

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
AT KIGOMA**

**LABOUR REVISION NO. 06 OF 2019**

*(Arising from the Ruling in Labour Dispute No. CMA/KIG/DISP/99/2019  
in the Commission for Mediation and Arbitration (CMA) of Kigoma, by  
Hon. Doris A. Wandiba, Mediator)*

**JEREMIAH MWANDI .....APPLICANT**

**VERSUS**

**TANZANIA POSTS CORPORATION..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 20/4/2020*

*Date of Judgment: 13/5/2020*

**Before Hon: A. MATUMA -JUDGE**

The Applicant Jeremiah Mwandi was employed by the Respondent as a clerk on Permanent and Pensionable terms from February, 2017 to 16<sup>th</sup> January, 2019 when he was terminated for allegedly misconduct. He was terminated from his employment by his Regional Disciplinary Authority (The Regional Manager).

He unsuccessfully appealed to Post Master General hence a referral of the dispute to the commission for Mediation and Arbitration (CMA) at Kigoma vide Labour Dispute No. CMA/KIG/99/2019.

At the CMA, the Respondent raised several Preliminary issues (objections) among others that;-

- i. The Applicant had not exhausted internal remedies provided by the Tanzania Posts Corporation Staffs Regulations of 2014.*

- ii. The applicant had not exhausted internal remedies provided by the Public Service Act.*

The Mediator Hon. Doris Wandiba having heard the objections sustained them in that, the applicant did not exhaust the internal remedies under the Respondent's staffs Regulations, 2014, the Public Service Act, and that the CMA had no jurisdiction over the matter.

The applicant was aggrieved hence this application for Revision.

As usual the Respondent raised several objections which were overruled.

On a day fixed for hearing of this application, the respondent raised another objection which was as well dismissed. Therefore, the instant application survived two barriers of Preliminary issues to have it determined on merit.

Having survived the preliminary issues, this Application was ultimately heard on merit on the 20<sup>th</sup> April, 2020. Mr. Sadiki Aliko learned advocate represented the applicant while Mr. Erigh Rumisha learned state attorney represented the Respondent.

The contention between the parties was: -

- i. Whether the Applicant is a Public Servant for the purposes of Public Service Act to have himself subjected into that Act by exhausting the internal remedies therein.*
- ii. Whether the applicant exhausted the internal remedies under the Respondent's staffs regulations*

Mr. Sadiki Aliko learned advocate for the applicant argued that his client the applicant is not a public servant for the purposes of the Public service Act and therefore, he is not subject to the public service Act for him to exhaust the remedies in that Act. To back up his arguments he cited to

me the case of ***Salehe Komba and another versus Tanzania Posts Corporation, Revision No. 12/2018*** in which it was held that the staffs of the Respondent can seek remedies under the labour Laws for they are not subject to the Public Service Act.

Mr. Erigh Rumisha leaned state attorney on this issue submitted that the Applicant is a public servant subject to the public service Act. He was of the view that a public servant is determined by establishing the status of the corporation itself. That in an institution where the Government has a total control, that institution or organization is a public institution. He argued that the Respondent is a Public Service Organization and the Applicant is therefore, a Public Servant.

In the circumstances, the Applicant had to exhaust internal remedies in the corporation, then internal remedies into the public service Act and finally to the president, he argued.

In my view, the Public Service Act, Cap 298 R.E 2002 as amended by Act No.3 of 2016 is a general law for Public Servants. It does not carter for all Public Servants in the Public service. That it is provided for in its own provisions particularly section 3 (the interpretation clause) in which a public servant for the purpose of the Act is defined.

The same defines a public servant as a person holding or acting in a public service office. It further define a public service office **for the purpose of the Act** to mean;-

- "a). *A paid Public office in the United Republic charged with the formulation of Government Policy and delivery of Public service.*
- b). *Any office declared by or under any other Written Law to be a Public Service Office".*

Mr. Erigh Rumisha learned state attorney submitted that to determine whether a certain institution or organization is a public office and its staffs, public servants, we have to look whether the government has a total control in it. He cited the case of ***The Attorney General versus Tanzania Posts Authority and Another Civil Application No. 78/2016.***

I entirely agree with him that in an institution or organization which provides public service and is under a direct control by the government, the same is a public entity and its staffs are public servants.

