

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 140 OF 2019

JEROME ATHUMANI CHINDINGIKA 1ST PLAINTIFF
SADIKI SAID MKUMBA 2ND PLAINTIFF
MOHAMED UVANGO BAKARI.....3RD PLAINTIFF
RAHISI RAHISI AJALI.....4TH PLAINTIFF
ATHUMANI MOHAMED MROPE.....5TH PLAINTIFF
JOHN SIMON MAGANYALA 6TH PLAINTIFF

VERSUS

PRINCIPAL COMMISSIONER OF PRISON...1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT

Date of last Order: 07/11/2019

Date of Ruling: 29/05/2020

R U L I N G

MGONYA, J.

The Plaintiffs filed before this Honorable Court a Civil Suit in which the Defendants in their reply raised two points of preliminary objection to the effect that:

- 1. That, this Honorable Court has no jurisdiction to hear and determine this suit in terms of Section 51 and 52 of the Labour Institution Act. No. 7/2000, as well as Section 94 of the Labour Relations Act No. 6 of 2004; and***
- 2. That, this Honorable Court has no jurisdiction to hear and determine this suit in terms of Section 7 (5) of the Police Force and Prisons Service Commission Act, [Cap. 241 R.E 2002] and Regulation 37(4) of the Prisons Service Regulation G.N No. 721 of 1997.***

When the matter came for hearing, this Court ordered that the advanced points of preliminary objections be disposed of by way of written submissions.

The Defendants in their 1st objection submitted that, it is undisputed that the whole case is based on Employment Contract as it can be gathered from the facts and reliefs prayed for. Further, it is also undisputed that on matters in relation to Employment Contracts, the laws applicable are Labour Laws and any other Laws for the time being in force. Further, the High

Court Labour division has exclusive right over Labour matters as stipulated by ***Section 51 and 52 of the Labour Institution Act No. 07/2004.***

It is further the Defendants' averments that ***Section 94 of the Employment and Labour Relations Act No. 06/ 2004*** provides:

"Subject to the Constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act"... Jurisdiction to determine matter.

The Case of ***PETER SAMANYA MSACKY VS. CHIEF EXECUTIVE OFFICER, AGRICULTURAL SEED AGENCY, CHIEF SECRETARY AND THE ATTORNEY GENERAL, Misc. Civil Application No. 14 of 2017*** and ***GIDIEON MWENDA VS DED NKOMBE DISRICT COUNCIL AND OTHERS, LABOUR DISPUTE No. 44 of 2009*** were cited to support the argument.

The Defendants also claimed that the reliefs sought in the present case falls squarely under the Labour laws hence making the suit amenable to be entertained by the High Court Labour Division. It is in the Defendants' awareness that ***Section 2 of the Employment and Labour Relations Act (supra)*** excludes members in the service of Tanzania Peoples Defense Forces, Police Forces Prison Services or the National Service. The case of ***BENERZER DAVID MWANG'OMBE VS THE BOARD OF TRUSTEES OF MARNE PARCKS AND RESERVES UNIT Misc. Application No. 380 of 2018***, Madam Abood J; with approval quoted the decision in the case of ***GIDEON MWENDA VS DED NJOMBE DISTRICT COUNCIL AND OTHERS (supra)*** held that:

"Decision of public authorities can be challenged only by way of judicial review."

Moreover, the Defendants' aver that on the above findings this matter cannot be entertained before this Honorable Court as it is purely under the Labour Laws hence defeating the whole purpose of ***sections 51 and 52 of the Labour Institution Act***

(supra) and **Employment and Labour Relations Act (supra)**.

The Defendant further maintained that, it has to be noted that our legal jurisprudence has no specific law which provides for how administrative decisions which are final and conclusive on Employment contract especially those affecting members which are excluded under **Section 2 of the Employment and Labour Relations Act (supra)** can be challenged in this regard. Further, the Court applies Common Law principles **under Section 2(3) of the Judicature and Application of laws Act [Cap. 358 R.E. 2002]** and the case of **FELIX MSELLE VS MINISTER OF LABOUR AND 3 OTHERS (2002) TLR 432** together with **TANESCO VS IPTL (2000) TLR 324** were cited in support of their submission. Therefore it is wrong to file such a suit under a normal High court while the matter falls under Labour Laws.

In the 2nd objection, the Defendants states that **Section 7 (5) of the Police Force and Prison Service Commission Act Cap [241 R.E 2002]** provides:

"The final disciplinary authority in respect of the 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, ***Regulation 37(4) of the Prisons Service Regulations G.N 721 of 1997*** provides:

"any prison officer below the rank of assistant inspector by any finding or award by the officer in charge of Police, the Regional Prison Officer or any other senior officer may, within seven days appeal in writing to the Principal Commissioner and Principal Commissioner may confirm or vary any finding or remit any punishment awarded and in all such cases the decision of the Principal Commissioner shall be final".

