

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO 41 OF 2005

ANTONY C. RUKOIJOAPPLICANT

VERSUS

THE BANK OF TANZANIA.....RESPONDENT

RULLING

MANENTO, JK:

Attorney C. Rukoiyo is an employee of the Bank of Tanzania. He is stationed at Mwanza, in the training institute of the Bank of Tanzania known by its acronym B.O.T. alleged to be without specified duties. He is an engineer by profession, but he alleges that he is not assigned to duties commensurate to his profession. He had been originally employed as an Estate Manager, later on became Deputy Director, Estate Management Department. By the acts of the defendant of transferring the plaintiff to Mwanza, where again has not seen provided with any specified job, that action has caused the plaintiff to suffer greatly psychologically to the detriment of both his health and physical health. Not only that, but the defendant has since then breached the contract of employment between the defendant and the plaintiff by not providing him with any work to do. He therefore claims general damages for torture and inhuman and degrading treatment to the tune of T.Shs. 500,000,000/= general damages for breach of contract to the tune of T. Shs. 500,000,000/= interests, costs of the suit and a

prohibitory order, restraining the defendant from further persecuting the plaintiff.

After service of the plaint to the defendant, the defendant responded by filing a written statement of defence, and raised a preliminary objection on point of law, that this court has no jurisdiction to hear and determine this suit. The plaintiff is represented by the firm of advocate known as The South Law Chambers while the defendant is represented by two firms of advocate, namely Mutabuzi & Company (Advocates) and Maajar, Rwechungura, Nguluma and Makani (Advocates).

To be more specific, the preliminary objection is that:

“ This court has no jurisdiction to entertain the matter as it is a trade dispute which ought to be dealt with in accordance with the Industrial Court Act, 1967”

The learned counsel with the consent of the Court urged the preliminary objection by way of written submissions. The defendants' court is whether the claims disclose a trade dispute and if this court has jurisdiction to entertain a trade dispute. The learned counsel argued that appointment as a Deputy Director Administration and Training at the defendant's Institute in Mwanza, a fact which the plaintiff alleged to have been subjected to psychological torture, inhuman and degrading treatment. Secondly that there is a breach of contract of employment, which action denied the defendant the chances to attend seminars, workshops and courses. It is further urged for the defendant that there is an employee/employer relationship between the plaintiff and the defendant. In that relationship, there is a dispute between the two parties connected with employment of the plaintiff in a sense that the plaintiff is claiming malicious transfer and assignment of duties not commensurate to his profession and secondly

breach of employment contract. The learned counsel submitted further that in determining those claims, it will indeed determine matters related to or connected to employment of the plaintiff. By suing so, it will determine differences arising out of the employment of the plaintiff, hence the application of section 3 of the industrial Court Act, 1967 which defines the term trade dispute. For that matter therefore, the claims before this court are based on a trade dispute and not otherwise.

On the other hand, the learned counsel of the plaintiff submitted in reply that the suit is based on the breach of contract of service as defined by section 2 of the Employment Ordinance cap 366. It was further urged that the plaintiff at the time of the cause of action arose was Deputy Director in the defendant's employment as such he was in the managerial position of the defendant's business. Thus the law applicable here is the Employment Ordinance and not the Industrial Court Act, 1967 as amended from time to time. However, the fact that the plaintiff was earning a salary more than eight thousand four hundred shillings per annum, the plaintiff was exempted from the application of the Employment Ordinance, Cap, 366 of the laws, whose procedure is to report to a labour officer the dispute. If the labour officer fails to reconcile the parties, then he, labour officer reports the matter to a magistrate. Therefore, the only form was for the plaintiff to file the suit in the High Court, which has jurisdiction to adjudicate. He cited the case of Juma Lugaila V. Hassan Shafik alias Shafy Kasiga (HC) Civil case No. 55 of 1999 at High Court Mwanza.

Having read those submissions by the learned counsel, then I have to determine whether the dispute between the plaintiff and the defendant is a trade dispute within the meaning of a trade dispute ascribed by section 3 of the Industrial Court Act or it is a breach of contract of service under the

Employment Ordinance as defined by section 2 of the ordinance. I am sorry to say that the fact that the learned counsel have submitted that the plaintiff is exempted from the application of the Employment Ordinance due to the fact that he is in the management of the employers business, a fact which I partly agree that the Employment Ordinance is not applicable, yet I can not say at this moment that the plaintiff was in the managerial position of the defendants business. I shall give reasons for that later on.

