

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 98 OF 2004

UBUNGO SPINNING MILLS LTD.....APPELLANT

VERSUS

SELEMANI MTIBU.....RESPONDENT

Date of last order 12/4/2006

Date of Judgment 24/4/2006

JUDGMENT

ORIYO, J.

In Employment Cause No. 27 of 2003 at the Resident Magistrates court at Kisutu, the respondent, Selemani Mtibu, through a Labour Officers Report to a Magistrate, claimed the payment of terminal benefits from the appellant, his former employer, Ubungo Spinning Mills. The following were claimed:-

- a) A months salary in lieu of Notice
- b) Leave not taken
- c) Overtime

The trial court found for the respondent in its ruling of 2/3/2004 and decreed that the appellant pay the respondent Shs. 832,149/= as claimed plus costs of the case.

Dissatisfied the appellant preferred this appeal with three complaints against the trial court:-

- i) That the trial court had no jurisdiction over the matter as the cause of action was founded on summary dismissal
- ii) That the trial court erred in decreeing for the respondent despite the fact that the standard of proof of the entitlements was not met
- iii) That the cause of action was based on employment relationship the court erred in condemning the defendant to costs.

On the first complaint that the trial court lacked jurisdiction to entertain the suit; there was no dispute in the parties submissions that the respondent was employed by the appellant as a watchman; on a monthly salary. Also not disputed was that the respondent's employment was terminated on the date that the appellant closed its factory, that was on 31/3/2002. The letter of termination which was annexed to the respondent's Amended Reply to the Defendant's Written Statement of Defence as Annexure

"SM3" was titled KUFUNGWA KWA KIWANDA stated in part as follows in Kiswahili:-

" Kwa ajili hiyo, Bodi ya Wakurugenzi iliyoketi tarehe 23/3/2002 hapa kiwandani imeamua kukifunga kiwanda kuanzia tarehe 31/3/2002. Kwa hiyo, kuanzia tarehe 1/4/2002 utakuwa umesimamishwa kazi rasmi na kwamba barua hii itakusaidia kuweza kupata michango yako huko N.S.S.F"
(EMPHASIS SUPPLIED)

The respondent argued that the letter served as statutory notice and the issue of equating his termination to a summary dismissal did not arise. It is apparent that the respondent is contradicting himself. Having agreed that the letter "SM.3" was not a statutory notice; his claims in Employment Cause No. 27/03 included "payment of one months salary in lieu of notice" which was duly granted. If "SM3" served as statutory notice, then his claim under paragraph 3(a) of the Report to the Magistrate was baseless and he was not entitled to the same. However, the purpose of the letter was clearly stated in the last sentence. It was

intended to facilitate the respondent to follow up and collect his dues from the Pension Fund (N.S.S.F).

On the foregoing, the respondents case was that of termination without notice and that he was entitled to a months salary in lieu of notice. The letter ("SM3") was not a statutory notice.

Faced with a similar case, the then East African Court of Appeal in the case of KITUNDU SISAL ESTATE VS SHINGO AND OTHERS [1970] E.A 557 at 558 stated as follows:-

"Summary dismissal means dismissal without notice, and the plaintiffs contention that their services were wrongly terminated without notice can only, in my view be construed as a contention that they were summarily dismissed".

On the foregoing it is clear that the respondent was terminated without notice and without payment of one months salary in lieu of Notice. In law, the termination

amounted to a summary dismissal see (Kitundu Sisal Estate decision above).

SECTION 28 of the Security of Employment Act states:-

"No suit or other civil proceedings (other than proceedings to enforce a decision of the Minister or the Board on a reference under this part) shall be entertained in any civil court with regard to the summary dismissal or deduction by way of a disciplinary penalty from the wages of an employee."

In terms of Section 28 of the Security of Employment Act the trial court had no jurisdiction over the matter which arose from the summary dismissal of the respondent. The proceedings, orders and decisions are a nullity. Ground one of Appeal is allowed.

In the result I quash the proceedings and set aside the decisions and orders of the trial court. Having allowed ground one of complaint the appeal is effectively determined

and there will be no useful purpose served to consider the other grounds of appeal.

In the circumstances, I make no order for costs.

K.K. ORIYO

JUDGE

24/4/2006

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