IN THE HIGH COURT OF TANZANIA

AT DODOMA

(DC) CIVIL APPEAL NO. 27 OF 2001

(Original Misc. Civil Application No. 3 of 2001 of the District Court of Dodoma District at Dodoma)

HEADMASTER HIJRA ..... APPELLANT

VERSUS

LABOUR OFFICER .....RESPONDENT

JUDGEMENT

KAIJAGE, J.

Vide Dodoma District Court Misc. Civil Application No. 3 of 2001, the Labour Officer who is the respondent herein, sought to execute a decision of the Minister for Labour and Youth Development against the Headmaster-Hijra Seminary, the appellant herein, as if it were a decree. That application was supported by the affidavit of the respondent and was brought under Order 21 Rule 9 of the Civil Procedure Code, 1966. In the counter affidavit filed on behalf of the appellant, the following two preliminary points were raised;

1. THAT, the application is bad in law having

been brought under a wrong person.

2. THAT, the application is not proper before the court having been filed without payment of court fees.

Subsequently, the District Court, in its decision dated 10th August, 2001, overruled the said two preliminary points. The appellant was aggrieved, hence the present appeal grounded on the following:

1. THAT, the learned Resident Magistrate erred in law in dismissing the preliminary points of objection that the application is bad in law having been brought under the wrong person.
2. THAT, the Resident Magistrate erred in fact and in law in dismissing the preliminary point of objection that the application was not properly before the court having been filed without payment of court fees.

On the date when the present appeal was called up for hearing, I granted leave to the parties to argue the aforementioned grounds of appeal by way of written submissions.

In her submission on the 1st ground of appeal, learned counsel for the appellant argued that the appellant was a

mere Headmaster of Hijra Seminary Secondary School, a department of the Registered Trustees of Baraza la Kiislam Tanzania (BAKWATA), and that in his capacity he had no legal status to sue or to be sued. She added that BAKWATA is the owner of the said school retaining the authority to employ and that Hijra Secondary School has no such authority.

On the basis of the foregoing submissions, counsel for the appellant concluded that failure to join the Registered Trustees of BAKWATA as respondents in Dodoma District Court Misc. Civil Application No. 3 of 2001 rendered the application futile, incapable of being rescued or rectified under the provisions of the Civil Procedure Code.

On the other hand, the Labour Officer/respondent maintained that the appellant is the employer of employees in whose favour the decision of the relevant Minister is sought to be executed. He added that at no time did the appellant indicate to either the Conciliation Board or to the Minister that Hijra Secondary School is a mere department of the Registered Trustees of BAKWATA. He further submitted that the appellant never stated before the Conciliation Board or before the Minister that his establishment had no authority to employ those in whose favour the decision of the Minister is sought to be executed as if it were a decree.

I have carefully considered the submissions of both parties in the present matter, and in the light of the provisions under S. 27 of the Security of Employment Act No. 62 of 1964, I think the submission of the learned counsel for the appellant is untenable. The relevant part of that section provides:

> "S. 27 (1). The decision of the Minister on a reference to him under S.26, 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; and
>
> (c) may be enforced in any court of competent jurisdiction as if it were a decree.
>
> 2. ....." [*Emphasis supplied*].

My understanding of S. 27 (1) (b) cited herein above is that; the decision of the Minister is binding and could be enforced in terms of paragraph (c) against parties to the reference. In this case, such a decision is only binding and

can only be enforced against the appellant who was the party to the reference. The Registered Trustees of BAKWATA were not and cannot be made parties to the reference subsequent to the Minister's decision as the learned counsel for the appellant seem to imply in her submission.

I hasten to add that issues touching on the legal competences, status of the parties and their relationship, etcetera, were matters which in terms of S. 27 (1) (b) should have been canvassed and determined prior to the decision of the Minister envisage thereunder.

With respect to the learned counsel for the appellant, I do not think that canvassing issues as to whether or not the appellant was a proper party to the reference will be legally appropriate at this stage. Such issues having not been put forward for determination at an appropriate time, I think the appellant cannot be heard to raise them at this stage or at any other stage subsequent to the decision of a Minister. With this brief observation in mind, I hereby dismiss appellant's 1st ground of appeal.

Submitting on the 2nd ground of appeal, learned counsel for the appellant argued emphatically that as long the application for execution of Minister's decision was filed in court under Order 21 Rule 9 of the Civil Procedure Code, the aspect of payment of fees is mandatory. She concluded

this point by submitting in effect that the application before the District Court was incompetent for non payment of necessary fees.

I think the provisions of S. 48 of the Security of Employment Act as read with those of S. 143 of the Employment ordinance (Cap. 366) waives the requirement of payment of fees in respect to applications such as one for enforcement of the Minister's decision as if it were a decree under S. 27 (1) (c) of the Security of Employment Act. Section 48 of the Security of Employment Act provides:

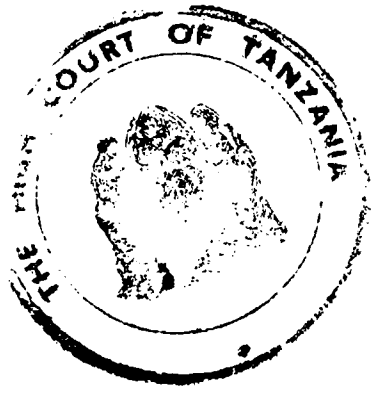
> "Subject to the provisions of this Act which exclude the jurisdiction of the courts, the provisions of Part II of the Employment Ordinance shall apply ***mutatis mutandis*** in relation to any question, difference or dispute between an employer and an employee arising out of the decision of the Minister or a Board under this Act as they apply in relation to the questions, differences or disputes referred to in that Part." [*Emphasis supplied*]

On the other hand, S. 143 of Part XII to the Employment Ordinance, waives the requirement for payment of fees or costs in respect of any proceedings under the provisions of the ordinance save in situations stated in the

proviso made thereunder. It follows, therefore, that as long as the respondent had sought to enforce the decision of the Minister in terms of S. 27 (1) (c) of the Security of Employment Act, he was not required to pay filing fees or any court fees on the basis of S. 48 of Security of Employment Act as read with S. 143 of the Employment Ordinance. In any case, the proviso to S. 134 of the Employment Ordinance, also falling under Part XII, makes it mandatory for magistrates to hear and determine proceedings according to substantial justice without undue regard to technicalities of procedure.

From the foregoing, I find that the ground touching on the non-payment of fees has no legal basis.

Consequently, I find that this appeal should be dismissed, as I hereby do. I make no order as to costs.



S. S. KAIJAGE
JUDGE
13/5/2006