Section 3 of the Industrial Court Act, 1976 defines a trade dispute as follows:

5.3: “Trade dispute” means any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non employment or the terms of the employment or with the conditions of labour of any of those employees or such an employee” (emphasis supplied).

The facts given by the plaintiff are that he is still in the employment of the defendant. Hence, an employee in the employment of that employer, the defendant. The cause of action is about the terms of the employment, in which the plaintiff had been recategorised as a Deputy Director and his transfer from Dar es salaam to Mwanza training Institute and finally non giving him of specified works. By doing so, he had been degraded and humiliated, a fact which has caused him to suffer psychologically and health wise. Those complaints are related to the terms of the employment of the plaintiff, which is also covered under the definition of a trade dispute hence, a trade dispute.

The plaintiff's counsel had urged that the plaintiff was in the managerial position of the defendant's business. I think and rightly so that the learned counsel is not competent to give that opinion, nor is the court competent to say so. The person competent to give that opinion is a labour officer as per section 4 of the Security of Employment Act, 1967 as amended by Act No. 45/1965 where the section has been amended to include the subsection reading:

“Any employee who, in the opinion of the labour officer, is employed in the management of the business of his employer”

Thus the whole issue of determining whether an employee employed in the management of the employers business has been left to the subjective opinion of a labour officer and not any other. See the High Court Case in *Walter Jarger V Cordura Ltd t/a Tanganyika Tourist & Oysterbay Hotel* Civil, Case No. 120/1972 (Dar es salaam Registry Unreported) whereby the plaintiff was working in the capacity of a hotel manager but the court ruled that, the labour officer was the person competent to determine whether an employee is in the managerial position of the employers business or not.

How that I have ruled that the dispute between the plaintiff and the defendant is a trade dispute within the meaning of the Industrial Court Act, 1967 as amended from time to time, I have to rule out whether this court has jurisdiction to deal with matters relating to trade dispute or not. The learned counsel for the defendants submitted that this court has no original jurisdiction on matters arising out of a trade dispute. He relied on the Court of Appeal decision on the unreported case of *Tambueni Abdallah and 89 others vs. National Social Security Fund*, Civil Appeal No, 33 of 2000. In that case, the High Court had ruled that the High Court had no jurisdiction to determine labour disputes and that such jurisdiction is with the Industrial

Court, under the Industrial Court Act, 1967. That case was in relation to the act of laying redundant the employees under 56(i)(g) of the Security of Employment Act, 196 as amended and the Court of Appeal held that trade disputes had to follow the prescribed procedure and there is no room to go to the High Court straight. The High Court has no original jurisdiction to entertain trade disputes. Such matters are dealt with in accordance with the Act” The procedure in issue was that prescribed under section 4 of the Security of Employment Act, 1964 which prescribes the procedure to start from the union branch of a trade union, then to the District Secretary of the Registered Trade Union up to the Labour Commissioner.

Though I agree with the submissions of the learned counsel for the plaintiff that the law applicable is the Industrial Court, yet I don’t agree with his submissions that the procedure to be followed by the plaintiff is that one prescribed under section 4 of the Security of Employment Act, 1964 as per the Tambueni’s case (Supra).

The reasons for saying so are that nowhere is the plaintiff has said that he is a member of a trade union, supported by a registered trade union field branch what he said is that he is an employee in the management of the employers business. He is not an employee within the meaning of assigned to the term by the Security of Employment Act, 1964. If the plaintiff had obtained a certificate from a labour offer that he was employed in the management of defendant’s business, he would have to report the dispute to the Industrial Court under section 4(i) of that Act, and by Act No. 3/1990 of the Industrial Court Act, as amended, under section 4(ia) was entitled to institute before the Court a trade dispute between him and his employer, either in person or by an advocate. The Industrial Court is a specialised

Court in labour disputes and other courts should desist from entertaining those disputer.

With all what I have said above, the preliminary objections raised by the learned counsel for the dependent are substained and hence, the suit is dismissed with costs for want of jurisdiction. It is wrongly filed in this court which has no **original** jurisdiction in trade disputes.


A.R. Manento,
JAJI KIONGOZI
28/11/2005