

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY**

AT DAR ES SALAAM

CIVIL CASE NO.181 OF 2003

SEIPH WANUMBWA..... PLAINTIFF

VERSUS

**MUHIMBILI MEDICAL CENTRE OR
MUHIMBILI NATIONAL HOSPITAL... 1ST DEFENDANT
MINISTRY OF LABOUR..... 2ND DEFENDANT
THE ATTORNEY GENERAL..... 3RD DEFENDANT**

RULING

MANENTO, JK:

Seiph Mwanumbwa has filed a civil suit before this court against the Respondent for a **declaration** that his dismissal was unlawful or unfair and for an order for general damages in his favour on the basis that his dismissal was invalid and the termination of his services by the 1st defendant was a breach of contract, which is the subject for damages.

On filing this suit, the 2nd defendant, the Attorney General filed a written statement of defence together with notice of preliminary objections. This ruling is on the basis of the preliminary objections raised.

The objections are as follows:

1. The case is misconceived, incompetent and bad in law for the same offends section 6 of the Government Proceedings Act, 1967 as amended by Act No. 30/1994.
2. That the case is hopelessly out of time.
3. That the plaintiff has hopelessly failed to establish any relationship and or cause of action against the 2nd and 3rd defendants.

Before I venture to the written submissions of the learned counsel for the plaintiff and the learned state attorney. I find it better to give explanations, though at nutshell, as to the facts of the suit, which the plaintiff based in his suit.

The plaintiff who was an Assistant Accountant was dismissed from his employment on 24 hours notice on 16th day of July, 1991. Being aggrieved by the said dismissal he referred his grudges to the labour Conciliation Board on 24/7/1991. His reference was dismissed on a point of limitation. It was time barred. he further referred the dispute to the Minister responsible for labour matters, now the 2nd defendant. The Minister confirmed the decision of the Conciliation Board. He did not believe that he had exhausted all the legal machinery opened to him, for an address of his grudges. He believes

that his services were wrongly terminated by dismissing him. Hence, on 1st September, 2003, he filed this suit, about 12 years after his dismissal.

In his first point of the preliminary objection, the learned state attorney urged that whoever wishes to sue the government, he is required to issue a 90 days notice to the government. Section 6 of the Government Proceedings Act, 1967 as amended by Act No.30 of 1994 is relevant. However, the learned state attorney submitted that the plaintiff did not comply with that mandatory legal requirement, hence the suit is incompetent and should be dismissed with costs.

On relying to this submission, the learned counsel for the plaintiff submitted that they are in conformity with the legal requirement of section 6 of the Government Proceedings Act, 1967. The reason given is that the suit requires only a declaration that the termination was invalid. That their suit should not be open to objection on the ground that a merely declatory judgment or order is sought thereby. He cited section 7(2) of the Civil Procedure Code, 1966 as the basis of his arguments. I wonder if the learned counsel have ever rebutted that legal requirement. This is a suit, in which, the government is sued. In that case, the relevant law in suing the

government is to be followed. Section 6 of the government Proceedings Act, 1967 as amended by Act No.30/1994 can speak on our behalf:-

“No suit against the Government shall be instituted and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim”.

From the wording of the above cited section of the law, the plaintiff is not allowed to institute the suit without prior notice and the court is also prohibited from hearing such a suit in the absence of the notice by the claimant. In this suit, which the plaintiff called a “declaration”, there is no such notice, so the court’s eyes are to be closed so that they don’t see it and act on an illegality. Section 7(2) of the Civil Procedure Code, 1976 can not override section 6 of the Government Proceedings Act, 1967 as amended.

On the second objection, the learned state attorney submitted that the termination of the plaintiff from his employment was at the time of his 12 months probation period of his employment. That this being a suit for termination of employment, it is based on a contract for service and the time limit to institute proceedings based on contracts in six (6) years under the

Law of Limitation Act, 1971, but this suit was filed twelve (12) years after the right to sue accrued. The plaintiff did not seek and obtain leave of the court to institute the proceedings after the time of limitation has expired. In replying to those submissions, the learned counsel for the plaintiff urged that the Law of Limitation 1971 is not applicable in proceedings of declaratory orders and that there is no time limit when instituting declaratory suits. That this court has powers to declare the action of the public authority an unlawful if it is done in abuse of the law so any person who may feel aggrieved by such action and or decision may seek declaratory orders from the court of competent jurisdiction. To fortify his submissions, he cited the writings of hon. Mwalusanya J; as he then was in his book titled **“Utaratibu wa Kutatua Migogoro ya Kazi pg 27** whereby an English case of Bernard vs. N.D.B. (1953) 2 QB 18. was quoted. But the issue here was the termination of a contract of service, which falls within the law of contract. Even in the quoted English case of Bernard (supra), the court have discretionary powers to intervene by way of declaration and injunction in the decision of statutory tribunals in cases where persons would otherwise be without a remedy for an injustice. This was not the case in this suit nor is the procedure used to file a suit leads the court to make such requested declaratory order, though the learned counsel for the plaintiff suggest so. On

the other hand, the learned state attorney says that once a dispute is dealt under the Security of Employment Act, then the decision of the Minister is final and hence the suit becomes res judicata.

That submission finds foot hold on Section 28(1)(a)(b) of the Security of Employment Act, Cap.387 R.E. where it is stated:-

(1) The decision of the Minister on a reference to him under section 27, and, subject to any decision on a reference to the Minister therefrom, the decision of a Board on a reference to it under this part:-

- a) shall be final and conclusive; and
- b) shall be binding on the parties to the reference, and the relationship between the parties in consequence of the matters in respect of which the reference was made shall be determined accordingly.

According to paragraph 8 of the plaint, the plaintiff, after his dismissal, referred the dispute to the Conciliation Board and further reference to the Minister. Under the Security of Employment Act, 1964, the decision of the Minister is final and conclusive. Not only that it is conclusive, it binds both parties, the plaintiff and the 1st defendant. The courts jurisdiction has been ousted and then, I agree with the

learned state attorney that once the Minister makes a decision on a reference to him from the decision of the Conciliation Board, then the dispute becomes *res judicata*. On the basis of the Court of Appeals decision in an unreported Civil app. No.8/1988, Mwanza Textile Ltd. Vs. Augustine Masatu, where the Court, after citing section 28 of the Security of Employment Act, 1964 said that:-

“It is clear from the provisions of section 28 that the High Court had no jurisdiction to entertain the suit in this matter which concerned the summary dismissal of the respondent by the appellant. The proceedings before the High Court was thus nullity and we are bound to quash them and set aside the orders made therein.”

If the whole proceedings before this court are nullity, then this Court could not issue the declaratory orders which the plaintiff wanted, still, the High Court has no jurisdiction to entertain the suit before it so the preliminary objections raised on this ground is also sustained. This brings me to the end of this ruling.

For all the reasons I have given, I don't see how this court can

proceed with this suit, other than dismissing it for the reasons stated. It is accordingly dismissed.


A.R. Manento

JAJI KIONGOZI.

31-10-2005

Coram: E. Mbise, DR

For the Plaintiff – absent

For the 1st Defendant Mr. Mselem

For the 2nd Defendant)

For the 3rd Defendant) Mr. Kamba

Cc: Livanga.

Court: /The ruling read this 31/10/2005 in the presence of Mr. Mselem for the 1st Defendant, Mr. Kamba for the 2nd Defendant and in the absence of the Plaintiff.

E. Mbise

DEPUTY REGISTRAR-HC.

31/10/2005