel
For 3rd Respondent:	Mr. Mbwambo

COURT

Ruling delivered in chambers in the presence of Dr. Twaib holding brief for Mr. Kalolo for the applicant, Miss Sehel for the 1st and 2nd respondents and Mr. Mbwambo for the 3rd respondent this 10th day of October, 2003.

N.M. Mwaikugile

JUDGE

10/10/2003