

IN THE HIGH COURT OF TANZANIA

**AT DAR ES SALAAM
CIVIL APPEAL NUMBER 68 of 2011**

**(Originating from Resident Magistrate's Court of Dar es Salaam at Kisutu Civil
Case No. 41 of 2003, F.S.K Mutungi-PRM)**

TANZANIA REVENUE AUTHORITY.....APPELLANT

VS

WENCY M. SETONGA..... RESPONDENT

Last Order: 07-05-2012

Judgment: 12-06-2012

JUDGMENT

JUMA, J.

At the Resident Magistrate's Court of Dar es Salaam at Kisutu, the respondent Wency M. Setonga filed an amended plaint claiming that the appellant Tanzania Revenue Authority had terminated his employment on the basis of a contract that was invalid and unenforceable in law.

The background facts leading up to this appeal may be traced back to 25th May 1996 when the appellant appointed and employed the respondent as a Deputy Commissioner

responsible for investigations, audit, prosecutions and preventive services. After completing one year probation, the respondent was on 29th July 1997 confirmed on permanent and pensionable terms. Respondent claims that in June 1999 the appellant unilaterally changed the respondent's employment status from permanent and pensionable employment terms to three years Service Contract terms.

In his judgment and orders dated 20th March 2006, the learned Principal Resident Magistrate (F.S.K. Mutungi) issued a declaration that the appellant's refusal to renew the respondent's service contract was unjustified, unlawful and ordered its renewal from 1st July 2002. And that was not all. The learned trial magistrate further ordered the appellant to pay the respondent general damages assessed at TZS 40,000,000/=, and costs. Dissatisfied with the decision of the trial court, the appellant filed the present appeal based seven grounds of grievance. Hearing of this appeal proceeded by way of written submissions.

The first ground of appeal touches on want of jurisdiction of the trial resident magistrate's court to hear and determine

Civil Case No. 41 of 2003. I will first deal with jurisdictional ground of appeal before moving on to other grounds.

Submitting in support of jurisdictional ground the learned M/S M.A. Ismail & Co Advocates contends that the Court of the Resident Magistrate should not have entertained a trade dispute over which it had no jurisdiction. The learned firm of Advocates drew my attention to sections 3, 10 and 4 of the repealed **Industrial Court of Tanzania Act** which were applicable on 11th March 2003 when the respondent filed the Civil Case No. 41 of 2003 at the Resident Magistrate's Court. According to the M/S M.A. Ismail & Co Advocates, the above cited sections 3, 10 and 4 in their totality define "trade disputes" and also provide the way these trade disputes are to be reported. It was submitted that these provisions did not envisage the jurisdiction of the Court of Resident Magistrate to entertain the trade dispute between the appellant and respondent. The learned M/S M.A. Ismail & Co Advocates referred me Court to the Court of Appeal decision in **Tambueni Abdallah & 89 Others Vs. NSSF, Civil Appeal Number 33 of 2000**, to augment its submission that the

Industrial Court of Tanzania Act does not envisage the jurisdiction of the Court of Resident Magistrate to entertain the trade disputes. Further, the learned Advocates also drew my attention to yet another Court of Appeal decision in **Attorney General Vs. Lohay Akoonay and Joseph Lohay [1995] TLR 80 at page 96** where the Court of Appeal directed that:

"... courts would not normally entertain a matter for which a special forum has been established, unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum..."

Through the services of M/S M.A. Ismail & Co Advocates the Appellant would like this court of first appeal to allow this jurisdictional ground of appeal and set aside the trial court proceedings.

Respondent's written submissions opposing this appeal were filed by the learned Crest Professional Attorneys who opposed the jurisdictional ground of appeal by contending that since the respondent's services were terminated by the appellant and came to an end on 30th June 2002 and that this date was well before the respondent instituted his civil case

No. 41 of 2003 at Resident Magistrate's Court. In other words, respondent was not in employment of the appellant when he filed his case at the subordinate court. The learned Crest Professional Attorneys have also given three basic reasons contending why the binding precedent of the Court of Appeal as set by the case of **Tambueni Abdallah & 89 others Vs. NSSF (supra)** can be distinguished. First, it is the learned Counsel's belief that the holding in **Tambueni Abdallah & 89 Others vs. NSSF (supra)** did not oust the jurisdiction of civil courts over labour disputes. Secondly, the learned firm of Attorneys submitted that the Court of Appeal in **Tambueni** case did not necessarily ruled that every labour dispute amounts to a trade dispute. And thirdly, the learned Crest Professional Attorneys submitted that the Court of Appeal did not hold that every suit for wrongful termination is a trade dispute.

From the submissions of the two sets of the learned Counsel, the main question calling for my determination of this jurisdictional ground of appeal is whether the respondent's cause of action in the Plaint which he filed at

subordinate court amounted to a trade dispute within the definition ascribed by section 3 of the **Industrial Court of Tanzania Act, 1967** and, subject to the jurisdiction of the industrial court and not the Court of a Resident Magistrate. Section 3 of the **Industrial Court of Tanzania Act** has defined a "trade dispute" to mean: *"...any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of any of those employees or such an employee."*

Section 15 of the **Industrial Court of Tanzania Act** establishes the Industrial Court of Tanzania and also confers on this court original jurisdiction over "trade disputes." The section states:

(1) There is hereby established an industrial court to be known as the Industrial Court of Tanzania which shall, subject to this Act, have jurisdiction in respect of matters specified in subsection (2).

