

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

CIVIL CASE NO. 22 OF 2020

PASTORY MIKEBUKO.....PLAINTIFF

VERSUS

TREASURY REGISTRAR.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

RULING

13/5/2022 & 08/07/2022

GWAE, J

This ruling emanates from the preliminary objection canvassed by the defendants' counsel one Mukama Msalama, the learned state attorney. The objection is to the effect that;

"This court lacks jurisdiction to entertain and adjudicate the plaintiff's case against the respondent"

It is perhaps apposite to briefly outline the basis of the respondents' preliminary objection on jurisdiction of the court, it is founded from the plaintiff's plaint where he claims a total of Tshs. **201,812,435/=** against the defendants on unpaid salaries for five (5) months from August to December 1996 and salaries for 1997 & 1998, transport allowance, unpaid

house allowance, insufficient transport allowance, subsistence allowance while waiting for repatriation, house allowance, overtime allowance and dressing code allowance. According to the plaint, the plaintiff was employed as an Assistant Accountant at Hotel 77 from the year 1988 to 1996 when his employment was terminated, the Public Corporation which operated her business affairs in Arusha Region and was taken by the Consolidated Holding Corporation from 1988.

Upon termination of his employment, the plaintiff referred his trade dispute to the then Conciliation Board which ordered reinstatement of the plaintiff's employment on the 13th December 1996. However, the decision of the Board was, on appeal by the employer, reversed by the Minister for Labour whose decision was delivered on the 3rd day of May 1999 which ordered termination of the plaintiff's employment without loss of his terminal benefits because of his long service.

The plaint further reveals that, the verdict of the Minister was not challenged and according to the plaintiff, his employer, Hotel 77 partly paid him the terminal benefits. Though no case number mentioned but it clearly seems from the decision of this court (Chocha, J) dated 4th March 2010 that

the plaintiff had filed an appeal or a proceeding in its original jurisdiction to this court whose order was to the effect and I quote;

"Order: Leave is granted to join the 2nd respondent in the intended suit"

After the above order of the court, the plaintiff subsequently filed an application (Misc. Civil Application No. 1 of 2003) in the Arusha District Court) which was however not decided in his favour. He appealed to the court **(Chocha J)** which held inter alia that there was no executable decree from the Minister's verdict but a new claim which the defendant was entitled to enter defence (See page 5 of the typed judgment of the court dated 4th March 2010).

The plaintiff never got exhausted as a result on the 10th August 2011 re-knocked the doors of the District Court insisting to have his decree emanating from the decision of the Minister via the same case file that is Mis. Civil Application No. 1 of 2003 enforced. Now, there was controversial issue as whether the order of this court dated 1st November 2002 allowed the plaintiff to file an application for execution or filing of suit.

The learned Resident Magistrate in his decision dated 29th February 2012 held that the plaintiff was permitted to **file a suit** and **not** application

for execution as was per the court's decision (**Chocha, J**). Hence, the plaintiff's application was struck out for misconception of the court's order and it was further directed that the plaintiff was to file the suit to the High Court.

The plaint also divulges that the plaintiff on the 11th July 2017 applied to the Minister for Constitution and Legal Affairs for extension of time under section 44 of the Law of Limitation Act, Cap 89 Revised Edition, 2002. His application was granted on the 8th July 2019 to the extent that his claim was based on termination of contract which would commence on the 20th June 2019 ending on 19th June 2022. Therefore, this suit against the defendants who have not filed their written statement of defence save to the preliminary objection on the said point of the law.

The defendants' PO was ordered to be disposed of by way of written submission and filing schedule was made known to the parties' counsel nevertheless the plaintiff's counsel filed his written submission on the 22nd April 2022 which is out of the schedule as the same was to be filed by 17th April 2022 that being the case, the plaintiff's written submission against the PO raised by the defendants' counsel is expunged accordingly (See the

judicial decision in **TBL v. Hedson and 19 others**, Misc. Civil Application No. 96 of 2000 (unreported).

Now, to the determination of the defendants' PO. As to the jurisdiction to determine any matter is a creature of statute as it was correctly stressed in **Shyam Thanki and Others vs. New Palace Hotel** (1972) HCD 92 where it was held and I quote;

"All courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is an elementary principle that parties cannot give court jurisdiction which does not possess".

