

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

(IRINGA DISTRICT REGISTRY)

AT IRINGA

LABOUR REVISION NO. 16 OF 2018

TANZANIA NATIONAL ROADS AGENCY.....APPLICANT

VERSUS

BRIGHTON KAZOBA.....1ST RESPONDENT

JULIUS CHARLES.....2ND RESPONDENT

RULING

KENTE, J:

The most important question which I am required to determine in this ruling which in turn must, by any standards, be very brief is whether the Commission for Mediation and Arbitration otherwise known by its acronym as the CMA had the requisite jurisdiction to entertain and finally determine the present dispute.

The factual background giving rise to the present application may be briefly narrated as hereunder. The two respondents namely Brighton Kazoba and Julius Charles were employed by the applicant the Tanzania National Roads Agency (henceforth the TANROADS or the

applicant) as respectively weighbridge operator and shift-in-charge. They were based at Wenda weighbridge station Iringa District. However, their contracts of service were terminated on 18th January 2016 following the allegations of gross misconduct. For the sake of exactitude, they were alleged to have allowed some motor vehicles to pass at the said weighbridge without measuring and recording weight of their cargo contrary to the dictates of the applicable law. Deeply aggrieved by the termination of their contracts of employment, the respondents referred their grievances to the CMA at Iringa which, upon hearing both parties, it decided in the respondent favour awarding them Sh. 24,596,000/= and Sh. 24,960,000/= respectively being compensation for unfair termination of their contracts of employment.

Dissatisfied with the decision and award by the CMA and deploying the professional legal services of Mr. Kenan Komba learned Advocate, the applicant has preferred the present application for revision. The applicant is complaining that one, the Arbitrator or the CMA had no jurisdiction to hear and determine the dispute between the parties herein as the same fell under the purview and the mandate of

the Public Service Commission, two the termination of the respondent's contracts of employment was both substantively and procedurally fair and finally that, assuming arguendo that this court finds the termination to have been unfair, still the amounts of compensation awarded to the respondents was too much on the high side in the circumstances.

Submitting in support of the proposition that the CMA for Iringa had no jurisdiction to entertain this dispute, Mr. Komba learned counsel for the applicant had the following reasons in his relatively lengthy but well informed legal arguments. One, that the **Public Service Act (No. 8 of 2002)** is a particular piece of legislation which applies to public servants in Tanzania Mainland as opposed to the **Employment and Labour Relations Act (No. 6 of 2004)** which is a general law applicable to all employees. Two, that taken as a whole, the additive effects of sections 30 (1) and (2) of the **Public Service Act (No. 8 of 2002)** as amended by section 12 (a) and (b) of the **Public Service (Amendment) Act No. 8 of 2007**, read in conjunction with Regulation 2 (f) of the **Public Service Regulations 2003** articulately

means that, the intention of the Legislature was that, being an executive agency was required to follow the above-mentioned laws which govern public servants in which the appellate authority in the hierarchy is the Public Service Commission. Three, that the **Employment and Labour Relations Act** being a general law, cannot override or take precedence over the **Public Service Act** which as far as this dispute is concerned is a specific law. Finally and paramount, Mr. Komba submitted and in my respectful opinion, he is correct that, section 34 A of the **Public Service Act** which was introduced by section 22 of the **Employment and Labour Relations Laws (Miscellaneous Amendments) Act No. 24 of 2015** is an overriding provision which makes the **Public Services Act** applicable to all disciplinary matters involving employees in public service.

For my part, without recourse to Mr. Mhagama's counter submissions, but not because of disrespect to him but rather for the sake of brevity, I think there is force in the arguments of the applicant's counsel. In my respectful opinion, with the introduction of section 34 A into the **Public Service Act** and on the strength of case law which

abound, the older state of inconsistency between the said Act and the **Employment and Labour Relations Act** has ceased as the latter legislation has now been superseded by the former. It seems to me therefore, that the respondents in the present case who were governed by the specific law the **Public Service Act** ought to have referred their grievances to the Public Service Commission which is a built-in-mechanism for determining disciplinary disputes between Public Servants and their employers. I must also mention that, I am live to the fact that the present dispute was referred to the CMA in January 2016 before the introduction of section 32 A into the **Public Service Act (Vide Act No. 3 of 2016)** which came into force n 18th November 2016 which requires in no ambiguous terms the public servants to exhaust remedies available under the **Public Service Act** before resorting to the labour law. I am however of the view that, when the current position of our statutory law is considered together with the preceding jurisprudence, it is certainly clear that, public servants such as the respondents in this case were, right from the outset, are governed by the **Public Service Act** which is the specific law in this case and therefore they were supposed to appeal to the Public Service

Commission rather than referring their grievances to the CMA. (Vide **Benezer David Mang'ombe V. Board of Trustees 2018, HCT Labour Division at Dar es Salaam**, unreported).

For the above reasons, I am convinced and I get the conviction that indeed the CMA was not seized with the requisite jurisdiction to entertain this matter. I thus allow this application and quash the proceedings before the CMA and set aside the awards arising therefrom. If the respondents are still desirous of pursuing their rights, they are at liberty to refer their grievances to the Public Service Commission.

This being a labour dispute, I make no order as to costs.

It is so ordered.

DATED at IRINGA this 28th day of September, 2020.



P. M. KENTE

JUDGE