

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 155 OF 2004

GRACE NYIRATU APPELLANT/APPLICANT

VERSUS

MAGIC KINGDOM COMPANY DEFENDANT/RESPONDENT

Date of last order – 18/10/2007

Date of Ruling – 17/12 /2007

R U L I N G

Shangwa, J.

On 25th February, 2005, Grace Nyiratu filed an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court Mandia, J. delivered on 11th February, 2005 in Civil Appeal No. 155 of 2004.

On 5th April, 2007, Magic Kingdom Company Ltd filed a notice of preliminary objection against Grace Nyiratu's application for leave to appeal to the Court of Appeal. The

preliminary objection is based on one ground which reads that this Court has no jurisdiction to entertain this matter by virtue of clear mandatory Provisions of the Industrial Court of Tanzania Act, [Cap. 60 R.E. 2002].

The Laws offices of Chipeta and Associates who represented the Respondent in this case made lengthy written submissions on behalf of Magic Kingdom Company Ltd. In brief, they submitted that the application involves a trade dispute as defined under the provisions of the Industrial Court of Tanzania Act [Cap. 60 R.E. 2002] due to the fact that the Applicant Grace Nyiratu is claiming for employment benefits arising from the alleged unlawful termination of employment. In support of their application, they cited the case of **Tambueni Abdallah and 89 Others Vs. National Social Security Fund** – CAT Civil Appeal No. 33 of 2000 CA (unreported).

In reply, counsel for the Applicant, the Professional Centre Advocates also made lengthy submissions in opposition to the point of preliminary objection raised by Magic Kingdom Company Ltd. In brief, they submitted that the preliminary objection is misconceived. They argued that at this stage the court is not looking into the merits of the case but that the Applicant wants to appeal to the Court of Appeal of Tanzania against the decision of this Court. They further argued that the Respondent ought to have raised the point Of lack of jurisdiction earlier before the suit was determined by this Court or reserve it for decision by the Court of Appeal of Tanzania once leave to appeal is granted.

In my view, there is nothing in the provisions of the Industrial Court of Tanzania Act [Cap. 60 R.E. 2002] which prohibits this Court from entertaining an application for leave to appeal to the Court of Appeal of Tanzania in cases where such an application has been filed for determination. With

respect to counsel for the Respondent/objector, this application does not involve a trade dispute. It simply contains points of law which counsel for the Applicant have identified to be involved in the decision of this court and are worthy of consideration by the Court of Appeal of Tanzania.

Due to the fact that the decision which is intended to be appealed from was not arrived at by this Court in the exercise of its original jurisdiction but in the exercise of its appellate jurisdiction, the case of **Tambueni Abdallah and 89 Others Vs. Social Security Fund** already cited is irrelevant. In that case, the Court of Appeal of Tanzania held that the High Court has no original jurisdiction to try a case in which a trade dispute is involved.

I therefore agree with Counsel for the Applicant that the Respondent's preliminary objection that this Court has no jurisdiction to hear this application for leave to appeal to the Court of Appeal of Tanzania against this court's decision

is misconceived. For this reason I hereby dismiss it with costs.

In their application for leave to appeal to the Court of Appeal Counsel for the Applicant have submitted five points of law which they contend are involved in the decision of this Court in Civil Appeal No. 155 of 2004. These points are listed at paragraph 7 of the affidavit of Martin Matunda in support of the application for leave to appeal to the Court of Appeal. They read as follows:

- 1. Whether a written contract of employment can be enforced before it has been attested.*
- 2. Whether an employee with a fixed term written contract is in law regarded as an employee on probationary period.*

3. *Whether the Applicant proved before the trial court that she was victimized and that the principle of Fiiio was not followed.*
4. *Whether the employer can prematurely terminate the employee's contract of service without good cause; and whether clause 7 of the applicant's contract of service was properly involved in respect of the Applicant.*
5. *Whether the Applicant's termination of services was lawful.*

In my opinion, point 1 and 2 are not involved in the decision of this Court in which the Applicant's appeal was dismissed with costs. It is only points 3 to 5 that are

involved and are worthy of consideration by the Court of Appeal of Tanzania.

Basing on those points, I hereby grant leave to the Applicant Grace Nyiratu to appeal to the Court of Appeal against the decision of this Court in Civil Appeal No. 155 of 2004.



A handwritten signature in black ink, appearing to read "A. Shangwa".

A. Shangwa

JUDGE

17/12/2007

Delivered in Court this 17th day of December, 2007 in the presence of Mr. Kobas for the Applicant.

A handwritten signature in black ink, appearing to read "A. Shangwa".

A. Shangwa

JUDGE

17/12/2007