

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

CIVIL CASE NO. 151 OF 2018

SIMON RUGWANA ----- PLAINTIFF

VERSUS

TANZANIA PORTLAND

CEMENT CO. LTD. ----- DEFENDANT

RULING

Date of last Order: 03/03/2020

Date of Ruling: 03/03/2020

E. E. Kakolaki, J

In this matter the defendant through his advocate Mr. RWEIKIZA raised a Preliminary Objection on point of law that this court is not seized with jurisdiction to hear and determine this case. The objection has two limbs, the first part being that the court is functus officio for having decided on the matter in Civil case No. 20 of 2010 with the same cause of action and same parties to the present case, and secondly, that the cause of action being premised on Social Security claims the

court lacks original jurisdiction to entertain the same as it is barred under part VI of the Social Security Regulatory Authority Act of 2008.

In support of his submissions on the point of objection Mr. RWEIKIZA referred this court to the cases **BURTON MSEMWA VS PILI HAMISI**, Civil Appeal No. 46 of 2008, **ZEE HOTEL MANAGEMENT GROUP & ANOTHER VS MINISTER OF DEFENCE AND OTHERS (1997) TLR 265** (CA) and the Ruling of this court in the case of **SIMON RUGWANA VS TANZANIA PORTLAND CEMENT COMPANY LIMITED**, Civil Case No. 20 of 2010 in that since the parties and cause of action in this matter are the same with the one in Civil Case No. 20 of 2010 above cited and dismissed by this same court, the court therefore became functus officio and cannot entertain the same matter again.

On the restriction of jurisdiction by the law he cited the case of **SHYAM THANKI and OTHERS vs NEW PALACE HOTEL (1972) HCD 92** in that parties cannot by consent give court jurisdiction which does not possess as court in Tanzania are creature of status and their jurisdiction are purely statutory. For that matter the jurisdiction of this court in relation to matters emanating from Social Security disputes is barred by

Social Security Regulatory Authority Act, 2008 Mr. RWEIKIZA submitted. He therefore prayed to have the case struck out with costs for want of jurisdiction.

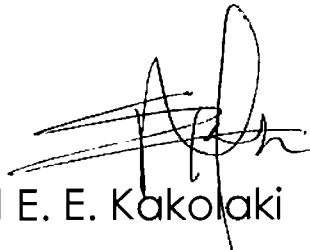
On his part Mr. NDIBALEMA learned advocate for plaintiff having heard the submissions from Mr. RWEIKIZA conceded to the fact that this court is functus officio as the matter was decided in Civil Case No. 20 of 2010 when this court dismissed it for want of jurisdiction. He therefore prayed for waiver of costs as the plaintiff has been out of work since 1991 to date and he is still fighting for his rights.

Having considered the submissions of both parties and the fact that the plaintiff is conceding to the point of preliminary objection raised by the defendant, I am also satisfied that this court is functus officio with regard to the issue of the jurisdiction to entertain this case. In the circumstances, I am inclined to strike out this case for want of jurisdiction. With regard to the prayer for costs I have considered the fact that this case is premised on labour disputes. As rightly submitted by the counsel for the plaintiff, the plaintiff has been out of work since 1992 pursuing his rights in court. To condemn him to pay costs in my opinion will not be in the interest of justice. All what he has to be warned for

is to be keen on choosing the right forum or court to pursue his rights. That said I order no costs.

The suit is therefore struck for want of jurisdiction. Each party to bear its own costs.

It is so ordered.

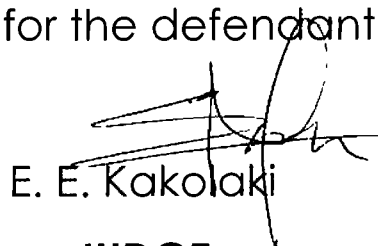


Sgd E. E. Kakolaki

JUDGE

03/03/2020

Delivered Dar es Salaam today on 03/03/2020 in the presence of **Mr. NDIBALEMA** advocate for the Plaintiff and **Mr. RWEIKIZA** advocate for the defendant.



E. E. Kakolaki

JUDGE

03/03/2020