

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION AT ARUSHA
LABOUR REVISION NO. 78 OF 2019

*(Arising from CMA/MNR/MED/09/2018/ARB/01/2019 at the Commission for
Mediation and Arbitration at Babati-Manyara)*

DISTRICT EXECUTIVE DIRECTOR- HANANGAPPLICANT
VERSUS
BARCELINA MUNUO1ST RESPONDENT
PETER MANDOO2ND RESPONDENT

JUDGMENT

Date of last order:11-1-2022

Date of Judgment: 15-2-2022

B.K. PHILLIP, J

The respondents herein were employees of the applicant, the District Executive Director of Hanang'. On 1/04/2002 the 1st respondent was employed as office attendant whereas the 2nd respondent was employed on 01/02/1995 as village executive officer and later on was promoted to post of a ward executive officer. They worked with the applicant until May 2017 when their names were removed from the pay roll on the ground that they presented forged form four academic certificates. Thus, technically they were terminated from employment. Being aggrieved by the termination of their employment, they lodged their complaint at the Commission for Mediation and Arbitration (CMA) at

Babati- Manyara vide Labour dispute No.
CMA/MNR/MED/09/2018/ARB/01/2019.

Upon hearing both sides, the Arbitrator ruled in favour of the respondent. He ordered the respondents to be reinstated in their employment and paid all arrears of their salaries from the date they were removed from the pay roll.

The applicant was not satisfied with the aforesaid decision of the Arbitrator, thus lodged this application under the provisions of section 91(1)(a) (b), (2) (c), (4) (a) (b), 94 (1) (b) (i) of the Employment and Labour Relations Act (ELRA) and Rules 24(1), (2) (a) (b) (c) (d) (e) (f) , (3) (a) (b) (c) (d) , (28) (1) (a) (c) (d) (e) of the Labour Court Rules G.N. No. 106 of 2007, seeking for the following orders;

- i) That this Honourable Court be pleased to revise and quash the Arbitrator' Awards dated 10/5/2019 , in Labour dispute No. CMA/MNR/MED/09/2018/ARB/01/2019 at Babati –Manyara.
- ii) Any relief that this Honourable Court will deem fit to grant for the interests of justice on the Compliant side.

This application is supported by affidavit deposed by Barikiel Sadikiel Sindato, the applicant's principal officer. The learned advocate, Mr

Jacob Msigwa, who appeared for the respondent filed a counter affidavit in opposition to the application.

The applicant's grounds for revision are stated in paragraph 9 (a) and (b) of the affidavit in support of this application, to wit;

9(a). That the Honourable Arbitrator have exercised Jurisdiction not vested to him/her by entertaining the dispute and award the respondents contrary to the requirement of the labour Laws.

9(b). That the Honourable Arbitrator have exercised power which are contrary to the instruction of her employer (annexure "D")

I ordered the application to be disposed of by way of written submissions. Mr Peter J. Musetti, Senior State Attorney filed the submissions for the applicant whereas Mr Jacob Msigwa, learned Advocate, filed the submission of the respondents.

Mr Musetti, started his submission by pointing out that he has abandoned the 2nd ground for this revision. Submitting for the 1st ground on the jurisdiction of the CMA, Mr. Musetti argued that Arbitrator acted without jurisdiction to entertain the dispute as it was filed prematurely at CMA in contravention of section 32A of the Public Service Act, Cap 298 R.E 2019 which was introduced by the Miscellaneous Amendment Act No. 3 of 2016 which provides that a Public Servant before seeking remedies provided in the Labour Laws must exhaust the available

remedies provided under the Public Service Act. He went on submitting that the respondents were public servants and paid salaries by government. They were terminated from employment after the academic certificates which they submitted before their employer (the applicant) were found to be forged. Mr Musseti, was of the view that the dispute between the applicant and the respondent falls within the Public Service Act, Cap 298 R.E 2019 and the respondent were supposed to exhaust all internal remedies under the Public Service Act. To cement his argument, he cited the case of **Bariadi Town Council vs Donald Ndaki, Application for Revision No. 3 of 2020 High Court of Tanzania at Shinyanga** (Unreported). He also cited the case of **Dar es salaam City Council vs. Generose Gaspar Chambi Labour Revision No. 584 of 2018** (unreported). He went on to arguing that section 2 (1) of the Employment and Labour Relations Act No.6 of 2004 which provided that the Act shall apply also to all employees including those in the Public Service within Mainland Tanzania it is not applicable to the respondent's complaints since there is a specific law that is, section 32A of the Public Service Act, Cap 298 R.E 2019, which caters for the employment disputes involving public servants. He maintained that section 32A of the Public Service Act, Cap 298 R.E 2019, requires

any Public Servant aggrieved by a decision of made by the disciplinary authority to refer the matter to the Public Service Commission before referring the same to the CMA.