It is the Defendants' assertion that the Plaintiffs being aggrieved by the decision of the Commissioner General of Prisons, whether the decisions is final or not can only challenge the decision through judicial review or as per principles governing administrative decision in our legal jurisprudence and common Law.

It is further submitted by Defendants that this Court cannot reinstate the Plaintiffs or order payments of terminal benefits or declare that the Plaintiffs were unfairly terminated by using the ***Civil Procedure Code, Cap. 33 [R. E.2002]*** as the reliefs claimed do not fall under the **Civil Procedure Code (Supra)**. In the event therefore, this Court can only quash the decision of the 1st Defendant when exercising judicial review. It is from the above, Defendants prayed the objections be upheld.

In reply to the Defendants' submission, the Plaintiffs are of the view that the jurisdiction of the court is a creation of the statutes. Reliefs sought do not confer jurisdiction on the court for a simple reason that the grant of a relief, is a result of Court's discretionary powers. It is therefore wrong and misinterpretation of what the High Court stated in the case ***PETER SAMANYA MSACKY vs. CHIEF EXECUTIVE GENERAL Misc. Civil Application No. 14 of 2017*** as, what was prayed for as relief in that case was contrary to what should be a relief in an application for judicial review.

In reference to the submission that the Plaintiffs are excluded to be covered by the **Employment and Labour**

Relations Act (supra) Plaintiffs named the same as misconception. They said, it is crystal clear that the entire **Employment and Labour Relations Act** and all other supplementary Act are not applicable to all military men listed as it appears in page 3 of the submission. That being the case, the jurisdiction of the Labour Court under **Section 94 of Act No 4 of 2004** is restricted to employees not listed under **Section 2 (1) of Act No. 4 of 2004 (Supra)**.

It is the Plaintiffs' averments that the position above of the law, the Labour Court has no jurisdiction to determine this matter because the Plaintiffs are excluded from the laws which the Labour Court is empowered to interpret, and that the cases relied upon by the Defendants are irrelevant to the circumstance at hand.

In respect to the 2nd objection, the Plaintiffs' averred that, they admit that the provisions of **Cap 241 and GN. No. 721 of 1997 (supra)** is very clear. Whereas the order provided for disciplinary mechanism, the latter provides for the effects and outcome of the said disciplinary mechanism. It is true that under the quoted laws, the decision of the Commissioner General of

Prison or Principal Commissioner of Prisons is final. The Plaintiffs' question is whether that final decision can be challenged by way of judicial review as proposed by the Defendants? Out of that question, Plaintiffs submitted that the answer is found in the case of ***PC JULIUS MKOMWA VS INSPECTOR GENERAL OF POLICE AND STATE ATTORNEY GENERAL Misc. Application No. 308 of 2003.***

The Plaintiffs' further stated that, it would be enough to have just ended here for reason that the observation by Hon. Shangwa, J. in **PC JULIUS MKOMWA** case which is very similar to the instant case is exhaustive and it clears all doubts as demonstrated by the Defendants. And since the above referred case stands unchallenged to date, then it is their humble submission that, the doubts by the Defendants that in our jurisdiction no law that provides on how to deal with Members who are excluded under ***section 2 of Act No. 4 of 2004 (Supra)***, have been answered by High Court in **PC JULIUS MKOMWA case.**

Moreover the Plaintiffs' averred in their submission that it is however of essence to travel in the mind of Hon. Shangwa, J. and

P. B. Khaday respectively, to grasp what was in their mind at the time they gave their observation when preparing and subsequently delivering their ruling with such firm stance. To properly grasp what these Honorable Judges had in mind, it is of essence to remember that judicial review is always applied against an administrative decision and will involve grant of prerogative orders which include an order of mandamus and certiorari.

Further, it is the Plaintiffs assertion that, it is with reference to the observation in the above referred case, the good reason that they infer was in the mind of Hon. Shangwa, J. was that a relationship between a Police Officer and the Inspector General of Police does not involve a public duty but rather a relationship based on a contract of employment. Such aspects are similar to the case at hand, that as between the Plaintiffs and the 1st Defendant, what existed was a contract of employment which does not impose any public duty to the 1st Defendant against the Plaintiffs. Further, the nature of the claim was purely on termination of a contract of employment which was not done by person with public duties but rather a person who is a party to

the contract of employment. And since the effect of an order of *mandamus* is to compel a mandatory performance of an act established by law, under the provisions of **Regulation 37 (4) of GN No. 721 (Supra)**, there is nothing that the Principal Commissioner of Prisons can be compelled to perform as imposed on him by law, because his decision as an employer is final.

