

**IN THE HIGH COURT OF TANZANIA  
AT MWANZA**

**CIVIL APPEAL NO. 13 OF 2008**

(Originating from the District Court of Nyamagana at Mwanza  
in Employment cause No. 28 of 2007)

**ERINEUS ANTHONY ..... APPELLANT  
VERSUS  
DIRECTOR K. M. SECURITY..... RESPONDENT**

**JUDGMENT**

17/9/2009 & 8/12/2009

**NYANGARIKA, J.**

On 30/7/2007, the Regional Labour Officer herein Mwanza on behalf of the appellant presented a Labour Officers report between the parties above pursuant to **Section 141 of Employment Act (cap 366 RE 2002)**.

On 14/11/2007 when the Labour dispute was called in the presence of both parties, the trial Court recorded the following:

**Court:** Both sides have filed their pleadings. This Court therefore after thorough perusal is satisfied to make the summary Judgment.

**Order:** Summary Judgment on 10/12/2007. Parties are hereby notified.

On 10/12/2007, a summary Judgment was indeed delivered where the trial Court struck out the suit for want of jurisdiction.

It is from this summary judgment of the trial court that the appellant had preferred the present appeal to this Court.

In this appeal, the appellant appeared in person but the respondent was represented by Mr. Constatine Mtalemwa, learned counsel.

In his brief submission, the appellant said that the trial Court made an error for holding that it had no jurisdiction without hearing the parties and instead it was supposed to enforce the decision of the Minister for Labour.

I reply, Mr. Mtalemwa, learned counsel for the respondent, conceded that the trial Magistrate misdirected in its judgment and invited me to correct that misdirection by making an order that the trial Court determine the execution of the decision of the Minister for labour for the interest of justice.

He said that under **S. 38 of Civil Procedure Code**, the trial Court as an executing Court has power to look and examine the correctness or otherwise of the decree but said that, that, has not been done, therefore, called upon this Court to exercise its inherent powers and direct the trial court to do so but each party should bear its own costs in this appeal.

I have carefully gone through the proceedings and the judgment appealed from and found that the parties were not heard before the trial Court but the trial court decided to write and deliver what he termed as

“summary Judgment”. There is no summary judgment in our statutes but only summary procedure and judgment nisi.

Under the provision of ***Section 143 (12) of the Employment Act***, the trial Court was duty bound to hear the parties who had attended before it and proceed to try the issue as disclosed from the pleadings in according to substantial justice without undue regard to technicalities of procedure.

Further, the trial Court was supposed to examine the parties in order to frame issues as required under **Order XIV of Civil Procedure Code**.

In its judgment, the trial Court spent much of its time venturing on the issue of summary dismissal which was not even disclosed in the Labour’s report but only raised and argued by the defence.

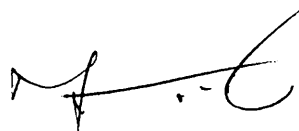
Under **Order VIII rule 2 of Civil Procedure Code**, a point of law originates from the defence against the Labour report unless otherwise raised by the Court Suo moto, in which case, an opportunity to both parties must be given to address themselves on the points before they are determined by the court.

The trial Court never examined the parties to see if that was one of the issues to be determined by it because a preliminary issue which has to be proved one way or another cannot be relied upon to dispose off the whole suit (**see the Case of Bikubwa Issa v. Sultan Mohamed Zahran [1997] TLR 295 (HC)**).

Therefore, without even discussing all the others grounds of appeal, one after another, I agree with the appellant in general that it was premature for the trial Court to determine what it termed as a point of law in what it described as "**summary judgment**" without framing both factual and legally issues after examine the parties and hearing them on those points.

I therefore allow the appeal with costs, nullify the entire proceeding of the trial Court, quash and set aside what it is termed as "summary judgment" and decree thereof.

I make an order that the suit before the trial Court shall be heard denovo by another Magistrate with competent jurisdiction in accordance with the law.



**K. M. Nyangarika**  
**JUDGE**

