

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**REVISION NO. 76 OF 2018**

**(Originated from Commissioner for mediation and Arbitration**

**Labour dispute No. CMA/ARS/ARB/225/2018)**

**THE NELSON MANDELA**

**AFRICAN INSTITUTE OF**

**SCIENCE AND TECHNOLOGY..... APPLICANT**

**VERSUS**

**HONORINA E. MASHINGIA.....1<sup>ST</sup> RESPONDENT**

**NAMSI I. HUSSEIN .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

10/12/2021 & 9/2/2022

**ROBERT, J:-**

Before the Commission for Mediation and Arbitration (CMA) of Arusha, the respondents who were employed by the applicant as Human Resource Officers, filed a complaint against the applicant claiming to be

unfairly demoted. The respondents sought to be placed to their previous positions and to be compensated for the duration of the said demotion. The CMA decided that the respondent's demotion was unfair and ordered the applicant herein to pay each respondent TZS 9,436,900/= being salary arrears for the duration of the time they were demoted. Aggrieved, the applicant is now seeking revision of the award on the grounds stated at paragraph 5, 6, 7, 8 and 9 of the affidavit.

When this application came up for hearing, the applicant enjoyed representation from Mr. Peter Musetti, Senior State Attorney whereas the respondent was under the legal representation of Mr. Harun Msangi, learned advocate. At the request of parties, this application was disposed of by way of written submissions.

Submitting in support of the application, Mr. Musetti decided to argue ground No. 5 only and abandoned the rest.

It was Mr. Musetti's submission that the matter at CMA was prematurely determined contrary to Section 32A of the **Public Service Act**, [Cap. 289 R.E 2019] which provides that;

*"A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provide for under this Act".*

He maintained that, when the respondents referred the matter at the CMA they were still public servants as they were not yet terminated and they were paid salaries by the government. Therefore, they fall within the Public Service Act as the dispute arose during their employment as public servants. To support his argument, he made reference to the case of **Bariadi Town Council vs Donald Ndaki**, Application for Revision No. 3 of 2020 (unreported) where the Court observed that:-

*“This is the law, a public servant has no other option than to fully utilize all the remedies available under the Public Service Act before exploring other avenues for dispute settlement.*

Further to that, he maintained that, since the applicant is under direct control of the government, she is a public entity and its staff are public servants. He supported his position by the case of **Attorney General vs Tanzania Posts Authority and Another**, Civil Application No. 78 of 2016). For that reason, he argued that, the respondents ought to have exhausted all the internal remedies under the Public Service Act before the matter was referred to the CMA.

He submitted further that, Section 2 (1) of Employment and Labour Relation Act No. 6 of 2004 provides that the Act applies to all employees including those in the public service within Mainland Tanzania. However,

where two laws provide for the same thing as one being specific and the other being general then the specific law prevails (*generalia specialibus non derogant*). He made reference to the case of **Medical Stores Department vs Amini Mapunda**, revision No. 183 of 2013 (unreported) to buttress his argument.

He argued that, since the respondent failed to exhaust internal remedies as per section 25 and 32A of the Public Service Act and Regulation 60 of Public Service Regulations, the CMA lacked jurisdiction to entertain the matter and prayed for the CMA award to be quashed and set aside.

In response, Mr. Harun submitted that the respondent sought remedies which are provided for by the Public Service Act. The remedies under the labour laws are the same as the ones in the Public Service Law. Further to that, the applicant's counsel failed to show if the remedies awarded conflict with what was provided under the Public Service Act.

After considering submissions by both parties', records of this matter and relevant applicable laws, this Court considers the main issue for determination to be whether the CMA entertained the dispute prematurely contrary to section 32A of the Public Service Act.

Section 32A of the Public Service Act, Cap. 298 (R.E 2019) provides that:-

*"A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act."*

Section 25 of the Public Service Act, Cap. 298 (R.E 2019) provides for remedies available to public servants prior to seeking remedies under labour laws. It provides that:-

*25 (1) Where -*

*a) the Chief Secretary exercises disciplinary authority in respect of a public servant who is an appointee of the President by reducing the rank other than reversion from the rank to which the public servant has been promoted or appointed on trial, or reduces the salary or dismisses that public servant, that public servant may appeal to the President against the decision of the disciplinary authority and the President shall consider the appeal and may confirm, vary or rescind the decision of that disciplinary authority;*

*(b) a Permanent Secretary, Head of an Independent Department, Regional Administrative Secretary or a local government authority exercises disciplinary authority as stipulated under section 6 by reducing the rank of a public servant other than reversion from a rank to which the public servant had been promoted or appointed on trial, or reduces the salary or dismisses the public servant, that public servant may appeal to the Commission against the decision of the disciplinary*

*authority and the Commission may confirm, vary or rescind the decision of that disciplinary authority,*


*(c) a public servant or the disciplinary authority is aggrieved with the decision in (a) and (b) that public servant or disciplinary authority shall appeal to the President, whose decision shall be final"*

Since the respondents' complaint falls under the Public Service Act and the respondents sought remedies under the labour laws by referring the matter to the CMA prior to exhausting remedies availed under section 25 of the Act, this Court finds that, the CMA was wrong to invoke its jurisdiction, it was incumbent for the parties to exhaust the remedies prescribed under the Public Service Act.

That said, this application is hereby allowed. The CMA Award is quashed and set aside. This being a labour dispute, I make no order as to costs.

It is so ordered.



  
**K. N. ROBERT**  
**JUDGE**  
**9/2/2002**