

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA
LABOUR REVISION NO. 2 OF 2021**

NYANGI NDARO THOMASAPPLICANT

Versus

MUSOMA DISTRICT COUNCILRESPONDENT

RULING

13th May, & 21st June, 2021

Kahyoza, J.

Aggrieved, **Nyangi Ndarro Thomas**, the applicant applied to this Court to revise the award of the Commission for Mediation and Arbitration and grant orders, which in its wisdom it deems fit to award.

The background of the matter is that Musoma District Council, the respondent employed applicant as medical attendant working at Nyakatende Dispensary. On the 5th May, 2017, the respondent for reasons know to herself stopped paying salaries to the applicant. The applicant made follow up and the respondent informed her that she forged her Form Four certificate. She appealed to the General Secretary who wrote to the National Examination Council for clarifications. The National Examination Council refused to reply. After several follow ups, neither the respondent nor the National Examination Council provided plausible explanation on the matter. The applicant resolved to institute a labour dispute before the Commission for Arbitration and Mediation (the **CMA**).

The CMA found that there was no constructive termination and struck out the dispute. It also observed that the applicant instituted the dispute pre-maturely.

The applicant instituted revisional proceedings to this Court. Before I heard the application on merit, I invited the parties to address me whether it was proper for the applicant to institute the dispute in the CMA without proof that she exhausted remedies available under the Public Service Act, [Cap. 298 R.E. 2019] (the **PSA**).

The applicant's advocate Mr. Mhagama submitted that the applicant was legally entitled to institute the dispute as her dispute was not covered by conditions specified under section 25 of the **PSA**. He added the applicant exhausted all the remedies available under section 25 of the PSA. He added that the applicant's disciplinary authority did not make any determination so the applicant could not climb the ladder seeking to exhaust the remedies under the PSA.

The respondent's state Attorney, Mr. Mude, submitted that it was clear that the applicant did not exhaust all available remedies under the PSA. She did not appeal against the decision of the respondent to the Public Service Commission (the Commission) and later to the President as provided by section 25 of the PSA. He refuted the contention that the respondent did not take disciplinary action against the applicant. He contended that the respondent took disciplinary action against the applicant, that is why the applicant instituted the labour dispute before the CMA.

Mr. Mhagama was emphatic that an employee can appeal to the Commission after his or her disciplinary authority took any disciplinary measures against him or her. In the present case, the respondent took no

disciplinary measures, which would have pushed the applicant to appeal to the Commission.

It is not disputed that the respondent stopped paying salary to the applicant. The respondent's act was tantamount to terminating the applicant's employment. I do not envisage a situation under which an employer would stop paying salary to his employee unless after termination or by breach of the terms of employment contract. If the employer unfairly terminates the employee or breaches the term(s) of the employment contract, the employee has a right to take legal action against that employer. See section 25(b) of the PSA.

Section 25(b) (c) of the PSA stipulates that-

*(b) a Permanent Secretary, Head of an Independent Department, Regional Administrative Secretary or **a local government authority** exercises disciplinary authority as stipulated under section 6 by reducing the rank of a public servant other than reversion from a rank to which the public servant had been promoted or appointed on trial, or **reduces the salary or dismisses the public servant**, that public servant may **appeal to the Commission** against the decision of the disciplinary authority and the Commission may confirm, vary or rescind the decision of that disciplinary authority;*

(c) a public servant or the disciplinary authority is aggrieved with the decision in (a) and (b) that public servant or disciplinary authority shall appeal to the President, whose decision shall be final;

The applicant's advocate submitted that the applicant had right to challenge her employer before the CMA because the respondent did not cause its disciplinary authority decide the applicant's matter. For that reason,

he could not appeal to the Commission and after the Commission gave its ruling, if, still aggrieved, appeal to the President. He added that section 25 of the PSA does not apply to his client, who was a very junior employee. I am unable to buy the applicant's advocate submission for the reasons that; **one**, section 25 does not categorize employees to which it applies. It applies to all public servants in the civil service, local government services, Health service, the executive agencies and the public institutions service; and the operational service. The test is whether the employee is public servant and not whether is senior or junior in the rank in the public service. There is no dispute that the applicant was a public servant. The applicant being a public servant, despite her rank, she is bound by section 25 of the PSA;

Two, it is not true that there was no disciplinary action taken by the respondent's disciplinary authority to refer to the Commission. The respondent stopped paying the applicant salary. The respondent's act implied that the respondent either had terminated the applicant's employment without following the procedure, which amounted to unfair termination or breach of the employment terms. Either way, the applicant had a right to institute the labour dispute for unfair termination or breach of employment contract. Thus, the applicant had right to take action under section 25(b), and if aggrieved by the decision of the Commission, appeal under section 25(c) to the President.

I agree with the respondent's state attorney that the applicant referred the dispute to the CMA pre-maturely. She was first required by section 32A to exhaust the remedies available under section 25, both sections of the PSA, before resorting to the remedies available under the labour laws. Section 32A of the PSA stipulates that-

"32A. A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act."

This Court had an opportunity to consider section 32A of the PSA in the case of **Tanzania National Roads Agency vs. Godo Ramadhani Biwi** [2020] TZLC 14 published on www.tanzlii.org website. In that case, the Respondent filed direct the dispute at Commission for Mediation and Arbitration. The court held that

"It is obvious that labour dispute number CMA/PWN/KBH /14/2018 was determined without jurisdiction. Any matter that is adjudicated without jurisdiction, ought to be quashed. Accordingly, proceedings in labour dispute No. CMA/PWN/KBH/14/2018 is quashed and award is set aside. Respondent if still interested can pursue his claims in appropriate forum. "

I am of the firm view that the applicant instituted the labour dispute pre-maturely before exhausting the remedies available under the PSA. Consequently, the labour dispute was incompetent and the CMA had no jurisdiction to determine the incompetent dispute.

In the end, for the reasons stated above, I nullify the proceedings before the CMA and quash its award. If the applicant wishes, she may take an appropriate remedy provided under the Public Service Act, subject to the limitation period, if any.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
21/6/2021

Court: Ruling to be delivered by the Deputy Registrar any time after issuing a notice to the parties.



**J. R. Kahyoza,
JUDGE
21/6/2021**

Court: Ruling delivered in the presence of the applicant and in the absence of the respondent. B/C Rutalemwa, RMA, present.

**M. A. Moyo,
DEPUTY REGISTRAR
21/6/2021**