

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

CIVIL APPEAL NO. 2 OF 2021

(Originating from Civil Case No 24 of 2019, Shinyanga Resident Magistrate's Court)

**BULYANHULU GOLD MINES LIMITEDAPPELLANT
VERSUS
SIASA IGORO MUNGOKA..... RESPONDENT**

JUDGMENT

12th & 15th July 2022

MKWIZU, J.:

Appellant, **BULYANHULU GOLD MINES LIMITED** is contesting the Resident Magistrates Court's decision in Civil Case No 24 of 2019. She initially filed a memorandum of appeal with five grounds of appeal as follows:

- 1. The Trial Magistrate erred in law and in fact in invalidating the settlement agreement entered into between the appellant and the Respondent based on an inapplicable law.*
- 2. The trial Magistrate erred in law by shifting the burden of proof to the appellant by requiring it to prove that the Respondent did not incur the expenses claimed.*
- 3. The Court erred in law and fact in awarding expenses incurred by the respondent amounting to TZS 20,000,000 as specific damages in the absence of evidence to support such findings.*

4. *The Court erred both in law and fact by failing to properly evaluate the evidence on the record thereby arriving at an erroneous decision.*
5. *The court erred in law and fact by failing to determine and adjudicate on issues framed and agreed upon before trial of the suit.*

Before the commencement of the hearing on 19/5/2022 and with the leave of this court more one ground was added:

"The trial court erred in law and fact by determining the case without jurisdiction"

When the matter came for hearing on 12/7/2022, Mr. Iman Mfuru advocate for the appellant chose to argue the additional grounds alone. His submissions were preceded by a brief background of the matter that, the respondent herein is a former employee of the Appellant. Having been terminated in 2007, the respondent instituted a civil case before the Resident Magistrate Court seeking for medical costs and associated medical expenses. The resident Magistrate court allowed the claim. It awarded the Respondent 20 million Tanzania shillings as medical expenses.

He contended that since the dispute arose from employee-employer relationships, the RM's Court did not have jurisdiction to handle the matter. He said, sections 88 (1) (b) of the ELRA; 14 (1) and 51 of the Labour Institution Act vests exclusive jurisdiction over all disputes arising out of employment related to the Commission for Mediation and Arbitration (CMA) and High Court Labour Division. He, to bolster his argument cited to the court the cases of **Bulyanhulu Gold Mines**

Limited Vs. Mwalami Mohamed Mbaya, Civil Application No. 11 of 2021 High Court Shinyanga and **Emmanuel Masanja Gaganga Vs. The Managing Director Out Door Tanzania**, Civil Appeal No. 162 of 2018 page 14(All unreported) and urged the court to find the trial courts proceedings a nullity and proceed to nullify the same, quash and set aside the resultant decisions and orders so that the respondent may initiate his claim in the proper forum. He also prayed for each party to bear her own costs.

Mr. Geoffrey Tuli who represented the respondent readily conceded to the appeal. He said, the RM's Court Shinyanga had no jurisdiction to determine Civil Case No. 24 of 2019 because the cause arose from the employee-employer relationship. He was also in support of the legal position elaborated by the appellant's counsel and all the prayers made. This is the basis of this judgment.

Indeed, the parties' dispute as articulated by the appellant's counsel emerges from the employer-employee relationship. Such kind of a relationship is guided by labour laws. This is agreed upon by both parties to this appeal. The question for determination is whether the trial resident Magistrate Court had jurisdiction to determine labour-related matters.

I will preface my determination by defining the phrase "Labour 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. And Section 88 (1) of the same Act which defines a labour dispute as :

"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)."

And section 94 (1) of the ELRA and 51 of the Labour Institutions Act No. 7 /2004 provides for the jurisdiction of the labour matter. Section 94(1) of the ELRA provides:

"94. -(1) Subject to the Constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act ..."

Section 51 reads:

*"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]*

Sections 88(1) and 94 (1) of the ELRA, 14 and 51 of the LIA read together vest exclusive jurisdiction over the application, interpretation, and implementation of the provisions of the labour laws over any employment matter falling under common law, tortious liability, vicarious liability, or breach of contract is exclusive to the labour Court and the Commissioner for Mediation and Arbitration.

That being the position and having resolved that the party's dispute was a labour-related dispute, it is obvious that the trial Resident Magistrate Court had no jurisdiction to determine whether the respondent's dispute. The entire proceeding is a nullity. I, for that reason, proceed to nullify the same. The decision and any order resulting therefrom are by this decision quashed and set aside. Respondent. May, if still interested file his claim in an appropriate forum in accordance with the law. This order is without costs. Order accordingly.

Dated at Shinyanga, this 15th Day of, JULY 2022



E.Y. Mkwizu
E.Y MKWIZU
JUDGE
17/7/ 2022