

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CORAM: MANDIA, J., ORIYO, J. AND SHANGWA, J.,

CIVIL APPEAL NO. 125 OF 2005

(Originating from the award and order of the Industrial Court of Tanzania by
Hon. Mipawa Deputy Chariman & Hon. Sambo Deputy)

TANZANIA BREWERIES LTD. APPELLANT

VERSUS

MOHAMED KAZINGUMBE RESPONDENT

Date of last order - 17/11/2006
Date of Judgment - 13/4/2007

J U D G M E N T

MANDIA, J.:

On 8th April, 2005, the Industrial Court of Tanzania, sitting in its revisional jurisdiction, rendered its decision in which it dismissed an application for revision against a decision of the Industrial Court exercising original jurisdiction. The dismissal of the application for revision has led to the present appeal.

The Memorandum of Appeal filed by the appellant has four grounds of appeal which we quote below:-

“(a) That the Court erred at law in holding that misappropriation was incomplete because there was mere preparation and no asportation.

(b) That the court erred in law and fact where it held that the Respondent’s acts were minor misconducts punishable by reprimand “*onyo kali la maandishi*” and did not amount to fraudulent and dishonest behaviour.

(c) That the Court erred in law and fact where it held that even if the Respondent is guilty of minor misconduct still he did not enjoy the

said three crates because they remained in the hands of the Appellant.

(d) That the Court erred in law and fact in that it had no jurisdiction to entertain revision as it was improperly constituted."

On 19/7/2006 we made an order allowing the appeal to be argued through written submissions. We set a timetable for presenting written arguments. We are grateful that all parties stuck to the timetable set, and congratulate counsel for their industry.

After going through the submissions of both parties we are of the settled opinion that the issues raised in the first three grounds are issues of fact, not law, though the second and third issues are shown as issues of mixed fact and law. We form this opinion because the first three grounds hinge on whether the respondent

transported three crates of beer to Gate Number One without a gate pass or not. The trial court and the revisional panel did not make a specific finding on whether there was theft or not, which means the facts which could establish liability, and upon which a disciplinary penalty could be based, were not established. The finding on whether there was theft or not is a finding of fact. It is an established principle of law that an appellate court, as we are, cannot interfere with a decision of a lower court based on findings of fact, unless the findings are so grotesque as to occasion a failure of justice. This being the case, we cannot say there is an error made by the lower courts warranting intervention by this court. We therefore find the first three grounds not established and we dismiss them.

The fourth and last ground relates to jurisdiction. In this ground, the appellant faults the trial Chairman of the Industrial Court for presiding over the original proceedings and also the revisional panel. We are of the opinion that there was nothing untoward in the Chairman of the Industrial Court presiding over the original proceedings and the revisional panel. Section 28 (2) of the Industrial

Court of Tanzania Act sets out the composition of a revisional panel as the Chairman sitting with two Deputy Chairmen and two assessors different from those who sat on the Court when it first heard the dispute. Section 2 of the Industrial Court Act defines Chairman thus:-

“Chairman” means the Chairman of the Court, appointed under Section 17;”

Since Section 17 which constitutes the Industrial Court of Tanzania establishes the post of Chairman for purposes of original jurisdiction under Section 16 of the same Act, and since Section 28 (2) which constitutes the revisional court also refers to the Chairman as appointed under Section 17, the law envisaged the Chairman of the Industrial Court of Tanzania to sit both in original jurisdiction and in revisional proceedings. Unwholesome as this situation is, it is the law as currently provided. For this reason we dismiss the fourth ground.

At the end of it all, we find the appeal devoid of merit. The same is dismissed with costs.

Dated this 13th April, 2007.



W.S. MANDIA

JUDGE



K.K. ORIYO

JUDGE

13/4/2007

A. SHANGWA

JUDGE

13/4/2007

13/4/2007

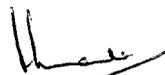
Coram: W.S. Mandia, J.

For the Appellant: Absent

For the Respondent: in person

C.C.: Shomary

Court: Judgment pronounced.


W.S. MANDIA

JUDGE

13/4/2007


K.K. ORIYO

JUDGE

13/4/2007

797 Words.