

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

**CIVIL CASE NO. 171 OF 2018**

**BASHIRU BADRU MBEO.....PLAINTIFF**

**VERSUS**

**SINCRO SITE WATCH LIMITED.....DEFENDANT**

**RULING**

10<sup>th</sup> June, 2021 & 18<sup>th</sup> October, 2021.

**S.M. KULITA, J.**

On the 5<sup>th</sup> day of October, 2020, the plaintiff who was an employee of the Defendant filed a Civil Case against the Defendant, claiming for among other things, payment of sum of Tshs. 358,168,000/= as specific damages and general damages not less than 300,000,000/=. The plaintiff's view is that, the claim arises from his sustaining injuries in an accident as a consequence of the defendant's negligence as to failure to perform his duty of providing a safety place of work to his employees.

In reply to the claim, the defendant filed a written statement of defense together with a preliminary objection on point of law to the effect that, this court has no jurisdiction to entertain employment dispute.

As the law requires a preliminary objection be determined first so as to ascertain whether this court has jurisdiction to entertain the matter on merits, thus on 26<sup>th</sup> October, 2020 the preliminary objection was scheduled to be disposed of by way of written submissions. Mr. Rajab Mrindoko, Advocate represented the plaintiff whereas Mr. Rahim Mbwambo, Advocate represented the defendant.

Submitting in support of the preliminary objection Mr. Rahim Mbwambo stated that, as the plaintiff's dispute has a nature of a labour, he was of views that, this court has no jurisdiction to entertain the same. To cement his position, he cited the cases of **Iman Godson Mngale (A legal representative of late Gidion Iman Godson) v. District Manager Tanzania Electric Supply Company Limited, Civil Case No. 13 of 2013** (unreported) and **Francisca K. Muindi v. Tanzania Ports Authority and 2 Others (2015) LCCD 1** that required labour disputes to be instituted either at the Commission for Mediation and Arbitration (CMA) or at the High Court Labour Division.

In compounding his argument, Mr. Rahim Mbwambo, referred this court to section 88(1) of the Employment and Labour Relations Act, Cap. 366 RE 2019 that defined a labour dispute and section 94(1) of the same Act, that talk of an exclusive jurisdiction of the Labour Court. Insisting the

same, he stated that, as the plaintiff's dispute is a tortious liability found on employment relations, thus he was of the considered views that, claim of damages suffered in the cause of employment have to be instituted at the CMA or High Court Labour Division.

However, in an astonishment, Mr. Rahim Mbwambo, contended further that, the same matter had ever been referred to CMA and finally adjudicated. With that contention, his view can be termed to have also faulted this case for being *res judicata*. Again, he insisted that, the plaintiff's plaint and its annexures depict that, parties had an employment relationship. On that note, he was of the considered views that the dispute arising from employment relation are labour disputes that have to be adjudicated by CMA or High Court Labour Division.

In response, Mr. Mrindoko submitted that, the defendant's preliminary objection is baseless as this Court has jurisdiction to entertain the dispute at hand. In cementing his position, reference was made to Article 108 of the Constitution of the United Republic of Tanzania, 1977 and section 5 of the Judicature and Application of Laws Act, Cap. 358 of 2019. On them, he stated that, High Court is one in the country with unlimited jurisdiction and added that judges are mandated to do all the powers conferred on the High Court. Insisting the same, Mr. Mrindoko

stated that, Labour Division was established by the enactment of The Employment and Labour Relation Act Cap. 366 RE 2019 and added that the Chief Justice established Labour Divisions of the High Court in all registries. However, he argued further that, labour division was meant to facilitate the administration and enhance expediate dispensation of labour category of cases. On that, he said the same designation does not abrogate the general mandate of the High Court as stipulated in the Constitution and Judicature and Application of Laws. To bolster his assertion, he cited the case of **The National Bank of Commerce Limited v. National Chicks Corporation Limited and 4 Others, Civil Appeal No. 129 of 2015** (unreported) and added that the same overruled the cases of **Iman Godson Mngale** and that of **Francisca K. Muindi**.

