

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA
CIVIL APPEAL No. 7 OF 2020

(Arising from the Resident Court of Bukoba at Bukoba in Civil Case No. 6 of 2019)

XAVERY KATWE.....APPELLANT

VERSUS

TANZANIA ELECTRIC SUPPLY CO. LTD.....RESPONDENT

JUDGEMENT

Date of Judgment: 27.09.2021

Mwenda, J.

The appellant Mr. Xavery Katwe being aggrieved by the decision of the Resident Magistrate of Bukoba at Bukoba in Civil Case No. 6 of 2019 preferred this appeal with three grounds of appeal which reads as follows and I quote;

During the hearing of this appeal the appellant was represented by Mr. Kabunga learned counsel and the respondent was represented by Ms Teresia Musango learned state Attorney.

During submission in chief Mr. Kabunga submitted that the appellant filed a suit before the Resident Magistrate Court of Bukoba for declaratory orders that he was seriously defamed by the respondent for being dishonest.

He went further by submitting that, the court without affording the parties opportunity to be heard dismissed the case and it was dismissed instead of struck out as the matter has not been heard on merits.

Mr Kabunga also submitted that, the issue at hand is whether the court had jurisdiction or not according and to him when filing a suit by way of plaint under Order VII Rule 1(e) and (f) of the Civil Procedure Code there are three things which are i) facts constituting the cause of action ii) facts showing that the court has jurisdiction and iii) reliefs which the plaintiff claims.

He went further by submitting that when you look at the plaint filed before the court at para 3, 7 and 8 and the reliefs claimed are not connected with the employment issues that fall under Employment and labour Relations Act [CAP 366 R.E of 2002]. To him the honourable trial magistrate misdirected himself as he did not consider the contents of the plaint.

Mr. Kabunga further submitted that in the annexure to the plaint entitled **"Fomu ya Kusikilizwa Shauri"** the parties who sat are only two that is the appellant and the chairman. He said the said chairman is not known of his capacity and this is where the defamation came from.

According to him the respondent company is a company limited by liability which can sue or be sued and in case of dispute can be sued in normal civil court.

He went further by submitting that the issue as to where this matter fall under Employment and labour relation act is a mixed point of law and fact which was not supposed to be determined by Preliminary Objection. He said it is trite principle that a matter of fact cannot be proved by submission by an advocate and he cited the case **Trans Africa Assuracy Company Ltd versus Cimbria**

(EA ltd) [2002] to support his argument. To him since some allegations were tortious liability then the proof by the advocate during submission cannot stand.

Mr. Kabunga submitted that, points of fact are to be ascertained by the evidence cannot amount to preliminary objection and the point of fact had to be ascertained as stated in **Mikisa Biscuits Co. Ltd versus Westend Distributors ltd [1969] E.A at page 696.**

According to him the trial magistrate ought to have required evidence to know if the appellant was defamed. He concluded by submitting that, the court had jurisdiction and it dismissed the case prematurely without affording the parties opportunity to be heard and such a decision in question was illegal as it is contrary to article 13 of the Constitution of United Republic of Tanzania. He prayed for the appeal to be allowed and the decision of the Resident Magistrate Court be quashed to enable the matter be determine on merit.

On reply to Appellant's submissions, the learned State Attorney for the respondent started her submissions by defining the meaning of preliminary objection as it was defined in the case of **Mikisa Biscuits (supra)** and invited this court to go through the case of **Salim O. Kabora vs Tanesco & 2 others Civil Appeal No. 55 of 2014** where the Court of appeal quoted with approval at page 11 the meaning of preliminary objection as

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded

by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”[Emphasis ours]

The learned state attorney submitted that when you look at the plaint itself one may notice if the court has jurisdiction or not. She said that at para 3 of the plaint the appellant stated that, these rights originate from Employment Contract. She went further by submitting that at para 6 of the plaint the appellant stated that he received a notice to appear before the disciplinary committee from the defendant. The learned state attorney submitted that, in para 4 the appellant stated that the plaintiff is an employee of the defendant, according to her by looking at the pleading the relationship leading to dispute is the Employment Contract between the parties.

She went further by submitting that, on the issue of attachment entitled ***"Fomu ya Kusikulizwa Shauri"*** the heading is clear and the chairman means he was chairing the hearing. She also submitted that at page 6 of the said fomu ya kusikuliza shauri there is a list of other persons who were in attendance by names. She further submitted that the appellant signed the said form which means he agreed to its contents and acknowledged the presence of other persons.

She also submitted that this is not fictitious body as it is an internal mechanism for conducting disciplinary hearing between the employer and employee.

According to her the facts above shows the centre of controversy rose from Employment Contract.

With regards to argument that, the Resident Magistrate Court had jurisdiction to determine this matter, the Learned State Attorney referred this court to **section 88 of the Employment and labour Relation Act** as amended by the Written Laws Miscellaneous Amendment Act No. 8 of 2006 on resolving dispute by compulsory arbitration. According to her since Mr Kabunga agree that this is tortious claim then the Employment and Labour Relation Act applies as it states clearly that the same should be determined by CMA so for that matter the Resident Magistrate Court has no jurisdiction.

