

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**CIVIL APPEAL NO. 13 OF 2021**

*(Originating from Civil Case No 25 of 2019, Shinyanga Resident Magistrate's Court)*

**GODWIN BALINA NIGO .....APPELLANT**

**VERSUS**

**BULYANHULU GOLD MINES LIMITED ..... RESPONDENT**

**JUDGMENT**

*25<sup>th</sup> May & 24<sup>th</sup> June 2022*

**MKWIZU, J.:**

Parties herein had an employment relationship. Appellant was once employed by the respondent as a miner, the employment which ended through retrenchment but claimed that it was after he had sustained occupational injuries on the cause of his employment. Feeling aggrieved by the said termination, appellant filed a civil suit at the Resident Magistrate Court of Shinyanga claiming for medical care and treatment from the respondent, compensation, and general damages. At the end of the trial, the plaintiff's case was dismissed for failure by the plaintiff to prove his claims.

Uncontented with that decision, appellant came to this court with a total of five (6) grounds of appeal challenging the Resident Magistrates decision.

However, before the commencement of the hearing, on 25/5/2022, Mr. Faustin Malongo respondent's counsel, drew the attention of the Court on the lack of jurisdiction of the trial court in respect of labour related disputes. Mr. Frank Samwel for the appellant readily conceded to the point that the trial court had no jurisdiction to entertain labour related matters. He urged the court to nullify the trial courts proceedings and decision with an order for each party to bear owns costs.

When invited to submit on the said points, Mr. Malongo had nothing to add. He like his fellow counsel, urged that the trial court's proceedings and decision are a nullity. He also did not press for the costs.

I think the issue for determination here is simple, only whether the trial court had jurisdiction to entertain the appellants claim arising out of employment relationship between the parties.

Both parties agree that the Resident Magistrate Court have no jurisdiction over ***labour matters***. This is not by choice. It is the law under sections section 88 of the ELRA and 51 of the Labour Institutions Act vesting an

**exclusive jurisdiction** to either the CMA or the labour Court for matters arising out of employment relationship subject to the pecuniary limits.

Section 88 (1) of the ELRA, defines a dispute to mean:

*"88 (1) For the purposes of this section, a dispute means –*

*(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, tortious 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)(ii)."(Emphasis supplied)*

And section 51 of the Labour Institutions Act No. 7 /2004 provides

*"51. subject to the constitution and labour laws, the Labour Court has **exclusive civil jurisdiction** over any matter reserved for its decision by **labour laws and any***

*employment matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court". [bold is mine]*

The two sections above subject **any contravention of the labour law, breach of contract** falling under common law, **tortious** and **vicarious liability** whose pecuniary jurisdiction is below that of the High court and any other dispute referred to arbitration under section 94 (3) (a) (ii) to a compulsory arbitration by the CMA. And any other case the High to the Labour Court under section 51 of the Labour Institutions Act No. 7 /2004. This position was also held in Civil Appeal No. 11 of 2021 between **Bulyanhulu Gold Mines Limited v Mwalami Mohamed Mmbaya; National Microfinance Bank PLC Vs. Sara Richard Hamza**, Civil Appeal No 1/2020 and **Emmanuel Masanja Gaganga Vs. The managing Director outdoor Tanzania**, Civil Appeal No 162 of 2018 (All unreported). In **National Microfinance Bank PLC Vs. Sara Richard Hamza** this court observed:

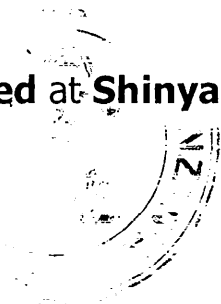
*"...the Labour Court, and the Commission for Mediation and Arbitration under section 88 & 94 of ELRA as well as section 51 of the Labour Institutions Act, (supra), have exclusive*

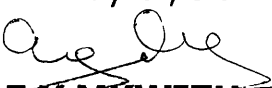
*jurisdiction to entertain and determine all matters provided under the Employment and Labour Relation Act including all matters of tortious nature arising out of the employment relationship, between the parties.”*

I for the foregoing reasons endorse the parties' submissions and prayers.

The trial Resident Magistrate Court had no jurisdiction to determine the appellant's dispute stemmed from an employment relationship. Thus, whatever transpired in that court is a nullity. Both the proceedings and the resultant decision and orders are nullified. Any interested party may, if wishes, file a claim in an appropriate forum in accordance with the law. Order accordingly.

**Dated at Shinyanga, this 24<sup>th</sup> Day of, JUNE 2022**



  
**E.Y MKWIZU**  
**JUDGE**  
**24/6/ 2022**