In the instant matter I have no doubts that Tanzania Posts Corporation is a public corporation for the provision of public service. This is clearly seen in its establishment under chapter 303 R.E 2002. Under such Law the corporation was established under a parliamentary law and its management is fully under control of the government.

Thus, for example its chief Executive officer the Post Master General is a Presidential Appointee under section 6 of the Act, the Chairman of the Board of Directors is as well an Appointee of the President under section 5 (2) of the Act (supra), and the corporations general duties and daily activities are subject to the guidelines and the Directions of the Minister responsible for Postal matters. See sections 4 (1) (a), (b), (c), (d), (e), (f), (g), (h), (2), (3), (a), (b), (4), (a), (b), (5), (6), (7) (a), (b) and (8) of the Tanzania Posts Corporation Act, (supra).

In the case of Tanzania Ports Authority (supra), the Court of Appeal observed that the same was under the control of the Government hence the government has interest in it.

In the circumstances, there is no way one can successfully argue that Tanzania Posts Corporation is not a Public body providing Public Services and its staffs, Public servants.

I therefore, rule out in an agreement with Mr. Erigh Rumisha learned State Attorney that the Applicant Jeremiah was prior to his termination a Public servant.

But as I have earlier on said, not every public servant is subject to the public service Act (supra).

The said Public service Act, despite of the understanding of the wide range of public offices, it clearly excludes some public offices into its operations. Thus for example under section 3 (supra) it excludes certain public offices from its operations and subject them to the relevant Laws which established them. The excluded public offices under the operations of the public services Act are:-

- i. A parliamentary office*
- ii. An office of a member of a Council, board, panel, Committee or other similar body whether or not corporate established by or under any written law.*
- iii. An office the emoluments of which are payable at an hourly rate, daily rate or term contract.*
- iv. An office of a Judge or other Judicial office*
- v. An office in the Police Force or Prisons service.*

Therefore, the staffs under the herein above offices despite of being public servants are not subject to the public service Act (supra). The Act under section 30 subjects them to the relevant laws which established their offices. Section 30 of the public service Act reads:-

*"Servants in the Executive agencies and Government institutions shall be governed by the provisions of the laws establishing the respective executive agency or institution".*

Tanzania Posts Corporation is a corporate body under section 3 (2) of the Tanzania Posts Corporation Act (supra) capable of suing or be sued in its name so does Executive Agencies in the public service. That being the case, the employees or staffs of Tanzania Posts Corporation are Public Servants subject to the governing law which established it along with the regulations thereof.

They are not public servants for the purpose of the public services Act and therefore not subject to it.

I subscribe to the holding of my learned brother Matupa, Judge in the case of ***Saiehe Komba and another versus Tanzania Posts Corporation***, (Supra) at page five that staffs under parastatal Organizations such as employees of the Tanzania Posts Corporations do not fall under the Public Services Act.

The learned Mediator wrongly construed the decisions in ***Salehe Komba's*** case and that of ***Board of Trustee of the Public Service Pensions Fund versus Jaiia Mayanja and Godfrey Ngonyani, Revision No. 248/2017*** by concentrating to establish who is a public servant and that once one is established to be a public servant he is subject to the public service Act. That misconception is born out in the decision of CMA at pate 15 that:-

*"I am also not unaware of the prior decisions of the labour Court which did not re-categorize public employees and proceeded to rule out that*

***employees employed by public institution or corporations are public servants”.***

It was not the question of public servant but whether every public servant is subject to the public service Act. Had the learned Mediator considered as such she would have not ended to conclude that the applicant is a public servant. She would have gone further to consider whether he was a public servant subject to the public service Act or public servant subject to the law establishing his institution or organization.

Having said all these and the analysis of facts and law as herein above, I conclude the first issue by joining hands with Mr. Sadiki Aliko learned advocate that the applicant is not a public servant who falls under the public services Act. This does not mean that he is or was not a public servant at all but that for the purpose of the public service Act, he is or was not. In the circumstances, it was wrong to rule out the CMA had no jurisdiction to determine the dispute between the parties herein.

