

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA

APPLICATION FOR REVISION NO. 111 OF 2021

(Arising from an award of the Commission for Mediation and Arbitration (CMA) Hon. Mourice Egbert Sekabila, Arbitrator, dated 8th October, 2021 in Employment Dispute Ref. No. CMA/ARS/ARS/17/2021)

TANZANIA FOREST SERVICES AGENCY.....1ST APPLICANT

PERMANENT SECRETARY MINISTRY OF

NATURAL RESOURCES AND TOURISM.....2ND APPLICANT

THE HON. ATTORNEY GENERAL.....3RD APPLICANT

VERSUS

CUTHBERT ROBERT KAJUNA.....RESPONDENT

JUDGMENT

07.09.2020 & 14.09.2022

MWASEBA, J.

This is an application for revision of an award of the Commission for Mediation and Arbitration (CMA) in labour Dispute No. CMA/ARS/ARS/17/2021) delivered on 08/10/2021. The Respondent, Cuthbert Robert Kajuna, filed a complaint at the CMA against the applicant, his former employer, claiming for unfair termination. After a full

Hon. Mwaseba

trial, the CMA ruled that the respondent was procedurally unfairly terminated and granted him compensation of 30 months' salary. Aggrieved, the applicants preferred this application for this court to revise the CMA award.

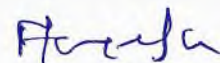
It was alleged that the respondent was employed by the 2nd applicant on 14th day of April, 2009 as an Assistant Bookkeeping Officer II and his employment was confirmed on 14th day of April, 2010 after a probation period. Later on, after undertaking accounting courses he was promoted and become an Assistant Accountant officer and was transferred from TFS Dar es salaam headquarter to Meru/ Usa Plantation in Arusha. When he was working on his new post, it is alleged that he started a bad behaviour of absenteeism from his workplace without justifiable reasons. He was warned via several letters with no changes. The said act prompted a Chief Executive officer to initiate disciplinary action where the preliminary investigation revealed the respondent was not depositing Government revenue at bank as required. Consequently, the respondent was suspended from work on 16th day of February 2016 to leave room for further investigation. When the investigation was completed a disciplinary Committee was called and upon hearing the respondent was found guilty and they terminated him from work from 15th day of February, 2018.

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Dissatisfied, the respondent unsuccessfully appealed to the Public Service Commission and to the President of the United Republic of Tanzania where the decision of the disciplinary committee was upheld. Aggrieved with the decision of termination, he filed a dispute of unfair termination at CMA via CMA/ARS/ARS/17/21 and after a full trial, an award was delivered in favour of the respondent for the reason that the termination was procedurally unfair.

The applicants being aggrieved with the award of the CMA they preferred the present application based on the following legal issues:

- a) That the Honourable Arbitrator had no jurisdiction to entertain the matter and he continued exercising that power.
- b) That Honourable Arbitrator erred in law and fact by failure to consider the evidence adduced by the applicants witnesses one Valentine Bakanilwa Mussa, Magreth Daudi Kimario and Erasto Ignas Luoga.
- c) That the Honourable Arbitrator erred in law and in fact by holding that the reason for termination was not fair despite of the preliminary investigation report of March, 2016, Disciplinary Inquiry Committee report of six employees including the respondent of June 2016, the report of the disciplinary inquiry Committee of Cuthbert Robert Kajuna of January, 2018, the decision of the Commission for public Services of 13th March, 2019 and the decision of the President of the United Republic of Tanzania of 17th September, 2019 which all decisions found him/respondent guilty an upheld the decision of termination.

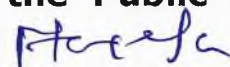


d) That the Honourable arbitrator erred in law and in fact by holding that the procedures for hearing were violated despite of the respondent being given the public funds for transportation and subsistence allowance to attend the hearing and was given the right to be heard on the session of hearing but he refused to be heard and decided to leave.

When the application was called for hearing on 22/06/2022, Mr Peter Musseti, Senior State Attorney represented the applicants while the respondent appeared in person, unrepresented. Hearing proceeded by way of filing written submissions as requested by parties.

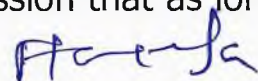
Supporting his application Mr Musseti prayed to adopt their affidavit sworn by Ms Lilian Patrick Akitanda, to be part of their submission. He added that they will argue only on the first ground in which they are challenging the jurisdiction of the CMA in determining the dispute at hand. Other legal issues were abandoned.

He submitted that the respondent was a public servant employed by the 2nd applicant and later on transferred to the 1st applicant, the agency which were established by the Ministry. He said, respondent filed labour dispute at the CMA after the decision of the President of the United Republic of Tanzania which is a final appellate authority. To support his point, he referred this court section 25 (1) (d) of **the Public Service At,** Cap 298 R.E 2019 and Regulation 60 (3) of **the Public Service**



Regulations, 2003. Thus, it was his submission that the Commission lacks jurisdiction to entertain the matter as it had already been decided by the President and his decision was final. Further to that, he argued that the issue of jurisdiction was raised at the Commission and the Arbitrator despite suggesting that they were *functus officio* they decided to proceed with the matter contrary to the law. He further cited the case of **Thadeus J. Madukenya Vs Urambo District Council**, Labour Revision No. 3 of 2020 and **Asseli shewally Vs Muheza District Council**, Revision No. 6 of 2018 (both Unreported) to support his arguments.

