

IN THE HIGH COURT OF TANZANIA

**AT DAR ES SALAAM
CIVIL APPEAL NUMBER 153 of 2009**

**(Originating from Employment Cause No. 175 of 2006 -Resident Magistrate's Court at
Kisutu-S. Fimbo-RM)**

DT DOBIE AND COMPANY.....

APPELLANT

VS

MRS MARY SHAMTE.....

RESPONDENT

JUDGEMENT

Date of last Order: 14-12-2010

Date of Judgment: 10-03-2011

JUMA, J.:

This Civil Appeal No. 153 of 2009 arises from an employment dispute between the appellant D.T. DOBIE & COMPANY (TANZANIA) LIMITED and its employee, the respondent Mrs. MARY SHAMTE. According to the respondent, she was first employed by the appellant on 1st February 1986 in the capacity of General Manager in charge of Tanzania. A trade dispute later arose between the appellant and respondent. On 21st March 2006, after failing to resolve the dispute, the Labour Officer in charge of Dar

es Salaam Region referred it to a magistrate's court. In his letter dated 21st March 2006, the Labour Officer specifically sent the dispute to the Principal Resident Magistrate in charge of Resident Magistrate's Court at Kisumu. The Resident Magistrate's Court received the dispute and transformed it into Employment Cause No. 175 of 2006 where the respondent Mrs. MARY SHAMTE became the plaintiff, and appellant D.T. DOBIE & COMPANY (TANZANIA) LIMITED was made the defendant.

At the trial court the respondent sued the appellant for a sum of Tshs 152,713,736/= unpaid salaries, severance allowance, repatriation allowance, among others. The judgment of the trial court was delivered on 7th May 2008 in respondent's favour. The trial magistrate ordered the appellant to pay the respondent severance allowance totalling TZS 1,924,393.07, salary arrears of between May 2001 and August 2005 amounting to TZS 40,032,166.55. Appellant was in addition ordered to foot the repatriation expenses for the respondent's luggage from Dar es Salaam to Nairobi amounting TZS 10,000,000/= and also air ticket for respondent and her husband totalling USD 600. The trial court ordered the appellant to pay the respondent a sum of TZS 10,000,000/= and TZS 90,000/= as golden handshake and subsistence allowance respectively.

Memorandum of Appeal against the Judgment and Decree of the Resident Magistrate's Court contains a total of twelve grounds.

In his first ground of appeal, appellant averred that the trial Resident Magistrate's Court had no jurisdiction to entertain the Employment Cause No. 175 of 2006 and the resulting Judgment and Decree of that trial court is a nullity. Hearing of this appeal proceeded by written submissions. The first ground of appeal touches on the issue of jurisdiction of the trial resident magistrate's court. It has the potential to dispose of this appeal without having to look at other eleven remaining grounds of appeal. I will first deal with this jurisdictional ground before moving on to other grounds.

Submitting in support of appellant's contention that the proceedings and resulting Judgment of the Resident Magistrate's Court was a nullity, Rex Attorneys averred that Employment Cause No. 175 of 2006 arose from a report dated 21 March 2006 by a Labour Officer in line with section 142-(1) of the **Employment Act Cap 366 (R.E. 2002)**. It was submitted further that this report should not have been sent to a Resident Magistrate. It should have been sent instead to a district magistrate. The learned counsel from Rex Attorneys proceeded to draw my attention to earlier decisions of this court which support appellant's contention that the Resident Magistrate's Court at Kisumu had no jurisdiction over the Employment Cause No. 175 of 2006. In the referred to case of **Mussa M.Z. Massatu vs. Director Diesel Electronics Services Ltd, HC Civil Appeal No. 134 of 2004 (unreported)** this High Court through Mandia, J. (as he then was) interpreted section 132 of the **Employment Ordinance Cap 366**. Section 132 incidentally became

section 142 when the **Employment Ordinance Cap 366** was revised in the 2002 edition to become **Employment Act Cap 366 (R.E. 2002)**. In his interpretation Mandia, J stated at page 2:-

“...Under section 132 of the **Employment Ordinance Cap 366**, such a report sent to a District Magistrate sitting in a District Court, and not a Resident Magistrate's court. The court of Resident Magistrate at Kisumu is not a District Court so there was no proper court to resolve the dispute referred to the 'court' under section 132 of the **Employment Ordinance....**”

Appellant's counsel in addition referred me to another decision of this court to support its contention that labour disputes are to be referred to a District Court but not a Resident Magistrate's Court. In the case of **Charles Chiwaya & Others vs. The Director of Telesecurity Ltd, Civil Revision No. 56 of 2006 HC at DSM (unreported)** High Court was called upon to revise the decision of Resident Magistrate's Court at Kisumu in Employment Cause No. 229. Once again, on page 3 of his Judgment; Mandia, J. (as he then was) reiterated what he had earlier stated in 2004 in the case of **Mussa M.Z. Massatu vs. Director Diesel Electronics Services Ltd (supra)**:

“...Under section 132 [of the **Employment Ordinance**] jurisdiction to determine labour disputes is conferred on a district magistrate. The trial court was a court of Resident Magistrate, and the trial magistrate was a

Resident Magistrate. If the proceedings were determined by a Resident Magistrate sitting in a District Court they would have been proper, since by definition a Resident Magistrate is also a District Magistrate where a district magistrate cannot sit, and the trial magistrate is a Resident Magistrate who has no jurisdiction to handle the matter under section 132 of the of the **Employment Ordinance** as he was sitting in a Resident Magistrate's Court. The trial was therefore a nullity."