The learned state attorney concluded by submitting that it is clear that the Resident Magistrate Court has no jurisdiction to hear and determine the case in question as the law restrict and it was justified to dismiss the said suit and she prayed for this appeal to be dismissed for want of merits.

In rejoinder to the reply by state attorney the counsel that para 5 & 6 of the plaint disclose claim emanating from contract of employment and that the appellant appeared in the disciplinary committee, Mr. Kabunga submitted that the said paragraphs in isolation from other paragraphs. According to him in para 7 of the plaint the appellant appeared in a strange committee and at unknown place. He also submitted that "**Fomu ya Kusikiliza Shauri**" does not stated that the said form is disciplinary committee form and this need evidence to ascertain it.

This court after hearing the submissions by both parties came up with only one issue for the determination which is whether the Resident Magistrate Court of Bukoba at Bukoba had jurisdiction to determine Civil Case No. 6 of 2019.

Before the Resident Magistrate Court of Bukoba the appellant (then the plaintiff) file a Civil Case No. 6 of 2019 claiming for as stated in para 3 of the plaint and I quote :-

"General damages suffered and declaratory orders for the act and omission made by the defendant for serious violation of the law and procedures in determining the rights of the plaintiff in the cause of discharging her obligations and statutory duties entailed in the contract of Employment resulting to serious defamation of his character, reputation, image and his integrity as a person who is dishonest".

From that claim the defendant filed his defence with two point of preliminary objections which are:-

- (1) That this court has no jurisdiction to entertain this case since it is built on employment and labour relations matters
- (2) That this case being in wrong jurisdiction but also was instituted prematurely since the case between the employer and employee has not yet been concluded.

After the determination of the said preliminary objection, the court dismissed the case with costs. And it is from that dismissal order that this appeal comes from.

It is trite law that jurisdiction of the court is the basic fundamental requirement before determination of the suit. The Court of Appeal articulated this position in the case of **Fanuel Mantiri Ng'unda v. Herman M Ngunda, Civil Appeal No. 8 of 1995, CAT (unreported)** where it stated that:

" The jurisdiction of any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature....the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case."

Also, Chipeta, J. in the book entitled Civil Procedure in Tanzania A Student's Manual defined jurisdiction of the court to mean the extent to which, or the limits within which a particular court can exercise its powers and what powers. These limits may be territorial or pecuniary or as may be prescribed by statutes or practice.

Guided by this principle, this court will proceed to determine the point so raised as to whether or not the claims were of the nature of a labour dispute hence beyond the scope of the jurisdiction of the trial court.

To resolve this question, it is important first determine what constitutes a labour matter/dispute. **Section 4 of the Employment and Labour Relations Act** define the term 'Labour matter' to mean any matter relating to employment or labour relations. A more nuanced definition is found under Section 88 (1) which defines a labour dispute is defined to encompass:

S. 88.-(1)...

(a) a dispute of interest if the parties to the dispute are engaged in an essential service;

(b) a complaint over

(i) the fairness or lawfulness of an employee's termination of employment;

(ii) any other contravention of this Act or any other labour law or breach of contract or any employment or labour matter falling under common law, tortuous liability and vicarious liability in which the amount claimed is below the pecuniary jurisdictions of the High Court;

*(iii) any dispute referred to arbitration by the
Labour Court under section 94(3)(a) of the Act.*

From above section resolving labour disputes fall under the exclusive jurisdiction of labour dispute resolution forums constituted of the Commission for Mediation and Arbitration (CMA). As it was stated in the case of **Pangea Minerals Ltd v Mark A Mkunde, Labour Case digest 2013 no. 98** and **Patrick Tuni Kihenzile v Stanibic Bank (T) Limited, HC Labour Division Revision No. 47 of 2011** the court held that:

*"under the provision of section 94 of the
Employment and Labour Relations Act, the
Labour Court has exclusive jurisdiction over any
employment or labour matter falling under
common law, tortious liability, vicarious liability
or breach of contract."*

In the same spirit in **Patrick Tuni Kihenzile v Stanibic Bank (T) Limited (supra)** it was held that **Section of 88 (I) (b) (ii) of the Employment and Labour Relations Act**, gives CMA jurisdiction to entertain complaints matters pertaining to contravention of labour laws, breach of employment contract or labour matters falling under common law and tortious liability irrespective of pecuniary jurisdiction.

Following the above analysis, I agree with the trial Resident Magistrate that the suit was wrongly instituted before the Court of the Resident Magistrate at Bukoba

as it had no mandate over labour matters. This appeal is hereby dismissed with costs and the judgment of the trial court is hereby upheld.

It is so ordered




A.Y. Mwenda

Judge

27.09.2021

Judgment delivered in chamber under the seal of this court in the presence of Mr. Frank Kalori the learned counsel for the appellant and in the presence of Ms. Theresia Masangya the learned State Attorney for respondent.




A.Y. Mwenda

Judge

27.09.2021