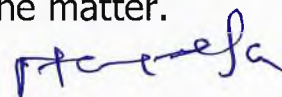
Responding to what was submitted by the learned State Attorney for the applicants, the respondent submitted that the matter was referred to the Commission after the exhaustion of all internal remedies. It was his further submission that Section 2 of the **Employment and Labour Relation Act**, Cap 366 R.E 2019 and Section 14 (a) of the **Labour Institutions Act**, Cap 300 R.E 2019 and Section 32 (2) (a) and (3) of the **Public Service Act**, conferred jurisdiction to the labour Court and CMA over dispute of unfair termination for those in public service except for the Tanzania People's defence, the police force, the prisons service and the national service. It was his further submission that as long as all



internal remedies were exhausted the CMA had jurisdiction to entertain the matter. He cited a number of cases to support his arguments including the case of **Joseph Khenani Vs Nkasi District Council**, Civil Appeal No. 126 of 2019 (CAT-Unreported) and **Attorney General Vs Tanzania Post Authority and Another**, Civil Application No. 78 of 2016 (Unreported).

More to that, the respondent distinguished the cases cited by the learned State Attorney for the applicants for the reason that they were also supporting that CMA has jurisdiction to entertain the matter. In the end he submitted that quashing the CMA decision and setting it aside will deprive his right to be heard as it was decided in the case of **Director of Public Prosecution Vs Yassin Hassan @ Mrope**, Criminal Appeal No. 202 of 2019 (CAT- unreported).

In his brief rejoinder, the learned State Attorney insisted that CMA had no jurisdiction to entertain the matter as it was already determined by the President of the United Republic of Tanzania and it was the final decision. Having gone through the records and the submissions by both parties, this court is now in the position to determine the merit of this matter on whether the CMA had jurisdiction to entertain the matter.



It is undisputed fact that the respondent herein was a public servant employed by the 2nd applicant and later on transferred to the 1st applicant and that his labour issues were governed by the Public Service Act, Cap 298 R.E 2019. **Section 25 of the Public Service Act** provides that the decision of disciplinary authority may be challenged through appeal under the Act to the Commission and thereafter to the President. The law provides further that the decision of the President of the United Republic of Tanzania shall be final. **Section 25 (1) (b)** provides:

"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."

Guided by the cited authority, I am of the considered opinion that the CMA lacks jurisdiction to entertain the matter as the decision of the president was a final. This provision has been recently clarified by the Court of Appeal in the case of **Tanzania Posts Corporation Vs Dominic A. Kilangi**, Civil Appeal No. 12 of 2022 (Reported at Tanzlii) that:

"Going by the wording of the above-quoted provision, it is unambiguously clear that all disciplinary matters or disputes involving public servants are exclusively within the domain of the public Service Commission whose decision is



appealable to the president. As correctly submitted by Ms. Kinyasi and as amply demonstrated above, the CMA has no jurisdiction to adjudicate upon such matters."

In our present application the same was well argued by the learned State Attorney for the applicants that CMA had no jurisdiction to entertain the matter. I agree with him and the Court of Appeal has already cleared the doubt as to the jurisdiction of CMA on the matters already appealed and determined by the President. On his side the respondent relied on **Section 32A of Cap 298** R.E 2019 which provides that:

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

The term "labour laws" as appears in the provision above is defined by **Section 2 of the Labour Institution Act**, Cap 300 R.E 2019 that:

"Includes this Act and any other written law in respect of which the Minister is responsible;"

Taking from the definition above, since the respondent was a public servant the Labour Laws which is applicable to him is the Public Service Act particularly the provisions of **Section 25 (1) (b) and (d) of Cap 298**. Thus, it is crystal clear that all disciplinary matters and its procedures in a matter involving a public servant are within the domain of the public

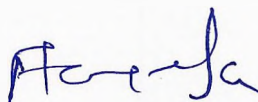
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Service Commission whose decision is appealable to the President. To allow the matter to be reopened in another forum it will prolong the litigation for unnecessary reasons since the respondent has already been given a right to be heard in a proper forum as per **the Public Service Act**, Cap 298 R.E 2019.

In the upshot of the above, I invoke the revisional powers of the Court under Section 94 (1) (b) of **the Employment and Labour Relation Act**, Cap 366 R.E 2019 to quash and set aside the proceedings and award in CMA dispute No. CMA/ARS/ARS/17/2021 for want of jurisdiction.

It is so ordered.




N.R. MWASEBA

JUDGE

14.09.2022