It is only public servants who falls under the public service Act (supra) as per section 3 (a), (b) and whose Disciplinary authorities are mentioned under section 25 of the Public Service Act and regulation 60 of the Public Service Regulations who are subjected to the internal remedies provided for under the said Act as per section 32A of the Act as amended by section 26 of Miscellaneous Amendment Act, No. 3 of 2016. The applicant is not among them as I have herein above explained. The Disciplinary Authorities whose decisions must be challenged through and or under the Public Service Act are; the minister responsible for local government, a permanent secretary, Head of Independent Department, Regional Administrative Secretary or Director of the local Government Authority.

The applicant is not subject to those Disciplinary Authorities and thus not subject to the Public Service Act.

I now go to the second issue as to whether the applicant exhausted the internal remedies provided for under the Tanzania Posts Corporation Staffs Regulations, 2014.

The contention under this issue both at the CMA and in this Court is whether the applicant after his termination by the Regional Manager and his unsuccessful appeal to the Post Master General ought to further appeal to the Board of Directors before resorting to CMA.

Mr. Sadiki Aliko learned advocate argued that the governing regulation for appeals against disciplinary measures is regulation F.4 of the regulations (*supra*).

He argued that under that regulation, the aggrieved staff is required to appeal to Post Master General as he did his client. Having his appeal to Post Master General failed, he was right to refer the matter to CMA as the regulation does not dictate that the decision of Post Master General be further appealed to the Board of Directors.

Mr. Erigh Rumisha learned State Attorney on his party argued that rule F.4 should be read together with regulation A.3 thereof which provides that “ **Mamlaka ya Rufaa maana yake ni Bodi ya Wakurugenzi ya Shirika na Postamasta Mkuu**”.

He stressed that since there are two appellate bodies in the corporation which are the Board of Directors and Post Master General, all these must be exhausted before one resort to a judicial process. He cited the case of **Paris A.A. Jaffer and others versus Abdallah Ahmed Jaffer and 2 others (1996) TLR 116** to the effect that where the law provides extra



judicial machinery along side a judicial one for resolving a certain cause, the extra judicial in general be exhausted before recourse is made to the judicial process.

I have no problem with the principle in the case of **Paris A.A. Jaffer and others** (supra) that an extra judicial process must be exhausted before recourse is made to the judicial process. And in fact, that is not the dispute before me.

It is undisputed fact that both parties rely to regulation F.4 (supra) as an internal remedy within the corporation which must be exhausted by an aggrieved staff of a decision of a Disciplinary body before recourse is taken to the judicial process.

The dispute between the parties is the interpretation of the said regulation. Let me reproduce it for easy of reference and discussion;-

*"Adhabu yoyote, kwa kanuni hizi, ikitolewa na mamlaka ya nidhamu kwa mfanyakazi, mfanyakazi huyo anaweza kukata rufaa dhidi ya uamuzi huo kwa Posta Masta Mkuu na asiporidhika atafuata ngazi za mamlaka nyingine kwa mujibu wa sheria".*

The rule has thereafter a proviso which provides;

*"Isipokuwa mfanyakazi atakuwa huru kukata rufaa nje ya shirika kama ilivyowekwa na sheria haiali".*

The rules being made in swahili language, I am of a firm view that its plain meaning under a plain Swahili meaning shall serve the purpose.

In the ruling dismissing the PO in this very case at page 7, while quoting the decision of the Court of Appeal in the case of **Juma kilimo versus The Republic, Criminal Appeal No. 70 of 2012**, I ruled that where

an ordinary English word is used in a statutory Provision, there is no need to apply other means of statutory interpretations other than an ordinary and plain meaning rule. In the case of Juma Kilimo (supra), the Court of Appeal held that where the words subject to scrutiny are not words of art but ordinary English words, they must be given their ordinary plain meaning.

