IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 262 OF 2021

(*Originating from Employment Cause No. 1 of 2018 dated on 10th April, 2019 before Hon. A.A. Sachore, RM)*

SHUKURU RASHID NGWELENJE.....APPELLANT

VERSUS

RIKI ABDALLAH AND HEMED HUWEL

t/a AFRICA TROPHY HUNTING LTD..... RESPONDENT

JUDGMENT

Date of last order: 13/07/2022
Date of Judgment: 26/08/2022

E.E. KAKOLAKI, J.

In Employment Cause No. 1 of 2018, in the District Court of Ilala at Samora Avenue, and by way of form LDI (Application by injured workman with respect to compensation payable to him) the Appellant/Applicant applied for compensation for the injury he had sustained in the course of his work being the respondent's employee.

The genesis of this appeal as gleaned from the record can be simply be stated thus, the appellant herein was an employee of the respondent,

working as a guard since 17/06/2003 before he changed the position in 2004 to become a tracker responsible for tracking animals. It appears that, on 17/07/2011 appellant was involved in an accident in Morogoro Region while in the course of his work, whereby he sustained serious injuries before he was taken to Kilombero Hospital and later on referred to St. Francis Hospital in Ifakara for further medical attention. Upon being treated, an x-ray examination was conducted which revealed that; his intestine and backbone were damaged and in the same year he was terminated from employment. Upon fruitless efforts to communicate with the respondent's managing director, he sought assistance of the Commissioner for Human Rights and Good Governance who provided him with a letter to present to the Ministry of labour and Employment. At the Ministry the respondent was summoned but defaulted appearance. In a bid to further pursue his right, appellant instituted Employment Cause No. 1 of 2018, by way of form LDI 309 (Application by injured workman with respect to compensation payable to him) before the District Court of Ilala, in which the respondent once again defaulted appearance despite several efforts to procure his attendance. Thus, the case proceeded ex-parte against her whereby in the course of testifying the appellant testified before the trial court that, his claims were

for payment of Tsh.30,000,000/- as treatment costs incurred by him, compensation to the tune of Tsh.50,000,000/- together with cost of the suit. After closure of applicant/appellant case, the District Court of Ilala dismissed the application on the reason that, it was no crowned with jurisdiction to entertain the matter rather the same was vested to the Director General under section 39(1) of the Worker's Compensation Act, [Cap. 263 R.E 2008]. Dissatisfied with the decision of the District Court the Appellant logged the present appeal equipped with one ground of appeal going thus;

> *The learned trial magistrate erred in law and in fact for holding that the Rm Court has no jurisdiction to adjudicate on employment cause on the grounds that the matter was within the jurisdiction of the Director General of the workers compensation Fund and thereafter to the minister.*

In this appeal the Appellant appeared in person though he enjoyed the legal aid from Everlasting Legal Aid Foundation (E.L.A.F), respondent did appear once before he defaulted appearance, thus hearing of the appeal proceeded ex-parte against him. The same was disposed of by way of written submission and the appellant complied with the court's filing schedule orders.

Submitting in support of the appeal, appellant contended that, the argument by the District Court that it had no jurisdiction to entertain the matter though sounds plausible, it is far from being correct as ordinary jurisdiction in worker's compensation before coming into effect of the Workers Compensation Act, No. 1 of 2015, was clarified by the High Court in the cases of **Shafii Ismail Chilumba vs MM Steel Mills Ltd**, Civil appeal No 100 of 2017 [2018] TZHC 2309 Dar es Saalam and **Hassan Kassim vs MM Steel Mills Ltd,** Civil Appeal No. 99 of 2017 [2018] TZHC 2308. According to him, in both cases the High Court cited section 30 (1) of Workers Compensation Act, 2008 and took the position that, the jurisdiction of the court was not ousted.

He further submitted that, according to the cases cited above, the question of civil liability of an employer is still in the jurisdiction of the court. In his view, the District Court had to satisfy itself as to whether the application was devoid of negligence, breach of statutory duty or any other wrongful act of an employer before ruling out that it had no jurisdiction. In further view of the appellant, in the present case there is an indication of negligence for which the appellant should have been heard before referring the matter to the Director General on being satisfied that there was no negligence.

