

**IN THE HIGH COURT OF TANZANIA**

**AT MTWARA**

**CIVIL CASE NO. 7/2012**

**JABIL MAULID ----- PLAINTIFF**

**VERSUS**

**INSPECTOR GENERAL OF POLICE ----- 1<sup>ST</sup> DEFENDANT**

**HON. THE ATTORNEY GENERAL ----- 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**8/10/2014 & 31/10/2014**

**MZUNA, J.:**

Jabil Maulid, has filed this suit against The Inspector General of Police and Hon. the Attorney General claiming among others for damages for unfair termination; Unpaid salaries; Allowances like severance allowance, Ration allowance, Detective allowance, Repatriation allowance; Interest plus costs of the suit and any other reliefs the court may deem just to grant.

During hearing, Mr. Mkali, learned counsel appeared for the plaintiff while M/s Mangu and Kimweri, learned State Attorneys' appeared for the defendants.

The facts in brief being that PW1, Jabir Jaulid the plaintiff and only witness said that he was employed by the first defendant as a

Detective policeman. He was posted at Kisarawe and latter to Lindi, Ruangwa and Nachingwea Districts. In 1995 he rose up to the level of Corporal and was attached to the Criminal investigation Department.

He was assigned to investigate the case file No. IR/1791 of 2001 in relation to the stealing of Tshs. 25 Million from the Co-operative Society.

He was accused to have solicited Tshs. 2 million but it is said he received Tshs, 450,000/-. By then disciplinary proceedings were opened and he was dismissed in the Police force. He was arrested by PCCB and was then charged at Nachingwea District Court. He was acquitted and latter convicted by the High court. He was acquitted on appeal to the Court of Appeal as evidenced by copy of judgment vides Criminal Appeal No. 147 of 2005 (Exhibit P1).

He instituted this suit after his notice to sue (Exhibit P2) was not responded to. He says, after being dismissed from employment he had been living under miserable conditions. His wife had passed away and his children are not attending schools. That he is under life threat.

They did not return him to his original home Dar es Salaam where they took him from instead dumped him in another place. He had been forced out from the house of his former employer and had not been given certificate of discharge after his summary disrmissal while all Government employees are given it.

He prayed for the court to find that his termination did not follow the land down procedure as it was unfair despite the fact that he worked for the Police force for 14 years. He therefore prayed for reinstatement to his original employment.

He prayed for the prayers on the plaint to be allowed as prayed for because he had been pursuing the matter since 2001.

The defence summoned only one witness namely Inspector Joachim Raphael Lekule (DW1). He admitted that the plaintiff was their employee stationed at Nachingwea where he was alleged to have solicited Tshs 450,000/- from Mr. Nurdin Ismail. That he was charged under Court Martial "Mahakama ya Kijeshi". He was accorded chance to be heard, however upon conviction he was summarily dismissed from employment from 2/11/2001 by the IGP in what he termed as "*kufukuzwa kazi kwa fedheha*". His appeal to the IGP was answered in 2008.

He tendered the proceedings for his summary dismissal as Exhibit D1. He says the plaintiff's claim for unpaid salaries, damages, or compensation, and allowances' are not legally justifiable as he was dismissed from employment.

That what he can claim as being his entitlement is only the repatriation allowance which he said should be claimed from the OCD if he did not claim for it after his summary dismissal.

Issues which were framed and agreed upon by the parties are;

- 1. Whether the termination of the plaintiff by the 1<sup>st</sup> defendant was fair.*
- 2. Whether the plaintiff is entitled for reinstatement to his original position in the first defendant's employment.*
- 3. Relief to which the parties are entitled thereto.*

During the defence hearing, it came out that the Policemen, the plaintiff inclusive are not covered under the normal civil suit especially where the matter had been dealt with by the IGP on appeal. Unfortunately none of the counsels could file written submissions on the point despite being asked to do so. However, due to the fact that the raised point poses a point of jurisdiction, I must deal with it first.

I have read The Police Force and Prisons Service Commission Act, Chapter 241 RE 2002. Section 7 (5) of the said Act states that;

*"The final disciplinary authority in respect of Police and Prison Officers below the rank of Assistant Inspector is vested in the Inspector-General of Police and the Principal Commissioner of Prisons respectively."*

Further to that there is also The Police Force Service Regulations, it states under C.18 (3) on appeals that;

*(1)...(Not relevant).*

*(2)...(Not relevant).*

***(3) Any non-commissioned officer or constable aggrieved by any finding of an appropriate tribunal or any award of an appropriate tribunal or a Commanding Officer may, within seven days of the notification to him thereof, appeal to the Inspector General in writing and the Inspector General may confirm or vary any finding of the appropriate tribunal or substitute therefor any finding at which the appropriate tribunal or Commanding Officer could have arrived upon the evidence, including any additional evidence which the Inspector General, in his discretion, admits at the hearing of the appeal, and may confirm or remit any punishment imposed by the appropriate tribunal or a Commanding Officer or may substitute therefore any punishment which the tribunal or such officer could have imposed, and in all such cases the decision of the Inspector General shall be final.*** (Emphasis supplied).

