

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 381 OF 2002

**1. FADHILI MANJAWA
2. JOSEPH FIDELIS AND 36 OTHERS} PLAINTIFFS**

VERSUS

**SOKOINE UNIVERSITY OF } DEFENDANT
AGRICULTURE (SUA)**

R U L I N G

ORIYO, J.:

The ruling is in respect of two points of preliminary objection as follows:-

- (i) The amended plaint is bad in law as it does not disclose a cause of action against the defendant
- (ii) Whether the suit is in the nature of a trade dispute, and if so, whether this Court has original jurisdiction to determine it.

The dispute arose from the plaintiffs' claims of subsistence allowance from SUA which accrued when the plaintiffs' former

employer, Vuyisile Mini Furniture Factory Ltd; failed to make timely payments of terminal benefits. Apparently, when South Africa reached the end of the Apartheid era, the African National Congress (ANC), which ran the Solomon Mahlangu also known as the Mazimbu campus handed it over to the Government of Tanzania. In the interim period, the Government allowed the plaintiffs' former employer, Vuyisile Mini Furniture Factory Co. Ltd; to temporarily operate a furniture factory which was part of Mazimbu Campus. In April 2000, the government decided to hand over the Mazimbu Campus including the carpentry facilities to the defendant, SUA. The handing over led to end of operations of the plaintiffs' former employer at the campus and consequently the termination of their employment.

The employer delayed to pay their terminal benefits and they sought assistance of the District Court of Morogoro which decided in the plaintiffs favour in Labour Case No. 66 of 2000. Attempt at execution against the assets of Mazimbu Campus, which was by then in the defendant's hands, was successful. However, the District Court judgment and order in Labour case 66/00 were quashed and set aside by this court (Kileo, J.) on 10/5/2002 in Civil Appeal No.293/01. Further, this court, held that the assets of Mazimbu Campus belonged to the defendant and were not liable for attachment by the plaintiffs in execution of a judgment against their former employer.

On the 18/2/2004, quite unaware of Kileo J. decision above, I decided on a similar preliminary objection in this case that the plaint disclosed no cause of action. After hearing parties and having looked at the four corners of the plaint, I failed to see the nexus between SUA and the former employer of the plaintiffs. I thought that it was a problem of poor drafting and ordered the plaintiffs to amend the plaint to rectify the anomaly. The same preliminary objection has been made against the amended plaint and a subject of this ruling.

But before I delve into the first objection; let me satisfy myself that I have jurisdiction to determine the matter before this court.

The second point of objection is on whether the suit is in the nature of a trade dispute; and if so; whether the Court has original jurisdiction to determine it. The plaintiff was represented by Mr Jesse learned advocate and the defendant was represented by Mr Mahundi, learned Counsel. Mr Mahundi argued that the plaintiffs' claims are part of their terminal benefits arising from their employment; and where such benefits are not settled a **trade dispute** arises under Section 3 of the Industrial Court Act, (Cap 60 R.E. 2002). His further arguments were that the procedure for the settlement of such dispute is as laid down under Cap 60 Revised Edition of the Laws. He submitted that a trade dispute, under the law, is not reported directly to this court as this Court does not have

original jurisdiction to determine it; but the Industrial Court of Tanzania. He cited in support, the Court of Appeal decision in TAMBUENI ABDALLAH & 89 OTHERS vs NSSF, C/A No. 33 of 2000, (unreported). He prayed for the dismissal of the suit on that account.

But for Mr Jesse, his arguments were just the opposite. He stressed that the plaintiffs' claims against SUA were not between employees and employer. He stated that their claims were not terminal benefits but

"subsistence expenses between the date of their termination of employment and the date when they were paid their terminal benefits and repatriation expenses."

It was argued that the obligation of SUA to pay plaintiffs arose out of SUA's responsibility of discharging the liabilities of the plaintiffs former employer. However Mr Jesse stated that he agreed with the Court of Appeal decision that this court has no original jurisdiction to determine trade disputes. Nonetheless he submitted that the claim for subsistence allowance is equivalent to a claim for **"special damages;"** and this court has jurisdiction to entertain it.

A Trade Dispute is defined under SECTION 3 as follows:-

“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)

There is no dispute that this suit is based on a trade dispute “connected with employment or non employment.” But the issue arises here as to who is the “employer” of the plaintiffs. The subsistence allowance being claimed arose from the late payment of terminal benefits by Vuyisile Mini Furniture Factory Ltd; who is not a defendant in this suit. Then on what basis are plaintiffs claiming subsistence allowance from the defendant, SUA? This unanswered issue takes me back to the first issue that the plaint does not disclose a cause of action against the defendant. Even with the amendment the plaintiffs have failed to disclose the cause of action against the defendant. There is no nexus between the plaintiffs claims and the defendant and neither is there nexus between Vuyisile liability and SUA.

On the basis of the foregoing and this court's decision in Civil Appeal No.293/01 the preliminary objections are sustained. The suit is hereby dismissed with costs.

K.K. ORIYO

JUDGE

19/12/2005

1,013 Words.