Appellant went on submitting that, proof of tort lies on the party alleging it but, in the case of negligence there is the doctrine of Res ipsa loquitur which was explained by the court of appeal in the case of **Embu Road Services vs Riimi** [1968] EA 22. He said, when the circumstances of the accident give rise to inference of negligence then in order for the defendant to escape liability, she/he has to show that there was a probable cause of the accident which does not connote negligence or that the explanation for the accident was consistent only with an absence of negligence. He argued the principle was adopted by the Tanzanian courts of in the case of **Fr. Sylvester Hittu vs Mr. Yohana Juma**, Civil Appeal No 4 of 1995 (1995) TZHC 708 Mtwara where the Court held that;

> *Although it is always for the plaintiff to prove negligence, the doctrine of res ipsa loquitor is one which plaintiff, by proving that an accident occurred in circumstances in which an accident should not have occurred, thereby discharges, in the absence of an explanation by the defendant the original burden showing negligence on the part of the person who caused the accident*

He rested his submission by contending that, it was miscarriage of justice for the District Court to decline to entertain the appellant's claim, in a

situation where the Director General had also dismissed the same on grounds of jurisdiction. He then pray the court to allow the appeal.

Having considered the submission by appellant and the lower court records which I had enough time to scrutinize, the calling issue for determination before this court is *whether the District Court had jurisdiction to entertain this matter.*

It is well settled that, the question of jurisdiction of any Court is so basic as the same goes to the very root of the authority of the court to adjudicate upon cases of different nature. As a matter of practice, the courts must be certain and assured of their jurisdiction at the commencement of their trial. See the case of **The Commissioner General of Tanzania Revenue Authority vs JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos 78 and 79 of 2018 CAT at Dodoma,

I'm also aware that, section 98 (1) of the Workers compensation Act 2008 provides that the workers compensation Act of 2002 was repealed, and Section 39 (1) of the same Act, further provides that, all claims regarding compensation shall be lodged to the Director General and not the Court. it is also no dispute that, Regulation 6 of the workers' Compensation Regulations, 2016 provides for the Appointment of Director General and

Chairman in accordance with section 6(1) and paragraph 1(1)(a) of the First Schedule to the Act respectively, the Director whom to my knowledge is in existence now. Notably the appellant was injured on 2011, when the Fund was yet to be established and its Director appointed, though the law was already in place. Now the sub issue here is, under the circumstances what was the proper course to be taken by the appellant? To answer this issue, I wish to make reference to the provisions of section 30(1) of the Workers Compensation Act, No. 20 of 2008 which provides for an exception under which the court can entertain matters arising from Workers Compensation Act. The exception covers *any civil liability or claim against the employer or any other person involving employee's occupational injury or disablement or death caused by employer's negligence, breach of statutory duty or any other wrongful act or omission.* This exception is only applicable in all matters before coming into operation of the Workers Compensation Act, No. 1 of 2016 and its Regulations of 2016. The said section 30(1) of the Act reads:

> *30.-(1) Nothing in this Act shall limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease resulting in the disablement or death of an employee if the injury or disease was caused by negligence, breach of statutory duty or any other wrongful act*

or omission of the employer, or any person for whose act or omission the employer is responsible, or of any other person.

The above position of the law before coming into operation of the Workers Compensation Act, No. 1 of 2015 was reiterated by my brother, Mkasimongwa, J (as he then was), in the case of **Shafii Ismail Chilumba Vs. MMI Steel Mills Limited**, Civil Appeal No. 100 of 2017, (HC-unreported), the position which I subscribe to, when deliberating on the matter which cause of action arose in 2010 before the coming into effect of Act No. 01 of 2015, where he had this to say:

> *It is clear from the Respondent's submissions that it is his position that since the Appellant got the injuries in the course of his employment and since following the enactment of the Workers Compensation Act 2008, there has been in place the Workmen Compensation Fund to which the Respondent makes fund contribution, the Appellant had no any claim against the Respondent. The Appellant had instead, to lodge his claims with the Director General of the Fund. As such, the plaintiff had wrongly brought the matter to the court and that the court has no jurisdiction to entertain it. That understanding by the Respondent though seems to have been not contested by the Appellant, the later shows that at* ***the time of the alleged accident the implementation of the Workers***

> ***Compensation Act, 2008 and in particular, the actual establishment of the Workmen's Compensation Fund was yet to commence. As such the law could not be applicable in the circumstances of this case. Whether the Act was in force or not at the time of the accident it seems to me is immaterial.*** *It is so from my understanding that* ***the Workers Compensation Act, 2008 does not limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease.*** *(Emphasis supplied)*

As alluded to earlier appellant in the present case got accident in 2011, when the 2008 law which repealed Workers Compensation Act, [Cap. 263 R.E 2002] was in place but the workers compensation fund was yet to commence. Thus, applying the position as stated in **Shafii Ismail Chilumba** (supra) to the facts of the present appeal, I agree with the submission by the appellant that he had nowhere to go than seeking his remedies from the court like what was the case for the appellant in the above cited case, as by then the Workers Compensation Fund and its Director General were not in existence.

