I THE HIGH COURT OF TANZANIA

AT TANGA

CIVIL APPEAL NO. 23 OF 2004
(Originating from D/C Tanga Civil Case No. 4 of 99)

TANGA CEMENT COMPANY LTD ..... APPELLANT

VERSUS

DAVID KAPOMA & 52 OTHERS ..... RESPONDENT

JUDGMENT

BEFORE: M.S. SHANGALI, J

This is an appeal against the Decision of the Tanga District Court in the original Civil Case No. 4 of 1999. In that Labour Civil case the plaintiffs who are the respondents in this appeal namely Mr. David Kapoma and 52 others sued their former employer, the present appellant Tanga Cement Company Ltd, following the redundancy exercise implemented by the appellant. In essence they complained to have been wrongfully declared redundant.

Before the District Court the plaintiffs claimed for the following reliefs:

(a) A declaratory order that the redundancy to the plaintiffs was done subtly, deceitfully wrongly, unlawful and unprocedural.
(b) That the redundancy exercise started before acquiring legal rights and therefore null and void.
(c) An order that the plaintiffs be paid their salaries and wages and fringe benefits for the period of 1.10.1998 to 21.10.1998 as per annexture B to the amended plaint.
(d) An order that the plaintiffs be paid their salaries and wages up to age of 55 years with annual salary adjustment, plus 15% PPF and 10% NPF OR

(e) An order that the plaintiffs be reinstated and hence paid all their dues and if the defence (sic) still wishes they could organize fresh redundancy.

(f) Interest be paid to the plaintiffs as follows:-

(i) At 36% p.a on decretal amount from the due date to the date of judgment according to bank lending practice on current account not to be taxed.

(ii) At 10% p.a. from the date of judgment till full settlement being the courts rate also not to be taxed.

(g) Any other reliefs the Honourable Court may deem fit and just to grant.

It is not irrelevant to mention here that the first plaintiff MR. DAVID KAPOMA was elected and appointed under Order I rule 8 of the Civil Procedure Code, 1966 to represent the other 52 plaintiffs in the conduct of their case. On the other-side the defendant was represented by Mr. Akaro the Learned Advocate.

After hearing and evaluating the evidence from both asides the trial District Magistrate Hon. Mrs. M.W. Kabwanga ruled in favour of the plaintiffs and awarded them the following reliefs:

(a) A declaration order that the whole redundancy exercise to the plaintiffs was done unlawfully unproceduraly and wrongly hence it was null and void.

(b) That, the plaintiffs be recognized as the defendants lawful employees from the time of termination and each plaintiff be paid his/her dues with adjustments from due date till the date of judgment up to the date of payment in full plus interest at the rate of 31% per annum till the whole claim is paid and general damages at the rate of Tshs.8,000,000/= for each employee at the Security Division.

(c) That fresh redundancy be conducted with deductions of all the amount already paid inclusive of taxes paid to Tanzania Revenue Authority.

(d) That some of the plaintiffs be paid their October salaries.

The trial District Magistrate went aheard and ordered for the what she called the alternative remedies to the plaintiffs namely:

(a) The plaintiffs be paid statutory compensation at the rate of their salaries plus general damages at the rate of Tshs.8,000,000/= for those involved.
(b) That the plaintiffs be paid their salaries and wages up to the retirerment age of 55 years with adjustments plus 15% PPF and 10% NPF from the date of termination till the date of full payments.
(c) That the plaintiffs be paid their severance allowances.
(d) That the plaintiffs be paid interest of 36% per annum on the wages from the date of termination till date of judgment plus further interest at the rate of 10% per annum from the date of judgment till the date of full payment.

The appellant **TANGA CEMENT COMPANY LTD** was aggrieved and dissatisfied with that decision of the District Court and hence preferred this appeal. In this appeal the appellant was represented by two Learned advocates namely Dr. Nguluma from Maajor, Rwechungura, Nguluma, Makani (Advocates) Company of Dar es Salaam and Mr. Akaro from Akaro, Advocates Company of Tanga. The respondents were represented by the first Respondent Mr. David Kapoma.

