

IN THE HIGH COURT OF TANZANIA  
AT TABORA.

APPELLATE JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 123 OF 2007

ORIGINAL CRIMINAL CASE NO. 539 OF 2005

OF THE DISTRICT COURT OF KAHAMA DISTRICT

AT KAHAMA.

BEFORE: J.S.K. HASSAN, Esq; RESIDENT MAGISTRATE

KAHAMA MINING CORPORATION LTD.....APPELLANT

(Original Accused)

VERSUS

THE REPUBLIC.....RESPONDENT

(Original Prosecutor)

JUDGMENT

*17<sup>th</sup> Sept. 08 & 26<sup>th</sup> Sept. 08*

MUJULIZI, J.

The Appellant, KAHAMA MINING CORPORATION LTD, was charged and convicted on eleven (11) counts of; Disobedience of a statutory Duty, contrary to Section 123 of the Penal Code.

Consequently, it was sentenced by the Kahama District Court (J.S.K. Hassan, RM) on 28/05/2007, "to pay fine of Shs. 5,000/= in default to be imprisoned for six months on all eleven counts - *"the sentences runs consecutively of fine (sic) in the event of default custodial sentence runs concurrently.* The Court ordered further! "Order: *The accused is ordered to pay the complainant Shs. 2,515,244/= which is his half salaries within seven days.*"

The Appellant appeals against both convictions, sentences and order of the District. They are represented by, Mr: Galati Mwantembe, learned Advocate. The Respondent Republic was represented by Mr. Mokiwa learned State Attorney. He did not support the decision of the District Court.

He was correct in taking that stance.

The Appellant filed a total of four (4) grounds of Appeal;

1. *That the learned trial magistrate erred in law and fact by trying a case which involved labour issues for which the court had no jurisdiction to try.*
2. *That the honourable trial magistrate erred in law by ordering the appellant to pay the complainant half salary for a period when there was no any subsisting Contract of*

*service between the appellant and the complainant and no services were given by the complainant.*

3. *That the learned trial magistrate erred in law by convicting the appellant while there was no sufficient evidence adduced by the prosecution side which proved the offences for which the appellant was convicted."*

Before Mr. Mwantembe could address the Court on the above grounds; I raised an issue as to whether, the Appellant being a Corporate person was liable to custodial sentence and if so how would it be effected?

Admittedly, since the Appellant had opted to pay the fine, this issue did not tax the learned Counsel's mind.

Section 123 provides:-

***"A person who willfully contravenes any written law by doing any act which it forbids or by omitting to do any act which it requires and which concerns the public or any part of the public, is guilty of an offence and is liable, unless a different punishment is provided by that or any other law for the disobedience, to imprisonment for two years."***

Section 27 (2) of the Penal Code provides;

***“(2) A person liable to imprisonment may be sentenced to pay a fine in addition to, or instead of imprisonment, or where the Court so determines under the Community Service Order.”***

It is clear to me from the clear construction of the two above sections of the Penal Code, that the Appellant being a body corporate was not such person intended by the prohibition under section 123, Penal Code (Cap.16 R.E. 2002).

Although corporate persons may be liable to Criminal charges through the acts of its employees, in this event section 123 above is not such incidence.

The section was clearly passed to cover human persons as exemplified by the custodial penalty imposed by the said provision.

Secondly, the particulars of the offence were in all counts drafted as follows:-

***“That GENERAL MANAGER KAHAMA MINING CORPORATION LTD of P.O. Box 891, KAHAMA To whom the Employment Ordinance Cap. 366 and the Security of Employment Cap.***

*574 applies failed to pay Tshs. 228,770 half salary being wages due for the month of (January) (2004) to his Employee (name) to whom have Criminal Case arose out of and in the course of his Employment in the capacity of Mechanical Fitter."*

*Now, by its very construction section 123 relates to doing or omitting to do any act either forbidden or required to be done by a written law, and such act being an act Concerning the Public or any part of the Public.*

In this case the disclosed offence relates to failing to pay a named employee of the appellant a salary arising out of a private contract of employment.

Such could not by any means be classified as a matter concerning the public. The dispute at hand was clearly in the realm of private civil law.

Thirdly, at the time the offences are said to have been committed, there was no such laws as the Employment Ordinance (Cap.366) or the Security of Employment (Cap. 354). A person could not have been held liable under any non-existent provision. Worse still the particular sections creating the contravened duty were not disclosed.

In the above premises not only were the charges not properly framed but the disclosed offence was not applicable to the appellant or in the circumstances of a private law dispute.

I therefore quash the Convictions on all the eleven counts of disobedience of a statutory Duty Contrary to section 123 of the Penal Code (Cap. 16 R.E. 200) and substitute the same with Orders acquitting the Appellant of all the eleven Counts of Disobedience of statutory Duty Contrary to section 123 of the Penal Code - (Cap. 16 R.E. 2002).

Consequently, the sentences and orders are also set aside. Perhaps, before leaving this matter, I should note in passing, that although according to section 31, Penal Code - (Cap. 16 R.E. 2002).

***“In accordance with the provisions of section 348 of the Criminal Procedure Act, any person who is convicted of any offence may be adjudged to make compensation to any person injured by his offence and the compensation may be either in addition to or in substitution for any other punishment.”***

It is clear that the learned District Resident Magistrate completely misconstrued the extent and intent of the powers given to the Court in a Criminal Case.

In this instance the sum of Tshs. 2,515,244 ordered to be paid to the "*complainant*" (whatever that meant) *which is his half salaries within seven days,*" was not in the nature of compensation for injury occasioned by the charged offence.

The Court, as correctly submitted by Mwantembe, learned advocate for the Appellant exceeded its powers in dealing with claims which were purely Civil in nature in a Court exercising Criminal jurisdiction.

Courts of law are regulated by the laws which establish them and are limited to the extent of powers conferred upon them. The exercise of such powers must be used carefully and within the four corners prescribed, by the relevant law.s

The Criminal and Civil jurisdictions of the Court are mutually exclusive. I allow the appeal.

Order accordingly.



A.K. MUJULIZI

JUDGE

26/09/2008

Judgment delivered in the presence of Mr. Kayaga learned Advocate holding brief for Mr. Mwantembe for the appellant and Mr. Mugisha Kassano learned State Attorney for the Respondent Republic.



A.K. MUJULIZI

JUDGE

26/09/2008