In the replying submissions filed on her behalf by Amicus Attorneys, respondent maintains that the Resident Magistrate's Court at Kisumu had the requisite jurisdiction to deal with the Employment Cause No. 175 of 2006. Amicus Attorneys supported respondent's position by citing section 2 of the **Magistrates Courts Act, Cap 11** which defines "district magistrate" as including a resident magistrate. Accordingly, respondent invited this Court to make a finding that reference to the district magistrate under section 142 of the **Employment Act** includes a Resident Magistrate. Respondent brushed off the two decisions of High Court which suggest that a resident magistrate sitting in a Resident Magistrate's Court has no jurisdiction over labour disputes as *per incuriam*.

In his rejoinder, the appellant's counsel does not dispute that indeed the definition of a "district magistrate" under section 2 of

the **Magistrates Courts Act** indeed includes a Resident Magistrate. But the learned counsel for the appellant hastens to point out the jurisdiction which is conferred on a district court or a district magistrate can only be exercised by a Resident Magistrate in circumstances mentioned in sections 40 and 41 of the **Magistrates Courts Act**. Employment matters under **Employment Act** Cap 366 are not amongst the circumstances under section 40 and 41 of the **Magistrates Courts Act** which a Resident Magistrate sitting in a Resident Magistrate's Court can handle.

I have considered the opposing submissions, statutory provisions and the case law which the appellant and the respondent have cited in support of their respective positions. I should perhaps begin by pointing out that the relevant section 142 of the **Employment Act Cap 366 (R.E. 2002)** specifically vests jurisdiction on district magistrates over cases or matters arising between employers and their employees:

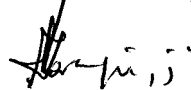
(1) Every District Magistrate (whether or not he is a civil magistrate) shall have jurisdiction, notwithstanding anything to the contrary contained in any Act or written law respecting the jurisdiction of such magistrate, in all cases or matters arising between employers and their employees and with reference to their relative rights and duties or to any matter or thing or offence for which provision is made in this Act.

There is no doubt in my mind that the issue of jurisdiction over labour disputes is statutory. No court can assume jurisdiction over a matter unless such jurisdiction is conferred upon by a provision of law. In my opinion the law is elementary that where a statutory provision contains a specific reference to a court, that specific reference must be given effect to. Section 142-(1) of the **Employment Act, Cap. 366 (R.E. 2002)** is a very specific provision giving district magistrates specific jurisdiction over labour disputes. I do not think this specific provision was meant to apply to resident magistrate's courts presided over by resident magistrates as established in a general statute i.e. **Magistrate's Courts Act, Cap 11** which establishes magistrate courts in Tanzania. In as long as Section 142-(1) of the **Employment Act** mentions specific magistrate i.e. District Magistrate, the intention of the legislature here is that other magistrates like Resident Magistrates sitting in Resident Magistrate's Court who are not specifically mentioned under this provision are not intended to deal with trade disputes.

Accordingly, I am in full agreement with the restatement of law by Mandia, J. (as he then was) in the two cases of **Mussa M.Z. Massatu vs. Director Diesel Electronics Services Ltd (supra)** and that of **Charles Chiwaya & Others vs. The Director of Telesecurity Ltd (supra)**. It is a District Magistrate sitting in a District Court who is vested with the jurisdiction under section 142 (1) of the **Employment Act** to hear and determine trade disputes. In

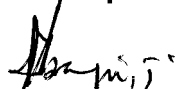
addition, I fully subscribe to the principle of law restated by the Court of Appeal (Kisanga JJA, Omar JJA and Mapigano Ag JA) in **William Rajabu Mallya and two others vs R [1991] TLR 83** to the effect that if a case is designated for a particular court, then it should be heard by a member of that court notwithstanding that another court shares some substantive jurisdiction over the same matter.

Having found that the trial Resident Magistrate's court lacked requisite jurisdiction to determine the Employment Cause No. 175 of 2006 which was wrongly sent to that court by a Labour Officer, it will serve no useful value for me to look into other remaining eleven grounds of this appeal. I hereby hold that the Resident Magistrate who presided over the Employment Cause No. 175 of 2006 at Kisumu was not a District Magistrate within the specific statutory language employed by section 142 of **Employment Act, Cap. 366 (R.E. 2002)**. This appeal is hereby allowed with costs.



I.H. Juma
JUDGE
10-03-2010

Delivered in presence of: Ndege, Advocate (for the Appellant)
and Kusaliika, Advocate (for the Respondent).



I.H. Juma
JUDGE
10-03-2010

