

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

CIVIL APPEAL NO. 17 OF 2021

(Originating from Civil case No 22 of 2019, Shinyanga District)

BULYANHULU GOLD MINES LIMITEDAPPELLANT

VERSUS

MWILIMA ATHUMANI JUMA RESPONDENT

JUDGMENT

21st & 24th June 2022

MKWIZU, J.:

Appellant and the respondent relationship is basically rooted on their employment affiliation. According to the records, respondent's employment with the appellant was terminated in the year 2007 on medical ground after he had contacted an occupational deceased at workplace. It seems, the employment benefits were not in dispute, what is apparent is that after such a termination, the two went apart to 2019 when the respondent instituted a suit at the Resident Magistrates Court of Shinyanga claiming for *inter alia* reimbursement of a total amount of 82,770,500/= as medical expenses .

At the conclusion of the trial, the magistrate found the amount of medical expenses claimed not substantiated. It however proceeded to awarding the respondent general damages to the tune of 16,000,000/=. The respondent was unhappy with the said decision. She filed an appeal to

this court with six (6) grounds of appeal initially submitted in court on 7/5/2021 and one additional ground presented on 21/6/2022.

At the hearing, Mr. Malongo Faustin advocate represented the appellant while the respondent had the services of Mr. Geoffrey Tuli, also advocate.

Mr. Malongo choose to argue the additional ground of appeal only that the Resident Magistrate Court had no jurisdiction to determine the dispute between the parties as it stemmed on employment relationship. Citing sections 88 of the ELRA, (CAP 366 R: E 2019) and section 51 of the Labour Institution Act (Cap 300 R: E 2019), Mr. Malongo said, the Labour Court and CMA have exclusive jurisdiction over matters relating to employment relationship. He, relying on the decision of **Bulyanhulu Gold Mines Limited v Mwalami Mohamed Mbaya**, Civil Appeal No. 11 of 2021 urged the court to find the proceedings as well as the decision and decree of the trial court a nullity with no order as to costs.

Mr. Tuli advocate for the respondent seconded the appellant's counsel submissions. He supported both, the position of the law and the prayer for the nullification of the proceedings and decision of the trial court with an additional prayer that the interested party be ordered to file a fresh suit before the proper forum.

I have considered the parties arguments in support of the appeal. Indeed, the ordinary courts have no jurisdiction to entertain claims arising from employment relationship between the parties. This guidance is provided for under section 88 of the ELRA, and 51 of the Labour Institutions Act which vests exclusive jurisdiction of such matters to the Labour Court

and the Commission for Mediation and Arbitration. Section 88 (1) of the ELRA for instance, states:

"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]*

As hinted earlier, the respondents claim before the trial court was for reimbursement of medical expenses incurred by the respondent as a result of an occupational disease contracted at work during the subsistence of the respondent's employment with the appellant. This is nothing but a labour dispute falling under the definition of a dispute under section 88 (1) (b) (ii) to be resolved either by the CMA or the Labour Court. In **Bulyanhulu Gold Mines Limited v Mwalami Mohamed Mbaya**, this court in analyzing the above sections had this to say at page 23 of the typed decision:

*"According to the above provision of the law, **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) is subject to a compulsory arbitration by the CMA. And in any other case, the High court Labour Division is responsible under section 51 of the Labour Institutions Act No. 7 /2004 as amended by Act No 8/2006...**" (emphasis added)*

That is the position. Since it is undeniable that the respondent's claim was a labour related matter, then, automatically, the Resident Magistrates Court had no jurisdiction to entertain it. The proper forum was either the CMA or the Labour Court as elaborated above.

The appeal is for that reason merited. The proceedings of the trial court are a nullity liable to be nullified as I hereby do. I proceed to quash the decision emanating therefrom and its resultant decree. Any interested

party may, if so wishes , file a fresh suit before an appropriate forum, of course subject to law of limitation Act. No order as to costs.

Dated at Shinyanga, this 24th Day of, JUNE 2022



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