In their memorandum of appeal the appellant's counsels listed a long list of seventeen grounds of appeal but during submission the counsels opted to consolidate some of the grounds appeal which appeared to be interrelated. Nonetheless, on my part I have find it convenient and without prejudice to their approach at this stage to apportion the said grounds of appeal in to two major categories. The first category which covers mainly the first grounds of appeal center on the question of jurisdiction while the second category circumvent on the merits of the case, evaluation of evidence, law and the findings.

For a clear comprehension and avoidance of doubts let me recapitulate the said grounds of appeal in-tone.

1. The Learned trial magistrate erred in law in holding that the court was vested with jurisdiction to try the case.
2. The Learned trial Magistrate erred in law and fact in holding that the respondents did not voluntarily opt for redundancy.
3. The Learned trial Magistrate misdirected herself by wrongly answering issue No.2 in the negative instead of finding that the redundancy exercise was governed by the Voluntary Agreement and that FILO and LIFO principles were inapplicable.
4. The Learned trial Magistrate erred in law and fact in holding that the Voluntary Agreement dated 15th August, 1997 Exhibit "D1(a)") was invalid.
5. The Learned trial Magistrate erred in fact and law in holding that the respondents were "undisputedly" terminated by a voluntary agreement dated 1st December, 1997.
6. The Learned trial Magistrate erred in fact in holding that not only one Voluntary Agreement was registered by the Industrial Court on 5th May, 1998.
7. The Learned trial Magistrate erred in fact and Law in holding that two Voluntary Agreements worked simultaneously for termination of the respondents and for payments of the respondent's redundancy packages.
8. The Learned trial Magistrate erred in fact in holding that when the Voluntary Agreement dated 15th August, 1997 was registered on 5th May, 1998 some of the respondents had already been paid their voluntary packages.

The Learned trial Magistrate erred in fact in holding that the appellant started to terminate the respondents and to pay their redundancy packages on 1st September, 1997.

10. The Learned trial Magistrate erred in law and fact in holding that the whole redundancy exercise was illegal, unlawful, and unprocedurally done.

11. The Learned trial Magistrate erred in law and fact in holding that the appellant was bound to retain the respondents in employment till they attained retiring age of 55 years.

12. The Learned trial Magistrate erred in law and fact in holding that the respondents are still employees of the appellant.

13. The Learned trial Magistrate erred in fact and law in holding that 29 of the respondents are entitled to remuneration of salary of October, 1998 and, without prejudice, the Learned trial Magistrate further erred in fact and law by failing to sufficiently specify as to which respondents are entitled to such payment.

14. The Learned trial Magistrate erred in law and fact by granting general damages in the sum of Tshs.8,000,000/= to each respondent who was working in security division whereas such claim was neither pleaded nor listed as a relief sought nor was any or sufficient evidence adduced to establish the same. The Learned trial Magistrate further erred in law and fact in acting on speculation that the appellant did not constest or dispute such claim and furthermore by not at all or sufficiently specifying which of the respondents are to be paid such relief.

15. The Learned trial Magistrate erred in law and fact in holding that the respondents are not bound by the Disclaimers (Exhibit

"D5") and that the respondents are not estopped by the said Disclaimers from laying further claims against the appellant.

16. The Learned trial Magistrate erred in law and fact in granting interest on that decretal amount at the rates of 31% and 36% per annum from due date to date of judgment and further interest at a rate of 10% per annum from the date of judgment till payment in full whereas such rates of interest were neither specifically pleaded nor supported by any law or evidence.

17. The Learned trial Magistrate erred in law and fact in granting to each respondent payment of PPF and NPF at rate of 15% and 10% (sic) respectively from rates of termination till date of full payment whereas there is no basic for granting such reliefs.

Consequent to the request from both parties this appeal was argued by way of written submissions and the efforts made by parties specifically the counsels for the appellants as reflected in their submission is highly, acknowledged.

Let me now start with the first ground of appeal on the crucial and important issue of jurisdiction which form category one of the grounds of appeal. Whether the trial District Magistrate had jurisdiction to try the case.

In their written submission the counsels for the appellant argued the ground in two limbs; one whether the trial court had pecuniary jurisdiction and secondly whether it had legal jurisdiction to entertain the matter at all.

