

**IN THE HIGH COURT OF TANZANIA  
AT MWANZA  
HIGH COURT CIVIL APPEAL NO. 14 OF 2007**  
(Arising Civil Case No. 85 of 2006 of the  
District Court of Nyamagana at Nyamagana)

**RAMADHANI HASSANI ..... APPLICANT  
VERSUS**

**DIRECTOR, SATYAM FAST FOOD  
NYERERE ROAD MWANZA..... RESPONDENT**

**JUDGMENT**

19/8/2008 & 4/8/2009

**NYANGARIKA, J:**

On 2/10/2006 the Labour Officer on behalf of the appellant presented a Labour report regarding a labour dispute between the parties pursuant to **Section 141 of the Employment Act (cap. 366 RE 2002)** to the District Court of Nyamagana at Mwanza (hereinafter referred to as the trial Court).

On 26/6/2007, following an objection raised by the respondent counsel, the trial court struck out the suit for want of jurisdiction with direction that the appellant take the proper forum.

It is from the above ruling that the appellant preferred the present appeal to this court.

When the appeal was called for hearing, the appellant appeared in person and was allowed to proceed *ex parte* with the appeal because the respondent failed to appear after being served.

The appellant summarized his 5 grounds of appeal before this court by submitting generally that the trial court misdirected itself both in law and fact by holding that it had no jurisdiction on the labour dispute because he was summarily dismissed.

The appellant also said that he was denied by the trial court an opportunity of being heard in respect of the verbal objection raised by the respondent without prior notice contrary to the cardinal principles of natural justice.

The record of the trial court show that on 26/6/2007 when both parties appeared before Hon. Magafu, PDM, counsel for the respondent raised verbal objection regarding jurisdiction of the trial court on the allegedly summary dismissal and without hearing the appellant, the trial court sustained the objection by striking out the suit.

According to Para 4 and 7(a) of the labour report filed in the trial court on 2/10/2006, the report reads on the said paragraphs as follows:

***"4. That on 31/5/2006 the defendant terminated the plaintiff from employment by verbal notice of termination with effect from the same date"***

**7. That the plaintiff is now instituting a civil suit in court claiming payment of his terminal benefits dues including unpaid overtime for extra hours worked from the defendant as follow:**

**(a) payment of one month's" wage in lieu of notice Tshs. 48,000/=.**

In my view Para 7 of the labour report may be taken as reliefs where the trial is called upon to exercise its discretion powers to allow such a relief or not, depending on the evidence adduced and the law.

The trial court has implied Para 9 of the labour report in its ruling to have the effect of summary dismissal.

I am sure that the learned trial magistrate is aware that a summary dismissal is a dismissal without notice.

I also agree with the trial court that summary dismissal has its own procedure as held in the **case of Jackson Rweyemanu & Sothers v. G. M Marine Division, Mwanza High Court Mwanza, Revision No. 1 of 2001 (unreported).**

One of the complaint by the appellant in this appeal is that he was denied an opportunity to be heard on an objection raised without prior notice.

Under **Section 143(2) and (3) of the Employment Act (cap 366 RE 2002)** once a labour report is presented, the magistrate shall proceed to try the issues disclosed in the report as if the proceedings before him were a civil suit without requiring the parties or any, to file any pleadings, and the **Civil Procedure Code** shall, in so far as they may be applicable, apply to the proceedings.

The Principle and practice enshrined under our **Civil Procedure Code (Cap 33 RE 2002)** is against surprises. If the court is of the view that the such matters or points of law if not raised before would be likely to take the opposite party by surprise, the court should not entertained it unless or until the party wishing to raise it had issued a prior notice to the opposite party.

I am aware that a point of law can be raised at any time by any party and even if not raised, the court can raise it ***suo moto*** because it is always an issue but that does not mean that the opposite party should be caught by surprise on such a point.

But, even more serious, although the appellant appeared before the trial court during hearing, he was not afforded a right of hearing. The right to be heard is a cornerstone principle of justice. The appellant should have been afforded an opportunity to be heard on the alleged point of law raised.

The basis of the ruling of the trial court which struck out the suit is in relation to Para 9 (a) of the labour report which has nothing to do with summary dismissal.

The trial court as required by **Section 143(2) of Employment Act (Cap 366 RE 2002)** was duty bound upon attendance of the parties to proceed to try the issues as disclosed under Para 9 of the report as if the proceeding before it were a civil suit without requiring the parties or any of the party to file any pleading.

In my opinion, the trial court was supposed to examine the parties in order to correctly and properly frame the issue(s) from the report as provided for under **Order XIV of the Civil Procedure Code (Cap 33 RE 2002)**.

The proviso to **Section 143 (2) of the Employment Act Cap 366 RE 2002** require the trial magistrate after framing issue(s) to hear and determine such proceedings according to substantial justice without undue regard to technicalities of procedure.

A preliminary objection on an issue which has to be proved one way or the other cannot be relied upon to dispose off the whole suit **(see the case of Bikubwa Issa v. Sultan Mohamed Zahran (1997) TLR 295 (HC))**.

I entirely agree with the appellant on the ground that at that stage of proceedings before the trial court, it was premature to determine the alleged point of law raised by the respondent counsel without framing both factual and legally issues after examining the parties.

I therefore allow the appeal with costs, quash and set – aside the ruling and decree delivered by the trial court on 26/6/2007.

The suit shall be heard denovo on its merit by another magistrate with competent jurisdiction in accordance with the law.

Order accordingly.



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**K. M. Nyangarika**

**JUDGE**

Date: 4/8/2009

Coram: Hon. K. M. Nyangarika, J.

Appellant: Present in person

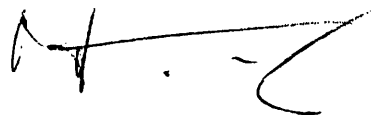
Respondent: Absent

B/C Rose

**Order:**

Judgment delivered today in the presence of the appellant in person but in the absence of the respondent.

Right, procedure and time of appeal fully explained.

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**K. M. Nyangarika**

**JUDGE**