The above provision is couched with what in administrative law is known as exclusionary or finality clause.

To challenge such decision the plaintiff ought to have applied for leave. After being granted leave he could then proceed to challenge it by prerogative orders either on judicial review, mandamus, certiorari or prohibition. This mechanism is the right recourse in this situation where the right to appeal had been exhausted but the plaintiff thinks he was dismissed without being treated fairly. I am fortified to this view by the case of **The Republic Ex-Parte Peter Shirima vs.**

**kamati ya Ulinzi na Usalama, wilaya ya Singida, The Area Commissioner and The Attorney General (1983) TLR 375 (HC).** In this case there was a withdrawal of trading licence and expulsion order on the orders of the Area Commissioner and Defence Committee. The issue was whether the action by Area Commissioner and Defence Committee was "judicial". It was held by Lugakingira, J (as he then was) that;

*"The practice of seeking leave to apply for prerogative orders has become part of our procedural law by reason of long user... where an appeal has proved ineffective and the requisite grounds exist, the aggrieved party may seek for, and the court would be entitled to grant, relief by way of prerogative orders"*

The court observed further that *"statutory remedy takes priority over but does not exclude a prerogative relief."*

I find and hold that it is wrong to bring it as a normal civil suit though his criminal appeal at the Court of Appeal was in his favour.

Looked on another angle, as the plaintiff seems to have brought it in that way, as an employment matter, under Section 2 (1) of the Employment and Labour Relations Act, Act No. 6 of 2004 which deals with relationship between employer and employee, Members of the Police Force are not covered.

Further, the High court has no original jurisdiction on Labour Matters. That was held in the case of **Tambueni Abdallah and 89 Others vs. National Social Security Fund**, CAT, Civil Appeal No. 33 of 2000 (unreported). In that case of **Tambueni Abdallah** the issue involved 89 employees who were declared redundant. They argued that they were wrongfully terminated. It was argued that the High court and the Industrial court have concurrent original jurisdiction. The High court allowed the Preliminary objection on a point that it had no original jurisdiction on Labour matters which prompted the appeal to the Court of Appeal.

*It was held that 'the High court has no original jurisdiction to entertain trade disputes. Such matters are dealt with in accordance with the Act.'*

Adopting the same holding, I find that the case before me which was wrongly filed by a wrong party, even assuming he has such a mandate it was filed in a wrong court. The mechanism for employment relations for those who are covered is governed by the Employment and Labour Relations Act, above cited. It recognizes among others the Labour Division of the High Court established under Section 50 of the Labour Institutions Act, 2004. So, unlike before where there was no such **Labour Court** the labour litigation must be subjected to that court. No individual can by pass it.

There may be some general sentiments on the way the plaintiff has stated his case in court that there is loss of his wife and the family has no hope after his dismissal from his employment together with his ill health. That notwithstanding, I am bound to follow the law. What I can only say is as stated by DW1, that the plaintiff should claim for his repatriation allowance from the OCD of his last work station if he did not claim for it after his summary dismissal.

For the above stated reasons this suit is marked dismissed for want of jurisdiction. No order for costs.

**M. G. Mzuna,**  
**JUDGE.**



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**INSPECTOR GENERAL OF POLICE - - - - - 1<sup>ST</sup> DEFENDANT**

**HON. THE ATTORNEY GENERAL - - - - - 2<sup>ND</sup> DEFENDANT**

Date: 31/10/2014

Coram: Hon. D.R. Lyimo – DR

Plaintiff: Present in person M/s Mangu holding brief of

1<sup>st</sup> Defendant: } Mr. Mkapa – Advocate present  
2<sup>nd</sup> Defendant: } M/S Mangu State Attorney

B/C: Namanga – (RMA

**State Attorney:** This case is coming for judgment we are ready to receive it.

**Order:** Judgment is delivered today on this 31<sup>st</sup> day of October 2014 in the presence of M/S Mangu for the Republic and in the presence of plaintiff Mr. Jabil.

**D.R. LYIMO**

**DISTRICT REGISTRAR**

**31/10/2014**