It is the Plaintiffs' that, assertion with the above enlightenment as intimated by Hon. Shangwa, J. the proper forum is through the normal case which the Plaintiffs can address their contentions, to claim for damage which is exactly what they have done. This forum was also advised in the case of **JOHN MWOMBEKI BYOMBALIRWA** at page 90. Plaintiffs further alleged that, this suit is definitely a suit for damages in terms of specific damage (unpaid salaries) and general damage and that it is different from what the Defendants have advanced that the reliefs sought fall under judicial review because that is just one of the prayers in which this court can exercise its discretionary powers to ignore it as how Hon. Mwalusanya did in the case of **JOHN MWOMBEKI BYOMBALIRWA** (Supra) when he ignored prayers which were purely unmaintainable in judicial review.

The Plaintiffs claimed this court reserves the power to deal with matter of this nature given its unlimited jurisdictional powers as conferred upon it under ***section 2 (1) of the Judicature and Application of Laws Act, Cap. 358 [R. E. 2002]*** in addition since the provisions of the ***Employment and Labour Relations Act, No. 4 of 2004*** exclude the Plaintiffs, this matter cannot be entertained by the Labour Court. And further, on the strength of ***section 52 of Act No. 7 of 2004***, it is the Plaintiffs concern that this Court has concurrent jurisdiction with the Labour Court and therefore its hands are not tied up to try this case because what is prayed for is for a declaratory order and damage.

Having gone through the records of the court and submissions by the parties, at this juncture, the issues at hand that seek this Court's determination is whether this Court has jurisdiction to entertain the suit at hand as a result of its nature. The Plaintiffs before this Honorable Court have filed a Civil Case against the Defendants against the actions of the 1st Defendant.

The short background is that the Plaintiffs were working as employees of the 1st Defendant as Prison Officers under the

Prison Service Department with different ranks. On a fateful date of **27/12/2013** the Plaintiffs were terminated from their jobs basing on administrative grounds. Upon seeking for their reliefs before this Honorable Court as stated in the plaint the Defendants went further into objecting that this Honorable Court lacks jurisdiction for the matter being purely a Labour matter from its nature as it is based on Employment, hence the laws on Employment ought to be applied and that such laws are within the ambits of the High Court Labour Division and not this Court.

It should be noted that the relationship between the Plaintiffs and the 1st Defendant is one of a Contractual nature especially for the 1st, 3rd, 4th, 5th, and 6th Plaintiff with and exception to the 2nd Plaintiff who has been working with the Prison Service Department for over 12 year and therefore becomes a permanent employer and hence pensionable.

However, it is in the records that the Plaintiffs being Prison Officers of the Prison Department. of lower ranks, the disciplinary decision being made against them by the Principal Commissioner of Prison according to ***Section 7 (5) of the Police Force and Prisons Service Commissioner Act (supra)*** being final. The

Plaintiffs room to challenge the said decision is under judicial review by first seeking for leave to file the same.

Judicial Review is a process under which administrative decision taken out against a person in accordance to their disciplinary authorities are being subject to review by the judiciary whereby it is the primary vehicle for the protection of human rights. The purpose of judicial review is to determine whether the action taken is Constitutional. It all serves in the line of checks and balance. This process allows taking of an active role in ensuring that other Authorities or Bodies abide by the Constitution.

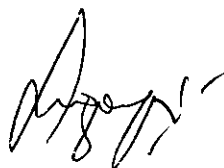
Challenging the action by the Plaintiffs in filing their case before this Court is a **misconception** since the principle of exclusivity that was levied to the High Court Labour Division was waived since 2018. Currently all the High Court's Registries all over the country are vested with the jurisdiction to hear Labour matters suggesting that the Plaintiffs ought to have filed this matter with the High Court Labour Division while they are not covered under the Labour Laws as provided under ***Section 2 (1) of Act No. 4 of 2004*** which is clear that Members in Tanzania

Prison Services or National services are excluded from being covered by that Act.

In the event therefore I find the set of preliminary objections before this honorable Court **lacks merits and therefore dismissed**

Costs in due cause.

It is so ordered.

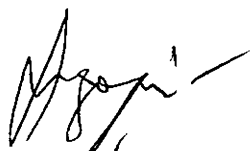


L. E. MGONYA

JUDGE

29/05/2020

Court: Judgment delivered before Hon. C. M. Kisongo, Deputy Registrar in chambers in the presence of Mr. Masunga Kamihanga, State Attorney for the 1st, 2nd Defendant, the 1st, 2nd, 3rd, 4th, 5th, and 6th Plaintiffs present in persons and Ms. Janet RMA, this 29th day of May, 2020.



L. E. MGONYA

JUDGE

29/05/2020