(2) The Court shall have jurisdiction–

(a) to hear and determine any trade dispute referred to it under the provisions of this Act;

- (b) to register negotiated agreements and voluntary agreements, and to hear and determine matters relating to the registration of such agreements;*
- (c) to inquire into any matter referred to it under this Act and to report to the Minister on such matters;*
- (d) to advise the Labour Commissioner on any matter referred to it by him under section 8; and*
- (e) to exercise such other functions and powers as are conferred upon it by this Act or as may be conferred upon it by any other written law.*

I propose to show why with all due respect, I do not agree with the learned Crest Professional Attorneys that the subject matter of the Civil Case Number 41 of 2003 at Resident Magistrate's Court was not a trade dispute. My reading of the salient paragraphs 5, 6, 7, 13, 14 and 30 (e) of the Amended Complaint which formed the basis of the respondent's claims at the Resident Magistrate's Court of Dar es Salaam at Kisumu, clearly disclose trade dispute as this respondent's cause of action. Paragraph 5 of the amended complaint clearly alleges a trade dispute in the nature of unlawful termination of employment:

*Plaintiff's action herein against the Defendant arises out of the Defendant's malicious and unjustifiable refusal to renew the Plaintiff's Contract of Service with it, or alternatively, arises out of the Defendant's unlawful termination of the Plaintiff's employment on the basis of a contract which is invalid and unenforceable in law"- **Emphasis added in paragraph 5 of the Amended Plaintiff.***

Similarly in paragraphs 6 and 7 of the Amended Plaintiff, the question of trade dispute is clearly raised as a cause of action. These paragraphs 6 and 7 indicate the first engagement of the respondent as an employee of the appellant, followed up later by confirmation in employment after completion of the one year probation period. According to the respondent, he was on permanent and pensionable terms of employment by the time he filed the Amended Plaintiff on 25th August 2003. Paragraphs 6 and 7 of the Amended Plaintiff state:

On 25th May 1996 the Defendant appointed and engaged the Plaintiff as its Deputy Commissioner

*responsible for investigations, audit, prosecutions and preventive services: **Paragraph 6.***

*On 29th July 1997, following the Plaintiff's successful completion of one year probation period, the Defendant confirmed the Plaintiff's successful completion of the one year probation period, the Defendant confirmed the Plaintiff's employment with it on permanent and pensionable terms. Further that this Plaintiff's employment, which was on permanent and pensionable terms, is still subsisting to date as the same has never been validly put to an end.- **paragraph 7.***

Again in paragraph 13 of the Amended Plaint, the issue of trade dispute arises when the respondent questions the 1999 "Service Contract" which he describes as unilateral and which had removed him from entitlement to employment on permanent and pensionable terms. Paragraph 13 states:

In June 1999, the Defendant unilaterally drafted a Service Contract that removed the Plaintiff's entitlement to employment on permanent and pensionable terms and imposed it on the Plaintiff to sign. Further that this service contract was imposed in total disregard to the terms and conditions of the then subsisting contract referred

*to in paragraphs 6 and 7 herein above. -
paragraph 13.*

In paragraph 14 of the Amended Plaintiff the trade dispute is disclosed when the respondent claimed that the Service Contract of June 1999 is not valid in law because, for amongst other reasons, it was not attested by the Commissioner for Labour or Labour Officer authorized to act on that behalf.

Even some of the prayers which the respondent lodged through his Amended Plaintiff; also disclose the existence of a trade dispute. Amongst the alternative prayers of the respondent under paragraph 30 (e) of the Amended Plaintiff was:

*Declaration that the Plaintiff has been and he still is and continues to be in the Defendant's employment on permanent and pensionable terms as it were prior to the Service Contract.-
Paragraph 30 (e).*

From the above mentioned facts in the Amended Plaintiff of the respondent the learned trial magistrate in my opinion entertained a trade dispute over which he had no jurisdiction. Section 15 (1) of the **Industrial Court of Tanzania Act 1967**

provides that it is the Industrial Court of Tanzania which then had the requisite jurisdiction in respect of trade disputes referred to it in terms of paragraph (a) of subsection (2). No court other than Industrial Court of Tanzania established under section 15 (1) of the **Industrial Court of Tanzania Act**; could on 11th March 2003 when the respondent filed his suit, assume original jurisdiction over trade dispute.

I found no room to wriggle this appeal before me, away from the precedent laid down by the Court of Appeal in the case of **Tambueni Abdallah & 89 Others Vs. NSSF (supra)** directing that trade disputes have to follow the procedure prescribed by the **Industrial Court of Tanzania Act** which prevents parties from going straight to the ordinary courts. The first ground of appeal is hereby allowed.

Having dealt with the aforesaid jurisdictional ground of appeal and finding that the trial Resident Magistrate's Court entertained Civil Case Number 41 of 2003 without requisite jurisdiction, I am fully satisfied that this ground suffice to dispose of this Civil Appeal Number 68 of 2011 before me.

This Court therefore, finds no need to address the remaining six grounds of appeal. Appeal is allowed with costs.

DATED at DAR ES SALAAM, this 12th day of June, 2012



**I.H. Juma
JUDGE**

Delivered in the presence of Mr. Betwel, Advocate for the Appellant and Mr. Marwa, Advocate for the Respondent.



**I.H. Juma
JUDGE
12-06-2012**