On the first limb it was argued that the jurisdiction of the District Court in Civil Cases is regulated by the Magistrate Court Act, 1984, particularly Section 40. Furthermore prior to the amendments of the Magistrate Court Act 1984 by Act No.25 of 2002, the pecuniary jurisdiction of the District Court was Tshs. Ten million. That amount was raised to one hundred million by the said Act No. 25 of 2002.

The counsels submitted that even after the pecuniary jurisdiction was raised the amount claimed in this case as per Annexture "A" and "B" to the amended plaint was Tshs.1,251,693,778.76 far beyond the pecuniary jurisdiction of the District Court. The counsels contended that according to the court record there were massive amendments to the plaint which resulted to the case to be filed as an ordinary civil special case but was never referred to the magistrate in pursuant to section 130 of the Employment Ordinance, Cap.366 (as amended) as a labour matter under section 132 of the Ordinance. To support their stance the counsels cited the case of **PETER NJIBHA Vs TANZANIA POSTAL BANK, HIGH COURT CIVIL CASE NO.107 of 1999**, Dar es Salaam Registry (unreported) where the case was striken out during the hearing when the court discovered that it had no jurisdiction to determine it. Also the case of **FRANK ANDREW Vs KAMYN INSUSTRIES (T) LTD (1986) TLR, 31** where the court dismissed a suit for want of jurisdiction because the amount claimed in the suit was below the jurisdiction of the High Court. The counsels for the appellant went aheard and cited another case of **JOHN AGRICOLA Vs RASHID JUMA (1990) TLR No.1** where it was held that lack of jurisdiction in the presiding Magistrate is a fundamental defect that is not curable at all and therefore a trial by a District Court Magistrate who lacked jurisdiction was a complete nullity.

On the second limb of the first ground of appeal the question is whether a court other than the Industrial Court has legal jurisdiction to determine a labour dispute or a trade dispute. The counsels for the appellant strongly relied on the recent decision of the Court of Appeal in the celebrated case of **TAMBUENI ABDALLAH and 89 OTHERS Vs. NATIONAL SOCIAL SECURITY FUND**, civil Appeal No.33 of 2000, Dar es Salaam Registry (unreported) where with reference to sections 3 and 4 of the Industrial Court Act 1967, the Court of Appeal ruled that a declaration of redundancy and especially when it is contested by employees, is a trade dispute; and further, that the High Court has no original jurisdiction to entertain trade dispute. The counsels submitted that in the present case the respondents case centred around redundancy or non-

employment as a result of the appellant's re-organization after privatization and that the word "non-employment" has been defined under section 3 of the Industrial Court Act, 1967 to mean and include "redundancy". The Learned Counsels for the appellant emphasized that Civil Case No.4 of 1999 was wrongly filed in the District Court Registry because according to the above cited Court of Appeal decision the original jurisdiction of any trade dispute is with the Industrial Court and mandatory procedure to be adopted in such trade disputes was clearly elaborated and spelt out at page 12 and 13 of the said judgment which provide:

> "Under section 4 of the Act a member of a trade union is required to report a trade dispute to the union branch at the place of work within 7 days of the occurrence of the dispute. The union branch has to report the matter to the Labour Officer within 14 days. Where there is no union branch then the report is sent to the District Secretary of the registered trade union within 14 days. The Labour Officer or the District Secretary shall within 21 days of receiving the report try to conciliate the parties and effect a settlement. Any such settlement, known as negotiated agreement, shall be recorded in writing and endorsed by the Labour Commissioner who shall submit it to the Industrial Court for registration under Section 24 which will make the negotiated agreement operative. The Labour Commissioner, on the other hand, can inquire into a trade dispute, whether or not it has been referred to him under section 8 and shall refer the matter to the Industrial Court.
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> It is clear to us that trade disputes have to follow that prescribed procedure and there is no room for going 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."

In response to that submission on the first ground of appeal the respondents submitted that the ordinary courts of law retain power to deal with labour disputes regardless of pecuniary value of claim. Mr. David Kapoma relied on section 2 of the Employment Ordinance Cap 366 of the Laws where it is

provided that the term "court" means a subordinate court. He further submitted that in the light of section 133(1) of the Employment Ordinance, jurisdiction of a District Court is unlimited.

