

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MWARIJA, NYERERE AND MRUMA, JJJ

MISCELLANEOUS APPEAL NO. 9 OF 2005
^{CIVIL}
[^]

ISSA MZEE & 136 OTHERSAPPELLANT

VERSUS

**TANZANIA RAILWAY
CORPORATIONRESPONDENT**

Date of last Order 11/7/08

Date of Judgment 23/10/09

J U D G M E N T

MWARIJA, J.

This appeal originates from the decision of the Industrial Court of Tanzania in Trade Dispute No. 43 of 2004. The appellants Issa Mzee and 136 others, former employees of the respondent, Tanzania Railways Corporation (the Corporation) had filed a complaint in that court claiming for unpaid balance of ~~the~~ benefits resulting from redundancy exercise undertaken by the respondent against them.

At the trial, a preliminary objection was raised to the effect that the appellants did not issue to the respondent at least one month's notice of intention to commence legal proceedings before filing their complaint. They were found to have breached the provisions of S. 87 (a) of the Tanzania Railways Corporation Act, Cap 170 RE 2002 and hence their complaint was struck out.

Aggrieved by that decision, the appellants have preferred this appeal. In their memorandum of appeal they have raised two ground, namely;

“ (1) The Industrial Court of Tanzania erred in law in holding that there had been non compliance with Section 87 (a) of the Tanzania Railways Corporation Act, 1977 when in actuality the commissioner for Labour sent the matter to the Industrial Court of Tanzania as per the law empowering him to do so.

(2) The Industrial Court erred in law and in fact in setting out the directions to be followed in sending the claims against Tanzania Railways Corporation to the Industrial Court of Tanzania at the same time denying the benefit of the said directives to the appellants”.

The appeal was argued by way of written submissions. In his written submissions in support of the appeal, Mr. Kashumbugu, learned counsel for the appellants argued firstly on the aim of S. 87 (a) of the Tanzania Railways Corporation Act, Cap. 170 RE 2002 (hereinafter referred to as “the TRC Act ”). He said that the aim is to bring to the attention of the Corporation existence of grievances with a view of looking into a possible remedial action before legal proceedings are commenced. But, according to the learned counsel, the position is different where the matter is taken to the Industrial Court by the Commissioner for Labour under S. 8 (a) of the Industrial Court of Tanzania Act, Cap. 60 RE 2002 (hereinafter referred to as “ the ICT Act”). He argued that at the stage of

~~referred to as "the ICT Act"). He argued that at the stage of~~
inquiry by the Labour Commissioner, the corporation is
accorded the opportunity to be heard and could at that stage
raise the issue concerning compliance with S. 87 (a) of the
TRC Act. He argued further that it is mandatory for the
Industrial Court to inquire into the matter once it is referred to
it by the Labour Commissioner and therefore S. 87 (a) of the
TRC Act is not applicable under such circumstances.

Responding to the submissions by Mr. Kashumbugu,
learned counsel on the first ground of appeal, Mr. Kariwa,
learned counsel for the respondent submitted that under S.
87 of the TRC Act, where any action or other legal proceedings
is intended to be commenced against the Corporation it is
mandatory that its General Manager should be notified. He
added that such a notice has to be given by a plaintiff or a
complainant himself and not anybody else on his behalf.
Because the appellants in this case did not comply with the
said provision of the law, it is the learned counsel's
submission that their case deserved to be dismissed.

In rejoinder submissions, Mr. Kashumbugu reiterated his argument that because the matter was first dealt with by the Labour Commissioner before whom the respondent was heard, the issue of notice does not arise. This is from the fact that at the time when the matter was filed in the Industrial Court, the respondent was aware. The court therefore has the duty of dealing with the complaint without being bogged down by any technicalities, Mr Kashumbugu argued.

We have given due consideration to the submissions by the learned counsel for the parties on that ground of appeal. There is no dispute that under section 87 (a) of the TRC Act legal proceedings cannot be commenced against the Corporation without at least one month's written notice. The section provides as follows;

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Where any action or other legal proceedings is commenced against the Corporation for any act done in pursuance of execution, or intended execution of this Act

or any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect.

- (a) the action or legal proceedings shall not be commenced against the corporation until at least one month after the written notice containing the particulars of the claim, and of intention to commence the action or legal proceedings, has been served upon the Director General by the plaintiff or his agent; and
- (b)

The learned Chairman of the Industrial Court found that the mandatory requirement of the above cited provision was not complied with and therefore struck out the appellants' complaint. The learned counsel for the appellants has argued that since the proceedings were commenced in the Industrial Court through the Labour Commissioner who had made a prior inquiry on the dispute under S. 8 (a) of the ICT Act and thereby making the respondent aware of the dispute, the decision that there was no compliance with s. 87 (a) of the TRC Act was erroneous. The learned counsel argued further

that the issue of non-compliance could have been raised during the holding of inquiry by the Labour Commissioner.

We are unable to agree with the learned counsel's argument so as to fault the finding of the learned Chairman. In the first place, inquiry proceedings by the Labour Commissioner are not legal proceedings. According to West's Encyclopedia of American Law, 2nd Ed (2008); legal proceedings are

“All actions that are authorized or sanctioned by law and instituted in a court or a tribunal for the acquisition of rights or the enforcement of remedies.”

It is therefore only upon institution of the complaint in the Industrial Court that the proceedings become legal proceedings and it is then that service of a notice of intention to commence such proceedings is mandatory.

Secondly, where there is a mandatory provision of law, such a provisions must always be complied with strictly. Its

compliance cannot be implied. The mere fact that the respondent became aware of the existence of a dispute during the inquiry before the Labour Commissioner cannot be a substitute of a legal requirement that the respondent must be served with the said statutory notice before the commencement of legal proceedings. The provision states in clear terms that the notice must be in writing and should be stated therein the intention to commence an action or legal proceedings.

As to the effect of S.8 (a) of the ICT Act, we cannot at any stretch of interpretation say that it can be applied to dispense with the requirement provided for under S. 87 (a) of the TRC Act. Section. 8 of the ICT Act only provides the procedure which is to be followed before a complaint is filed in the Industrial Court. It does not provide for exemption to the provisions of S. 87 (a) of the TRC Act. Further, although by virtue of provisions of s. 8 of the ICT Act, the Industrial Court is duty bound to inquire into the matters referred to it by the Labour Commissioner, the court cannot perform that duty

without following the law. The court is duty bound to do so according to the law. For these reasons we do not find any merit in the first ground of appeal.

In the second ground of appeal, it was submitted that the directives regarding the way on which a complainant may comply with S.87 (a) of the TRC Act, which directives were made because of the short comings on the application of the said section, should have been applied to the appellants. Instead of striking out the complaint therefore, the appellant should have been required to comply with the said provision according to the directives made by the Industrial Court, Mr.Kashumbugu submitted. With due respect, we are unable to agree with the learned counsel. As said earlier, S. 87 (a) of the TRC Act is mandatory and it must be complied with strictly. Failure to comply with it rendered the complaint incompetent. The Industrial Court could not, therefore, make any orders in an incompetent and hence legally non-existent complaint. The same deserved to be struck out.

For the foregoing reasons, we find the appeal to be devoid of merit and we hereby accordingly dismiss it. We make no order as to costs.

A.G. Mwarija

JUDGE

A.C.Nyerere

JUDGE

A. R. Mruma

JUDGE