In the light of the above judicial decision, it follows therefore this court is obliged to closely ascertain whether this court is clothed with the requisite jurisdiction or not, whether the defendants' objection on the jurisdiction has merit or not. I am alive of the legal position that, prior to the newly enacted labour laws that is before 2004, the District Courts were enjoined with powers to hear and determine applications for executions of awards of Conciliatory Board or Minister which were being referred by a Labour Officers pursuant to section 138 of the Employment Ordinance, Cap 336 Revised Edition, 2002. However, even after the enactment of the new labour laws,

the District Court, or Commission for Mediation and Arbitration or Labour Court are empowered to hear such applications for executions or complaints or revisions originating from the repealed labour laws in accordance with the substantive laws applicable immediately before the newly enacted labour laws. This court has very limited jurisdiction of only hearing and determining appeals or judicial review of the matters determined by the defunct Industrial Court. This trend of hearing and determination of labour disputes originating from the repealed labour laws (Security of Employment Act and Employment Ordinance) is applicable as if those repealed laws are still in operation as provided under the 3rd schedule of the Employment and Labour Relations Act Cap 366 R.E, 2019, to the Act which reads.

"13 (1) All disputes originating from the repealed laws shall be determined by the substantive laws applicable immediately before the commencement of this Act.

(2) All disputes pending and all applications for executions filed arising from the decision of the Minister in the subordinate courts prior to the commencement of this Act shall proceed to be determined by such courts.

(3) All disputes pending –

(a) revision of the defunct Industrial Court of Tanzania shall be determined by a panel of three Judges of the Labour Court; and

(b) hearing before the Industrial Court of Tanzania shall be determined by the Labour Court.

(4) All appeals and applications for judicial review originating from the industrial Court of Tanzania pending in the High Court shall be determined by the High Court.

(5) The Commission shall have powers to mediate and arbitrate all disputes originating from the repealed laws brought before the Commission and all such disputes shall be deemed to have been duly instituted under section 86 of the Act.

(6) All references pending decision of the Minister shall –

(a) in the case of references which were returned by the High Court to the Minister for retrial, be determined and finalized by the Minister; and

(b) in the case of references pending the decision of the Minister be forwarded together with their respective complete records to the Labour Court for determination.

(7) The date of the decision of the Minister shall be the date indicated in the prescribed form.

(8) Notwithstanding the provisions of any other written laws, for the purposes of computation of limitation of time, the

period between the date of decision and the date of receipt of the decision shall be excluded (emphasis supplied)".

According to the above clear provisions of the law, it is my considered opinion that if the plaintiff's desire was to have the decision of the minister fully complied with, he ought to have re-opened the Misc. Civil Application No. 1 of 2003 in the District Court as per Rule 13 (2) of the Act however my hands are *fancus officio* since there is an order made by this court (Chocha, J) dated 4th March 2010 interpreting this court's order issued on the 1st November 2002 with effect that leave is granted to join the 2nd respondent in the "intended suit". More so, in this suit, the plaintiff has instituted a fresh suit to this court, ordinary High Court which has never been vested with original jurisdiction in hearing and determining labour disputes but the High Court, Labour Division established under section 50 of the Labour Institution Act, Cap Revised Edition, 2019. Therefore, it should be understood in advance that, this court has never been conferred with original jurisdiction to hear and determine labour disputes.

If the plaintiff was intending to challenge the decision of this court delivered on the 4th March 2010, in my firm view, he ought to challenge that order to the Court of Appeal of Tanzania or refer the dispute to the

Commission for Mediation and Arbitration under Rule 13 (5) of the Act cited above or Labour Court, as the case may be.

Having demonstrated as herein above this court lacks jurisdiction to hear and determine the plaintiff's suit as correctly argued by the learned state attorney for the defendants. The defendants' preliminary objection is hereby sustained. The plaintiff's suit is consequently struck out with no order as to costs. The plaintiff is hereby advised to refer the matter to the court of competent jurisdiction or Commission.

It is so ordered.

Dated and delivered at Arusha this 8th July, 2022


M.R, GWAE,
JUDGE
08/07/2022

Court: Right of appeal is fully explained.


M.R, GWAE,
JUDGE
08/07/2022