On the second limb of jurisdiction issue, Mr. David Kapoma argued that what the court of appeal decided in the case of TAMBUENI ABDALLAH (Supra) was nullification of the proceedings conducted in the High Court, while in the present case the decision was made by the District Court. Mr. David Kapoma argued that the issues raised in the original Civil Case No.4 of 1999 can not be equated to trade dispute as defined under section 3 of the Industrial Court Act, 1967. He submitted that the issues were centred on whether the respondents were induced, terminated improperly, or whether the redundance was done illegally, unprocedurally, unlawfully or whether there was any breach of respondents contracts of employment. On the other hand Mr. David Kapoma conceded that they were not contesting declaration of redundance itself although the framed issues depicted redundancy exercise and not a trade dispute. Mr. David Kapoma relied on the decision of several cases including **CHRISTOPHER GASPER AND OTHERS VS. TANZANIA HARBOURS AUTHORITY (1997) TLR 301** in which it was held that parties are free to go to Industrial Court or Ordinary Courts where the issues of redundancy are concerned.

In their rejoinder the counsels for the appellant hammered back and submitted that the prerequisite for reliance on section 133(1) of the Employment Ordinance is adherence to the procedure laid down in the ordinance itself as a whole including reporting of a dispute under section 130 and subsequent reference of the same to court under section 132 of the ordinance. The counsels argued that in the present matter, the labour officer having initially reported the matter to court against the **GENERAL MANAGER OF TANGA CEMENT COMPANY** LTD which involved only 43 employees, the respondents subsequently made massive amendments to the case by presenting the same to court by an ordinary plaint against **TANGA CEMENT COMPANY LTD** and by

increasing the number of plaintiffs from 43 to 53 without involving the labour Officer on those changes. The counsels argued that in such circumstances the respondents cannot rely on the provision of section 133(1) of the Employment Ordinance.

The Learned Counsels for the appellant submitted that the crux of the first limb of the first ground of appeal lie on the fact that the principal sum of Tshs.1,251,693.76 claimed by respondents in the suit exceeds the pecuniary jurisdiction of the trial District Court as section 40 of the Magistrates Court Act, limits the pecuniary jurisdiction to Tshs.100,000,000/= only in a suit filed in the ordinary way by presentation of a plaint like it was done in the present case pursuant to the amendment of the plaint.

On the second limb of jurisdiction, the counsels for the appellant submitted that the respondents have been simultaneously blowing hot and cold about whether the matter before the trial court was a trade dispute or not. The counsels argued that the respondents has already conceded that jurisdiction in matter of trade dispute lies exclusively with the Industrial court but their contention is that the case before the trial court revolved around "redundancy exercise" and according to them (respondents) the "redundancy exercise" is not tantamount to a "trade dispute". The Learned counsels submitted that the "redundancy exercise" was governed by a Voluntary Redundancy Agreement of which the respondents claims that redundancy was compulsory and contrary to the law. Therefore the respondents are obviously contesting the redundancy and that is why among the reliefs sought and obtained by the respondents is a declaratory order that they are still in the employment of the appellant.

On the strength of the foregoing submission supported with the facts and law I am convinced now it is not difficult to determine and resolve the first ground of appeal on whether the trial District Court had jurisdiction to try the case or not. On the first limb of the jurisdictional issue, I concur with the submission made by the learned counsels for the appellant and hold that in the circumstances of this case the amount claimed in the amended plaint of

Tshs.1,251,693,778.78 is far beyond the pecuniary jurisdiction conferred to the District Court under the Magistrate Court Act 1984 as amended by Act No.25 of 2002.

Even if that amount claimed was within the pecuniary jurisdiction conferred to the trial District Court, still the respondents are not free from difficulties because on the second limb of jurisdiction issue a court other than the industrial court has no legal jurisdiction to determine a labour dispute. On this matter I entirely agree with the submission made by the Learned Counsel for the appellant and well guided by the recent decision of the court of appeal in TAMBUENI ABDALLAH Case.