The same rule of interpretation was determined by the Court of Appeal in the case of East African Development Bank vs. Blueline Enterprises Limited, Civil Appeal no. 110 of 2009 which held;

*"...It is presumed that drafters rely on ordinary meaning when drafting legislation and that readers are entitled to do so as well. In the absence of adequate reason to prefer some other interpretation, the ordinary meaning should prevail"*

The court then concluded;

*"The Courts therefore, under the ordinary meaning rule of statutory construction, are obliged to determine the ordinary meaning of the words to be interpreted and to adopt this meaning in the absence of a reason to reject it in favour of some other interpretation"*

Now back to the rule, the parties are not at issue that once an employee is aggrieved with the decision of a Disciplinary body shall Appeal to the Post Master General. They are at issue as to where next after the decision of Post Master General. The rule says when an employee is further aggrieved by the decision of Post Master General;

***"Atafuata ngazi za mamlaka nyingine kwa mujibu wa sheria".***

To the applicant "**Mamlaka nyingine kwa mujibu wa sheria**" is CMA as he did, but to the respondent such "**Mamlaka nyingine**" is the Board of Directors of the Tanzania Post Corporation.

Unfortunately, the Honourable Mediator did not determine what is it mean in the regulation "**Mamlaka nyingine kwa mujibu wa sheria**". She merely concluded;

*"Where one desires to appeal, then he can only appeal as per the prescribed procedure and organs. I, therefore, find that the complainant did not exhaust the internal remedies which were available to him before he re-sorted to CMA".*

I take it that the Hon. Mediator subscribed to the submission of the respondent as reproduced at page 3 of the ruling that;

*"In his written submission in support of the preliminary objections, the advocate for the respondent...argued that... the employee has the right to challenge the decision of the employer through two organs namely; the Post Master General and the Board of Directors.*

*These bodies and or organs are provided under Rule F.4 of the Tanzania Posts Corporation Staff Regulations, 2014".*

The same argument was made before me by Mr. Erigh Rumisha learned state attorney who argued that when regulation F.4 is read together with A.3, it brings the meaning that the aggrieved staff has first to appeal to Post Master General and if further aggrieved to Appeal to the Board of Directors.

Now to understand whether "**mamlaka nyingine kwa mujibu wa sheria**" refers to the Board of Directors or ~~any~~ other Authority such as CMA we need to read the rule as a ~~whole~~ together with its proviso. The

rule provides that if the staff is aggrieved by the decision of Post Master General in an appeal, **atafuata ngazi za mamlaka nyingine kwa mujibu wa sheria.**

In a plain meaning **"kufuata ngazi"** is nothing than taking a step further within the same channel.

That means and as rightly argued by Mr. Erigh Rumisha learned State Attorney, the Applicant having been aggrieved by the decision of Post Master General in his appeal to him had a right of further taking a step ahead within the same channel/corporation.

Regulation A.3 as cited by the learned State Attorney provides that ***"Mamlaka ya Rufaa maana yake ni Bodi ya Wakurugenzi ya Shirika na Posta Masta Mkuu"***.

Therefore, it is plainly on the face of the regulations that within the corporation the appellate bodies are two, the Board of Directors and Post Master General.

Although the regulation does not state expressly that an appeal from Post Master General be lodged and or referred to the Board of Directors, the necessary implication implies as such. This is due to the Composition and role of the two appellate bodies under the Tanzania Post Corporation Act (supra).

Post Master General under section 6 of the Act is a composition of only one individual appointed by the president to be the Chief Executive Officer of the Corporation, while the Board of Directors is a Composition of several members chaired by a chairperson who is also a presidential appointee.

Again under section 7 of the Act, the Board of Directors have wide powers which the Post Master General do not have. Such powers include but not limited to;

- i. Approve the development programme of the corporation,*
- ii. Approve the annual and any revised budget of the corporation*
- iii. Decide where the monies of the corporation should be invested*
- iv. Approve all monies to be borrowed by the corporation.*
- v. Approve major and Police decision*
- vi. Appoint such number of employees of the corporation as it may deem necessary in the proper and efficient conduct of the business and activities of the corporation i.e power to employ staffs.*
- vii. Approve salaries and benefits to employees of the corporation.*

Those are few powers, duties and functions of the Board of Directors of the corporation, for many others see section 7 (3) (a)-(l) of the Act (supra). Section 7 (3) (k) (supra) provide among those powers, to ***"give general directions to the management for the administration of the corporation"***.

