

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 429 OF 2002

MATAYO H. KIWAYOPLAINTIFF

VERSUS

VOCATIONAL EDUCATION AND TRAINING AUTHORITY

(VETA).....DEFENDANT

Date of last Order : 15/ 9/ 09

Date of Judgment: 17/9/09

JUDGMENT

MLAY, J.

The Plaintiff MATAYO H. KIWAYO who was an employee of the VOCATIONAL EDUCATION AND TRAINING AUTHORITY, (VETA) who is the Defendant. The Plaintiff has sued the Defendant for unlawful termination of service claiming damages amounting to the total of Tshs. 590,659,500, being earnings for remaining period of active employment for 14 years, leave allowance for 14 years, employers contribution to PPF, housing allowance and compensation for emotional and mental torture.

The plaintiff was initially represented by the late Ngassala

advocate and later by Ms Rwebangwa while Ms Kashonda represented the Defendant. At the hearing, the following issue were framed:

1. *Whether it was a term of the contract of employment that the Plaintiff would be employed by the Defendant until he reached the retirement age.*
2. *Whether the plaintiff was entitled to be conformed in his employment.*

Whether or not the plaintiff was lawfully terminated from employment.

3. *What reliefs the parties are entitled to.*

The Plaintiff led by the late Ngassala, was the sole witness who testified to prove the plaintiffs case while the Defendant also paraded one witness, one ADELHELM MGOMA MERU who was during the material period, first a Regional Director and later the Director General of VETA, who is the Defendant. At the close of the hearing of the suit, with leave of the court, the counsels representing the two parties filed written submissions on their respective cases and the date for delivery of the judgment was set.

It the course of researching on the law in order to write the judgment, it appeared that the question of jurisdiction of this court to entertain the suit may be involved in the light of the decision of the Court of Appeal of Tanzania in Civil Appeal No. 33 of 2000 TAMBUENI ABDALLAH AND 89 OTHERS VS NATIONAL SOCIAL SECURITY FUND, that "**the High Court has no original jurisdiction to entertain trade disputes** ..." Since the matter had not been raised or argued in the course of the hearing, this court gave the counsels of both parties the opportunity to address the court on the question of jurisdiction. Both counsels filed additional written submissions directed on the question of jurisdiction of this court to entertain the plaintiffs suit.

The Defendants advocate citing the case of Mwisi Lyimo and 4 others Vs NBC Holding Corporation, Civil Case no. 112 of 1998 (HCD) (Unreported) submitted that « **the question of jurisdiction is so fundamental that it can be raised and considered at any stage of the proceeding, even if it has not been raised by any party,**

as it goes to the root of the jurisdiction of the court to entertain the dispute". Coming back to the question at hand of whether this court had jurisdiction to entertain the plaintiffs suit, the Defendant's advocate submitted that it lacks jurisdiction. She argued that, "**it is not disputed that this suit arose out of termination of service of the Plaintiff. It was due to that termination of service that the plaintiff instituted the present civil case against the Defendant**". She submitted that, "**since the nature of this suit arose out of termination of services the question of the lawfulness of the termination of services makes the proceedings a trade dispute that ought to have fallen under the jurisdiction of the Industrial Court of Tanzania.**" She further argued that, "**any person dismissed / terminated cannot challenge such termination and seek relief directly in the ordinary court law. With trade dispute there are procedures to be followed under the Industrial Court of Tanzania Act, [Cap 60 R.E. 2002]**". The Defendants advocate then cited and quoted from the decision of the Court of Appeal, in the case of TAMBUENI ABDALLAH AND 89 OTHERS (Supra), the following passage:

*It is clear to us that trade disputes have to follow that proscribed procedure and there is no room for going to the High Court straight **The High Court has no original jurisdiction to entertain trade disputes such matters are dealt with in accordance with the Act.**" [Cap 60.*

R.E. 2002}

The Defendants counsel also quoted the provisions of section 3 of the Industrial Court of Tanzania which defines the term "**trade dispute**" which provisions were considered by the Court of Appeal in the TAMBUENI ABDALLAH'S case. The provisions state as follows:

"trade dispute" means any dispute between an employee and employers or an employee in the employment of that employer connected with the employment or non - employment or the terms of employment, or with the conditions of labour of any of those employees or such employee."

