

**IN THE HIGH COURT OF TANZANIA
AT MWANZA
HIGH COURT CIVIL APPEAL NO. 1 OF 2008**
(Originating from Resident Magistrate Court
Musoma Civil Case No. 27/2006)

**1. JUMANNE KABATI
2. JUMA MALIMA
3. MASHAKA MASAU** } **APPELLANTS**

Versus

**DEPOT MANAGER,
TANZANIA BREWERIES LTD
MUSOMA** } ...**RESPONDENT**

JUDGMENT

14/5/2009 & 6/8/2009

NYANGARIKA, J:

The appellants filed unsuccessfully a suit against the respondent before the Resident Magistrate Court of Mara at Musoma claiming for various relief's founded on employment.

Dissatisfied with the Judgment of the trial Court, the appellants had preferred this appeal to this Court.

The appellant has registered four grounds of appeal.

When the appeal was called on for hearing, the appellants appeared in person but the respondent has hired the services of Mr. Buntulaki, learned counsel.

The record show that the suit before the trial court was filed on 22/8/2006 by way of a plaint. Thereafter a written statement of

defence was filed on 7/9/2006 and reply to the written statement of defence filed on 18/9/2006.

I have carefully perused the trial court record but there is no labour report filed as required under the provision of **Section 141 of the Employment Act (Cap 366 RE 2002)**.

Under **Paragraph 7(1) of the 3rd Schedule of the recent Employment and Labour Relations Act No. 6 of 2004** it is provided that any trade dispute in the repealed law that arose before the commencement of this Act shall be dealt with as if those laws have not been repealed.

With these principles to guide me now I proceed to consider and determine the appeal before me.

In view of the fact that the cause of action in the present appeal arose between 28/12/2004 and 9/5/2006 when the claim of loading and off loading crates surfaced and so long as the Employment and Labour Relations Act No. 6 of 2004, became operational on 5/1/2007, it goes without saying that the law applicable is the repealed laws (i.e. **the Employment Act (Cap 366 RE 2002)**).

Under **Section 139 of the Employment Act (Cap 366 RE 2002)** any labour dispute had to be dealt with by the labour officer before it can find its way to the trial magistrate under **Section 141 of the Employment Act (Cap 366 RE 2002)** by way of a labour report.

It is only under the provisions of **Section 141, 142, 143 and 144 of the Employment Act (Cap. 366 RE 2002)** that a trial Magistrate has jurisdiction in labour matters.

Parties cannot by agreement or otherwise confer jurisdiction upon a court (**see the case of Tanzania Electric Supply Co Ltd versus PTL & Others Consolidated Civil application No. 19 of 1999 and 27 of 1999 unreported (CA)**).

A point of jurisdiction may be raised at any stages even at an appellate stage and even if it was not raised in the lower court because jurisdiction is always an issue.

It is a principle of law that the Primary duty of a court is to investigate whether or not it has jurisdiction in a matter before proceeding to hear or determine it.

A point of law can be raised by the appellate court suo moto (see **M/s Tanzania – China Friendship Textile Co Ltd Versus Our Lady of the Usambara sister, civil appeal No. 84 of 2002 (Unreported) (CA)**).

This tows a long chain of authorities set in the past. Thus in **Mandaria versus Singh (1965) EA 118** it was held that the issue of jurisdiction may be raised at any time.

In this appeal, it is obviously therefore that the trial magistrate has no original jurisdiction to deal with labour disputes until after a labour officer has failed to effect a settlement and had referred it by way of a labour report under **Section 141 of the Employment Act (cap 366 RE 2002)**.

This point of jurisdiction is enough to dispose of the whole appeal.

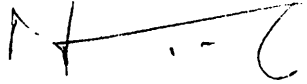
I will therefore not waste my breath in disposing all the arguments raised in this appeal as the question of jurisdiction is enough to dispose off the whole appeal.

Now as hinted earlier on, the trial magistrate has no original jurisdiction to deal with the labour dispute, the subject of this appeal.

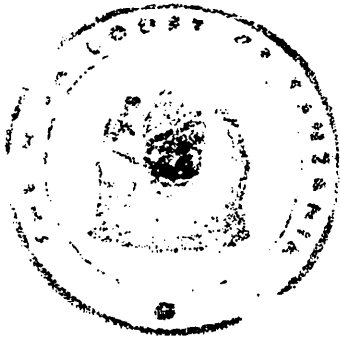
I therefore struck off this appeal with no orders to costs and nullify the entire proceedings, judgment and decree of the trial court.

The appellants are strongly urged to search their rights by following the Laid down procedure under **Sections 139, 141, 142, 143 and 144 of the now repealed Employment Act (cap. 366 RE 2002)** the period within which the cause of action arose but subject to the law of limitation.

Order accordingly.



K. M. Nyangarika
JUDGE



Date: 6/8/2009

Coram: Hon. Nyangarika, J

1st Appellant: Present in person

2nd Appellants: Absent but reported sick

3rd Appellant: Present in person

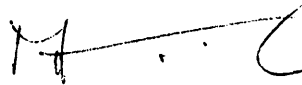
Respondent: Bantulaki, Advocate

B/C Rose

Order:

Judgment delivered to day in the presence of the 1st & 3rd Appellant in person and Mr. Bantulaki, learned counsel for the respondent but in the absence of the 2nd appellant who was reputed to be sick.

Right, time and procedure of appeal fully explained to the parties.



K. M. Nyangarika
JUDGE