That aside, I have examined the pleadings presented before the trial court seeking to establish respondent's civil liability as provided under section

30(1) of the Workers Compensation Act, No. 20 of 2008, where the appellant had to plead *negligence, breach of statutory duty or any other wrongful act or omission suffered from the respondent's act or omission* to establish his cause of action against the respondent, and facts and statement stating value of the subject matter as provided under Order VII Rule 1(f) and (i) of the Civil Procedure Code, [Cap. 33 R.E 2019], which are part of the contents of the competent plaint. There is nothing in the said pleadings reflecting compliance of the law as under Order IV Rule 1 of the CPC that, every suit shall be instituted by presenting **a plaint** electronically or manually to the court or such officer appointed in that behalf, the plaint which shall be in compliance with Order VI and VIII. What was presented before the trial court was a letter from the Minister for Labour duly issued and signed by the Labour Officer in-charge for Dar es salaam showing that, the appellant had reported his claims to the labour officer whom unsuccessfully summoned the respondent before the matter was referred to in Court, accompanied with form LDI 309 (Application by injured workman with respect to compensation payable to him) and not by way of plaint as required by the law. By taking that course I hold the appellant went against the requirement of the law as provided under Order IV Rule 1 of the CPC, unlike what was the case in

Shafii Ismail Chilumba (supra) where the appellant had pleaded a claim of Tshs. 50,000. Even if I was to be convince that the said form could institute the suit on civil liability against the respondent which is not the case, still, I could hold similar view that it was in contravention of the law for lacking necessary contents such as the facts and statement disclosing the value of the subject matter for determination of court's jurisdiction and fees. Thus the case of **Shafii Ismail Chilumba** (supra) is distinguishable considering the facts of this case, hence exception provided under section 30(1) of the CPC is inapplicable under the circumstances of this case where the claims were not based on the civil liability of the respondent but rather the compensation claims under the Workers Compensation Act, No. 20 of 2008.

Before I pen off, I find it imperative to consider the dismissal order that was entered by the trial Court upon finding itself not seized with jurisdiction to entertain the matter. Having found what was before it was incompetent or abortive the trial court ought not to have dismissed the application but rather strike it out. This settled position of the law was stated in the case of **Cyprian Mamboleo Hizza Vs. Eva Kiosso and Another**, Civil Application No. 3 of 2010 (unreported) where the Court of Appeal had an opportunity to

consider the dismissed appeal upon being found abortive by the lower court. The apex court while citing with approval the celebrated case by the Court of Appeal in Eastern Africa in **Ngoni- Matengo Cooperative Marketing Union Ltd Vs. Ali Mohamed Osman** (1959) EA 577 had the following observation to make:

> *"...This court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it: for the latter phrase implies that a competent appeal has been disposed of, while the former phrase implies there was no proper appeal capable of being disposed of."*

In this case since the trial court wrongly dismissed the appellant's application, I invoke the revisionary powers bestowed to this Court under section 44(1)(b) of the Magistrates Court's Act, [cap. 11 R.E 2019], and proceed to set aside the said order and substitute it with an order of striking out the application.

For the reasons explained above, I find nothing wrong to fault the trial court's decision for rightly holding that, under the circumstances it had no jurisdiction to entertain the matter. Save for the substituted order to the

extent explained above, the appeal is dismissed in its entirety. The appellant is advised to institute a fresh suit if he so wished subject to compliance with the law.

I order each party to bear its own costs.

It is so ordered.

DATED at DAR ES SALAAM this 26th August, 2022.

E. E. KAKOLAKI

JUDGE

26/08/2022.

The Judgment has been delivered at Dar es Salaam today 19th day of August, 2022 in the presence of the appellant in person and Ms. Asha Livanga, Court clerk and in the absence of the Respondent.

Right of Appeal explained.

E. E. KAKOLAKI

JUDGE

26/08/2022.