The Defendant's counsel retreated that, " **this dispute arose one of termination of service and therefore a trade dispute for which jurisdiction is rested in the Industrial Court of Tanzania** " she submitted that .." **Since the subject matter of the suit constitutes a trade dispute, this Honourable Court Lacks original jurisdiction to entertain the matter.**" And further that, " **as this court lacks jurisdiction to entertain the suit, the suit is imorooerlv before this court** " Ms Kashonda prayed that the suit be struck out with costs.

The plaintiffs Counsel MS Rwebangira in her written submissions conceded that this court lacks jurisdiction. She stated in her submissions and I quote:

I have read the submissions of counsel for the Defendant which I concede to be the correct position of the law on cases of this nature. I have nothing of substance to add in terms of distinction from the present suit."

The question for determination is whether this court has jurisdiction to entertain the plaintiffs suit. As indicated earlier on in this judgment, the issue of jurisdiction was not raised or argued in the course of the hearing of the suit or in the final submissions filed by the of both parties. The issue was raised by the court suo mottu in the course of preparing to write the judgment, but the parties were given the opportunity to address the court on the subject, which they did by filing additional written submissions, the substance of which is set out above. As the Defendants counsel Ms Mgutto pointed out and quoted from the case of MLISI LYIMO AND 4 OTHERS VS NBC HOLDING COPROTATION decided by this court, the issue of jurisdiction can be raised at any stage the proceedings before Judgment. As the Court of Appeal of Tanzania stated in CIVIL APPLICATION NO. 3 OF 2004, RICAHRD JULIUS RUKAMBURA V ISSACK NTWA MWAKAJILA AND TANZANIA RAILWAYS CORPORATION, (MZA) (UNREPORTED):

*The question of jurisdiction is fundamental in court proceedings and can be raised at any stage, even at the appeal state. The court **suo motu**, can raise it."*

See also FANUEL MANTIRI NGUNDA VS HERMAN MANTIRI NGUNDA AND 20 OTHER (CA) CIVIL APPEAL NO. 8 OF 1995 (Unreported).

In the case of TAMBUENI ABDALLAH AND 89 OTHERS in which the Court of Appeal laid the question of jurisdiction of the High Court in trade disputes to rest, the Appellants sued the Respondent for wrongfully being declared redundant. The Court of Appeal having reviewed the decided cases on original jurisdiction of the High Court in employment matters, having considered the definition of what constituted a trade dispute Section 3 of the Industrial Court of Tanzania Act. Cap. 60 R.E. 2002, was of the view that, the word " non - employment" in the definition, « **includes redundancy So this matter had to be dealt with under Section 4 of the Act...** " The Court of Appeal stated categorically that:

It is clear to us that trade disputes have to follow that prescribed procedure and there is no room for going to the High Court straight. The High Court has no original jurisdiction to entertain trade disputes. Such matters are dealt with accordance with the Act."

The present case is about the unlawful termination of employment of the plaintiff by the Defendant . There is no doubt at all that unlawful termination of employment, is also " **none -employment,**" within the definition of a trade dispute. In the circumstances in the light of the decision of the Court of Appeal in TAMBUENI ABDALLAH AND 89 OTHERS which is binding on the court, this court lacks original jurisdiction to entertain the Plaintiffs suit. The position of the law has been correctly stated by the Defendants Advocate and conceded by the Plaintiffs advocate in their additional submissions upon being asked by this court.

We therefore agree with the Defendants counsel that as this court lacks original jurisdiction to entertain the plaintiffs suit which is a trade depute, the suit is improperly before this court and it is accordingly struck out, with costs.

J. I. Mlay

JUDGE

Dated and delivered in the presence of Ms Kashonda and the plaintiff this 17th day of September 2009. The right of appeal is explained.

J. I. Mlay

JUDGE

17/9/2009