

IN THE HIGH COURT OF TANZANIA

AT MWANZA

ORIGINAL JURISDICTION

CIVIL CASE NUMBER 09 OF 2001

EMANUEL R. MAIRA ----- PLAINTIFF

VERSUS

DISTRICT EXECUTIVE DIRECTOR BUNDA ----- DEFENDANT

JUDGMENT

21/11/14 & 24/02/15

S. S. MWANGESI J.:

In the instant matter, the plaintiff claims against the defendant a number of reliefs that are couched in this way that is to say;

First, that he be paid general damages to the tune of TZs 150,000,000/=, say one hundred and fifty million Tanzanian shillings as general damages.

Second, that he be re-instated in his job.

Third, that he be paid his salaries per month and all other benefits, which he is entitled to from the date when he was wrongly dismissed from his employment up to the date when he will be re-instated.

Fourth, that he be paid interest at commercial rate on the above indicated monies from the date of filing this suit up to the date of delivery of judgment.

Fifth, that he be paid interest at the Court's rate on the above indicated monies from the date of judgment up to the date when the decretal amount will be paid in full.

And sixth and last, that he be paid the costs of this suit.

As the number of this case can reveal, this is an extremely long outstanding matter, which has been lingering in Court for more than enough. Upon having previously been dismissed by this Court for want of jurisdiction, it did find its way to the Court of Appeal, where it was ultimately ordered that, it had to be tried de novo. Since the attendance on the part of the defendant after the start of the trial de novo has not been convincing the fact that, he has been duly served notwithstanding, the defendant's learned Counsel did ultimately pray to proceed with the matter ex parte, a prayer which was granted by this Court. The plaintiff has therefore proved his case ex parte, which is the subject of this judgment.

Before embarking to consider the merits of the case, this Court had to satisfy itself if it is clothed with the requisite jurisdiction to handle the matter. This is from the fact that, the question of jurisdiction of the Court in handling cases is a paramount legal

requirement. According to the amended plaint of the plaintiff which was lodged in Court on the 13th February 2012, he claims to have been an employee of the defendant employed on the 01st day of July 1983 as a Fisheries Assistant whereby, he was later promoted to the rank of Fisheries Assistant Grade II. However, his employment with the defendant was terminated on the 23rd day of January 1996 for reasons best known to the defendant vide a letter of reference No. HB/JB/940/51.

In the light of the foregoing scenario, the immediate question which does crop, is as to what was the nature of the termination of the employment of service of the plaintiff that is to say, was it an ordinary termination of contract of employment or it was a summary dismissal. The answer to the question can be secured from the content of the letter of termination of service dated the 23rd January 1996, which has been annexed to the plaint by the plaintiff as annexure "B". In the same it has been indicated that, he was being dismissed from employment in terms of the provision of the Local Government Disciplinary Code of 1983 Part A (f), which was embodied in the provisions of section (19) and (20) of the then Security of Employment Act 1964 Cap 574 (Now sections 20 and 21 of Cap 387). Section 19 was about "Restriction in summary dismissal and fine", while section 20 was about disciplinary penalties.

It is evident from the wording of the provisions which were used by the defendant to terminate the employment of the plaintiff that, it was by way of summary dismissal. The subsequent question thereafter, is what is the procedure to deal with employees summarily dismissed? According to the Security of Employment Act, such task had been assigned to the Labor Tribunals. And in terms of the provision of section 28 (1) by then (now section 29 (1)) of the Act, Cap 574 (now Cap 387), the jurisdiction of Courts to entertain summary dismissals had been ousted. The provision was worded thus:

"No suit or other civil proceedings other than proceedings to enforce a decision of the Minister or the Board of Conciliation on a reference under this part shall be entertained in any civil Court

with regard to summary dismissal, or a deduction by way of a disciplinary penalty from the wages of an employee.”

The foregoing provision of law was applied by the Court of Appeal in the case of ***KLM Royal Dutch Airlines Versus Jose Xavier Ferreira [1994] TLR 230***, where it stated in black and white that, section 28 of the Security of Employment Act, ousts the jurisdiction of ordinary Courts to entertain disputes arising from summary dismissal. And according to Georges, CJ (as he then was) in the case of ***Omari Versus East African Airways [1970] EA 610***, a person summarily dismissed could only find audience in Court by way of certiorari or mandamus in order to challenge the correctness of the procedure followed.

On the bases of what has been highlighted above, it is my finding that, the plaintiff in the instant suit did wrongly institute the current proceedings against the defendant in Court, as the proper procedure to be adopted, ought to have been through the Labor Officer to the Conciliation Board and later to the Minister for Labor if need necessitated. Without any ado therefore, I would hereby order the striking out of the suit for want of competence. No order is made as to cost and therefore, each party will bear its own.

Order accordingly.

S. S. Mwangesi

JUDGE

AT MWANZA

24 – 02 - 2015