With those powers, I am constrained to agree with Mr. Erigh Rumisha (SA) that the Board of Directors of the Corporation is superior to the Post Master General.

In fact, under subsection 3 (k) (supra) the Board has powers to give general direction to the Management for the Administration of the Corporation. In my view Post Master General is a top Official in the Management of the Corporation and thus subject to the directives of the Board. If that is so, then an appeal from the decision of Post Master General should be referred to the Board of Directors as rightly argued by Mr. Erigh Rumisha leaned state attorney.

I further get assistance in interpreting regulation F.4 that **"Mamlaka nyingine"** means **the Board of Directors** from the proviso thereto which provides that;

*"Isipokuwa mfanyakazi atakuwa huru kukata rufaa nje ya shirika kama ilivyowekwa na sheria halali"*

The term **"Isipokuwa mfanyakazi atakuwa huru kukata rufaa nje ya Shirika"** coming after the explanation that the employee may appeal to Post Master General and further to **"Mamlaka nyingine"**, it means **"Mamlaka nyingine"** is within the Corporation itself and no doubt the Board of Directors. That is why the proviso has come after **"Mamlaka nyingine"** and expressly states the employee may appeal to other authorities **outside** the corporation. That pre-supposes that **"Mamlaka nyingine"** is within the corporation otherwise the proviso would have not been necessitated to state that apart from an appeal to the **"Mamlaka nyingine"** the employee may appeal **"nje ya shirika"**.

I thus agree with the learned State Attorney to that extent but I disagree with him that the applicant was necessitated to make a further appeal to the Board of Directors after his appeal before the Post Master General got failed. I am, of such firm view under the proviso to regulation F.4 (supra).

Under that proviso it is clear that an employee who has been aggrieved by the decision of a Disciplinary Body may appeal to post Master General and if further aggrieved to the Board of Directors (**Mamlaka nyingine**) but he is at liberty to appeal outside the corporation. Therefore, reading regulation F.4 as a whole along with its proviso, I find that;

An employee aggrieved with the decision of a ~~disciplinary~~ body may;

a) Appeal to the Post Master General ~~General~~

- b) Appeal direct to other authorities outside the corporation in this case to (CMA) without even going to Post Master General.
- c) Appeal to Post Master General and further Appeal to the Board of Directors.
- d) Appeal outside the Corporation after he has finished the two appellate bodies in the corporation.

Most important is that the proviso to regulation F.4 provides a wide range of choice to an employee of Tanzania Post Corporation as to where should he refer his appeal against the decision of a Disciplinary Body. It does not restrict him to exhaust all the appellate stages in the corporation with clear word, ***isipokuwa mfanyakzai atakuwa huru kukata rufaa nje ya shirika kama ilivyowekwa na sheria halali***. This does not provide which decision can be challenged outside the internal channels between the three i.e. that of the Disciplinary Board, or that of the Post Master General in an appeal or that of the Board of Directors in its appellate capacity.

I am of the firm view that, the proviso to regulation F.4 supra was purposely made to give a wide choice to the aggrieved staff who might be aware that before disciplinary actions were taken against him, either of the appellate bodies was consulted and perhaps it gave some directions to the Disciplinary body. In such a situation, it would be useless and misusing time and resources to appeal to the body which in one way or another was prior involved in the actions taken. The staff who is aware as such may direct appeal against the decision of the disciplinary body outside the appellate bodies in the Corporation. Furthermore, the staff who in one way or another has no confidence with the internal machinery, should not be restricted to seek remedies ~~outside~~ the Corporation as provided for under the Proviso to regulation F.4 supra.

Therefore, the applicant complaint at CMA was competent and it was wrongly rejected.

I order its restoration and direct that the same be heard on merit.

It is so ordered.



  
**Sgd: A. Matuma**

**Judge**

**13/5/2020**