I do agree with Mr. David Kapoma that what was argued in **TAMBUENI ABDALLAH'S** case was whether the High Court has original jurisdiction over a trade dispute. However, in its findings the court of appeal concluded that not only that the High Court has no original jurisdiction over a trade dispute but also that the only court with original jurisdiction in labour disputes is the Industrial court as clearly provided under the Industrial Court Act, 1967. Therefore all other courts including the District Court has no jurisdiction to entertain trade dispute matters.

Further I have painstakingly gone through the various decision cited by Mr. David Kapoma including, **GENERAL MANAGER, TFC Vs FERUZI NGOI Civil Appeal No 10 of (1989)** Tanga Registry (Unreported); **MOSES SWEBE Vs COOPER MOTORS (T) LTD, Misc. Civil Appeal No.2 of 1981** (Unreported); **SHABANI MSENGESI Vs NATIONAL MILLING CORPORATION, Civil Appeal No.44 (1994); AHMED KONDO & 11 OTHERS Vs. HON. AG, Civil Case No.24 (1981)** Unreported and **CHRISTOPHER GASPER (SUPRA)**; and I am of the view that some of those cases were decided before 1993 amendment to the Industrial Court Act; others did not discuss the issue of original jurisdiction of the court over the trade disputes and what constitute a trade dispute and if at all discussed their decisions were decided per incuriam.

Thus, following the decision in **TAMBUENI ABDALLAH'S** case all courts and tribunals below the Court of Appeal are now bound by that decision. Any other decision which is contrary to that stance of the law is now old and obsolete law, including the decision in the case **CHRISTIPHER GASPER (Supra)** and **NJOMBE, LUDEWA & MAKETE COOP. UNION LTD Vs. MINISTER OF LABOUR YOUTH AND CULTURE DEVELOPMENT, Civil Cause No. 8 of 1994** (Songea) where it was held that the only remedy available to the employees who have been unlawfully declared redundant by employer and his workers committee is to file a suit in an ordinary court.

The present case falls on all fours within the ambit of Tambueni Abdallah case (supra). There is no dispute that the respondents claims revolves around redundancy and no-employment as submitted by the counsels for the appellant and substantially conceded by Mr. David Kapoma. It is also undisputed at this juncture that a declaration of redundancy and especially when it is contested by employees is a trade dispute. In addition the definition of "trade dispute" as per section 2(a) of the Industrial Court of Tanzania (amendment) Act No. 2 of 1993 encompasses a dispute on non-employment as a trade dispute; It has also been resolved that the court other than the Industrial court has no jurisdiction to entertain a trade dispute. Yet, the respondents went to the District Court and requested it to declare that they were still in the employment of the appellant because of the violation of the voluntary agreement which they (Respondents) termed "compulsory agreement".

In other-words the court was invited to venture and deliberate generally on the whole issue of redundancy, non-employment and validity of the Voluntary Agreement duly registered by the Industrial Court. The issues fundamentally based on trade dispute which are ousted from the mandate of the ordinary court by the law and vested upon the Industrial Court.

I am of the settled view that the Civil Case No. 4 of 1999, the very mother of this appeal was wrongly filed in the District Court Registry and the correct

and mandatory procedure for such cases is as elaborated by the Court of Appeal in the case of **TAMBUENI ABDALLAH (Supra).**

It is stance of the law that the question of jurisdiction is not merely one of form. It is fundamental and any trial conducted by a court with no jurisdiction to try the same will be declared a nullity on appeal or revision. (See **Melisho Sindiko Vs. Julius Kaaya (1977) TLR NO.18 and JOHN AGRICOLA (Supra).** Therefore, the first ground of appeal alone is enough to dispose of this appeal without embarking on the second category of ground of appeal because the trial District Court had no legal jurisdiction to entertain the case. I am convinced that any attempt to determine the remaining grounds of appeal would amount to a mere academic exercise and waste of time and indeed reverting to perform exercise clearly ousted from this court by the operation of the law.

In conclusion therefore, I hereby declare the proceedings and judgment of the trial District Court a nullity and set it aside. Appeal is hereby allowed with costs to the appellant.

M.S. SHANGALI, J
27.1.06

Judgment delivered todate 27th January, 2006 in the presence of Dr. Ngululma and Mr. Akaro, Learned counsels for the appellant and Mr. David Kapoma, the respondents representative.

THE HIGH COURT OF

M.S. SHANGALI, J
27.1.06