On a second approach, Mr. Mrindoko was of the views that, nature of the dispute is not regulated by the Employment and Labour Relations Act nor the Worker's Compensation Act. He urged this court to make reference to section 30(1) of the Worker's Compensation Act of 2008. With it he said, the same provides for an employer's civil liability caused by negligence, breach of statutory duty or wrongful act or omission. He added that, that section does not preclude those in employment

relationship who sustained occupational injuries to file civil suits against their employers. With that, he was of views that, this court has jurisdiction to entertain the matter.

Thirdly, Mr. Mrindoko argued that, in terms of the amendment of section 13 of the Civil Procedure Code made in 2016 vide section 9 of the Act No. 4 of 2016 even if the nature of the matter is found a labour dispute, that section operates to preserve the general jurisdiction of this court to entertain the matter.

On the fourth approach, Mr. Mrindoko submitted that, section 24 of the worker's compensation Act, Cap. 263 supports their position as it allows a plaintiff to institute suit on negligence as against the employer.

Concerning the argument as to whether the same dispute was referred to CMA by the Plaintiff and that it is at the execution stage, Mr. Mrindoko said the same is non existing. He contended that, what was filed in the CMA was on termination of contract after the plaintiff had sustained injuries. He added that even the prayers that had been sought was for the Plaintiff to be reinstated and be paid his entitlements. The Counsel attached the copy of the CMA decision for our reference. He finally prayed this court to dismiss the preliminary objection for being unmeritorious.

I have taken into consideration on both parties' submissions, pleadings and the cited authorities together with the entire records. The issue for determination is whether this Court has jurisdiction to entertain the matter.

From the parties' submissions, it is not in dispute that, the parties to the case were in an employment relationship and that the plaintiff's claims arise from injuries alleged to have sustained while performing his duties in that employment. It is not in dispute further that, the defendant's submission is to the effect that, the dispute ought to have been instituted either at CMA or at the High Court Labour Division. Now, as the dispute is instituted at the High Court District Registry, there arises an issue as to whether this High Court has no jurisdiction to entertain matters that fall under the High Court Labour Division.

I am in all fours with the submissions of the plaintiff's counsel, and as rightly observed in the Court of Appeal cited case of **The National Bank of Commerce Limited** (supra) that;

*"The purpose of establishing divisions or registries is to facilitate the administration and dispensation of judicial function. They are meant to enhance expeditious and*

*proper administration and management of certain categories of cases”*

The same case of **The National Bank of Commerce Limited** at page 20 observed further to the effect that, a High Court Division as a part of the High Court, it has jurisdiction to entertain any other matters because its substantive mandate is provided by the Constitution.

With that observation, whether this matter at hand is a labour matter or normal civil matter as suggested by the plaintiff's counsel when he referred to section 30 of the Worker's Compensation Act, Cap 263 RE 2015, I find no need for overemphasizing than concluding in the same line that, as the plaintiff has filed this matter here at the High Court, then this Court which has been created by Article 108 of the Constitution of the United Republic of Tanzania, 1977 has jurisdiction to entertain the matter at hand.

Concerning the argument that, this same matter was instituted and adjudicated by the Commission for Mediation and Arbitration, though improperly raised for not being among the Preliminary Objections that had been raised in the notice, still the same does not hold water. This is after perusing the alleged decision of the dispute in question, that is

CMA/DSM/KIN/R.1431/17/54 the same shows the Plaintiff's claim was on employment termination.

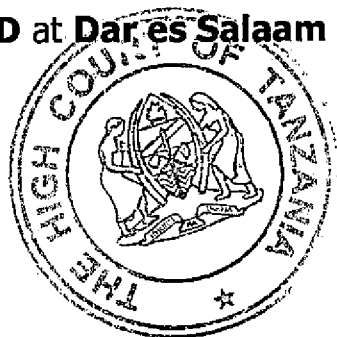
For that matter and in accordance with the above discussion, I am well settled and find that, the defendant's preliminary objections are unmeritorious and I proceed to dismiss the same, with costs.



A handwritten signature in black ink, appearing to be 'S.M. Kulita'.

**S.M. Kulita**  
**JUDGE**  
**18/10/2021**

**DATED at Dar es Salaam** this 18<sup>th</sup> day of October, 2021.



A handwritten signature in black ink, appearing to be 'S.M. Kulita'.

**S.M. Kulita**  
**JUDGE**  
**18/10/2021**