In rebuttal, Mr. Jacob Msigwa, conceded the respondents were employed by the District Council of Hanang' hence they were public servants. However, he maintained that the CMA had jurisdiction to determine the dispute between the applicant and the respondents, and entertained the matter rightly. He added that the arguments raised by Mr. Musseti that respondents ought to have exhausted all local remedies is not applicable in the circumstances of this matter as pursuant to the provisions of section 2 (1) of the ELRA, the ELRA is applicable to all employees including those in the public service of the Government of the United Republic of Tanzania in mainland Tanzania. Relying on the provisions of section 14(1) (a) (b) (i)-(iii) of the Labour Institutions Act, No. 7 of 2004, he argued that the CMA has powers to mediate or arbitrate any Labour dispute filed before it provided that it involves employee- employer relationship.

Having gone through the rival submissions made by Mr. Musseti and Mr. Msigwa, and the Court's records, I am of the view that the issue to

be determined by this Court are two. The first one is; whether or not the Commission for Mediation and Arbitration had jurisdiction to entertain the labour dispute between parties. The second issue is; If the first issue is answered in the affirmative, then whether the respondents' termination was unfair.

It is a common ground that the respondents were Government employees by virtue of being employed by the applicant. The provisions of section 32A of the Public Service Act as amended by Miscellaneous Amendment Act No. 3 of 2016 provides as follows;

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

On the other hand the provisions of section 2(1) of the ELRA, provides as follows;

" Thus Act shall apply to all employees including those in the public service of the Government of Tanzania in Mainland Tanzania but shall not apply to members, whether temporary or permanent in the service of

- (i) The Tanzania Peoples Defence Forces,*
- (ii) The Police Force,*
- (iii) The Prisons Prison Service , or*
- (iv) The National Service"*

The pertinent legal question which arises here is which one of the above quoted provisions of the law should prevail. In the case of **Medical**

Stores Department Vs Amini Mapunda, Revision No. 183 of 2013, (unreported) this Court was confronted with a similar situation to the one in hand. Hon Lady Justice Rweyemanu, J, as she then was had this to say;

"In Labour Law and practice where there exists a statutory dispute resolution machinery vesting in a different body of Government, the parties to an employment contract in all Labour disputes must follow the machinery so established and not the one set up under the Employment and Labour Relations Act No. 6 of 2004."

In the case of **Thadeus J Madukenya Vs Urambo District Council HC at Tabora Labour Revision No.3 of 2020** (unreported) , Hon Lady justice Bahati J, was confronted with a similar issue to the one in hand , in her decision she cited the case of **Asseli Shewally Vs Muheza District Council Labour Revision No.6 of 2018 HC Tanga** (Unreported) where His Lordship Mkasimongwa J, as he then was. said the following; *"Indeed it is the law that after exhaust all remedies as provided under Public Service Act, a party shall have a right to seek remedies provided for under the labour laws....."* And proceeded to hold that the decision of the CMA in which it declined to entertain the applicants' complaint on the reason that it had no jurisdiction because he was a government employees was correct.

In the Similarly, on the strength of the cases of I have cited herein above, in my considered view of section 32A of the Public Service Act as amended by Miscellaneous Amendment Act No. 3 of 2016 is applicable to the dispute between the parties herein. Thus the respondents being

government employee were supposed to exhaust the all remedies provided under Public Service Act, before resorting to the remedies provided under the Labour Laws. [Also See the case of **Bariadi Town Council** (supra)].

In the upshot, it is the finding of this Court that the CMA acted without jurisdiction when it entertained the labour dispute between parties herein. Consequently, the Award made by the Arbitrator in Labour dispute No. CMA/MNR/MED/09/2018/ARB/01/2019, is hereby set aside.

Dated this 15th day of February 2022




B. K. PHILLIP
JUDGE