

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

AT ARUSHA

REFERENCE/COMPLAINT NO. 02 OF 2021

MOHAMED NURU.....COMPLAINANT

VERSUS

AND BEYOND TANZANIA LIMITED.....RESPONDENT

RULING

22/11/2021 & 18/03/2022

GWAE, J

This ruling stems from a preliminary objection canvassed by the respondent following a complaint filed by the complainant. It is in the complainant's statement where the nature of the complaint is alleged to be a breach of contract. The complainant has retired and he alleges that, according to the collective bargaining agreement entered between the employer and the employees specifically under article 18. 3. 1 (a) of the Agreement, an employee, who upon retirement, will be paid among others gratuity of four months' salary of every year worked.

Nevertheless, the complainant herein claims that upon his retirement on the 31st October 2020 the respondent him all of his other retirement benefits but denied him his gratuity payment. He therefore sought for relief

that he should be paid his gratuity as per the collective bargaining agreement to the tune of Tshs. 125,580,000/=

In the response to the statement of complaint the respondent also filed a notice of preliminary objection with the following points of law;

- i. That, the applicant has no locus standi to file this application.
- ii. That, the applicant has no cause of action against the respondent
- iii. That, the applicant's application is frivolous and vexatious.

As the rule of practice demands, the preliminary objection based on a point of law has to be determined first before going into a merit of the case.

Mr. Allen Godian, learned counsel appeared for the complainant, whereas the respondent was represented by Mr. Erick Balthazar Kimaro-advocate. With leave of the court the preliminary objection was ordered to be disposed of by way of written submission.

On the first limb of the preliminary objection, it was the submission of Mr. Kimaro that the complainant herein has no locus standi to sue the respondent as there was no agreement / contract between the applicant and the respondent. Mr. Kimaro went on submitting that, the Collective Bargaining Agreement that is the subject of this suit was entered between the respondent and the registered trade union (CHODAWU) as an agent of

the respondent's employees. Therefore, it was his contention that the right to sue and implement the contents of the collective bargaining agreement is vested to the trade union and not an individual employee, to buttress his argument, the counsel for the respondent cited the case of **CHODAWU Branch-Ngorongoro Crater Lodge vs. And Beyond Tanzania Limited**, Misc. Application No. 4 of 2017 (unreported).

Submitting on the second limb of the preliminary objection, Mr. Kimaro stated that complaint filed by the complainant does not establish cause of action against the respondent on the reason that the complaints giving rise to this dispute are pursuant to the agreement concluded between CHODAWU and the respondent on the payment of the gratuity. Mr. Kimaro went further to state that the complainant did not indicate to which agreement he was referring as there were a number of agreements that they were concluded with CHODAWU.

Submitting on the last limb of the preliminary objection, it is the argument of Mr. Kimaro that this dispute is frivolous as the complainant was well aware of the decision cited above that an individual has no locus to sue in collective agreements.

Responding to the respondent's submission, Mr. Allen submitted as follows;

On the 1st point of the preliminary objection, Mr. Allen submitted that all the Collective Bargaining Agreements attached to the complaint indicate that the respondent herein concluded the said agreements with the staff members together with CHODAWU, therefore, it is undisputed fact that even the staff members of the respondents were party to the said agreements, and thus have rights to sue if aggrieved by any action which is not in conformity with the agreement. Embracing his arguments, the counsel urged this court to make a reference to the case of **David Mwakasala & 12 others vs MCC Limited**, Complaint No. 01 of 2017. As to the case of CHODAWU Branch Ngorongoro Crater Lodge, the learned counsel distinguished it from the facts of this case as in that particular case **CHODAWU NGORONGORO BRANCH** was not a registered trade union and it was only a branch which was not recognized as exclusive bargaining agency. In that case it was not stated as to whether an individual has no right to sue but only a trade union branch has right to sue.

On the second limb of the preliminary objection Mr. Allen submitted that in the statement of the complaint Item 2.3 provided for the nature of

the complaint and it was stated to be a breach of contract. The counsel went further to state that even at paragraph 3 (j) it is stated that the respondent herein did not fulfill his obligation by not paying gratuity of four months salary for every year worked. Therefore, it was his view that the complainant needed judicial redress against the respondent with regard to the payment of gratuity.

On the last point of the preliminary objection, Mr. Allen submitted that the same is not worth to be a preliminary objection in the eyes of the law as it is clearly not a point of law and therefore it does not qualify to be a preliminary objection.

Having summarized the parties' contending submissions; the issue for determination is whether the preliminary objection based on the three has merit.

As to the **first limb of the preliminary objection**, this court agrees with the submission of Mr. Allen on the reason that looking at the Collective Bargaining Agreements that were attached to the statement of complaint, it is clearly seen that the agreements were concluded between the employer who in this case is the respondent and the staff of the respondent and

members of CHODAWU. In this case both the staff of the respondent together with CHODAWU are parties to the agreements, and even if the staff of the respondent would have not been part of the agreement so long as it is sufficiently established that the employee was a member of the Trade Union which concluded an agreement on behalf of the interests of the employees, in circumstances where the interests of the employee are prejudiced, I am of the thought that, an employee has also right to file a complaint where there are violations of terms of the agreement even if where the agreement was concluded by a Trade Union.

Assuming in a situation where a trade union which entered into an agreement on behalf of employees is no longer in existence for any other reason (s) while the collective bargaining agreement is still valid, it will be said that an employee whose rights articulate in the agreement are violated by his or her employer cannot complain, the answer is negative.

This court has also gone through the cited case by Mr. Kimaro as correctively submitted by Mr. Allen the case referred by the respondent's counsel is distinguishable from the case at hand as in that case the party was a union field branch and not a trade union and the court held that;

"The right of recognition as an exclusive bargaining agent of employees is granted to a Registered Trade Union and therefore the right of concluding CBA is vested to the Registered Trade Union and not Field Branch of that particular Trade Union as well as the right to initiate the proceedings against any terms of the CBA."

Reading from the above holding, there is nowhere the learned judge held that an individual or an employee has no right to initiate proceedings to enforce any terms of the Collective Bargaining Agreement. The learned counsel either did not read the judgment as a whole or misconceived the whole concept derived from the said holding. More so, the complainant has demonstrated that he has an interest to the complainant. The above being said and explained; the first limb of the preliminary objection is dismissed accordingly.

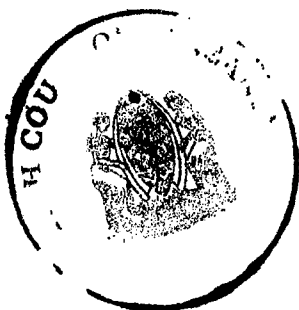
Coming to **the second limb of the preliminary objection**, this does not need to detain me much, as it is apparent from the complainant statement under paragraph 2.3 where it is established that the nature of the complaint against the respondent is breach of contract, the complaint went further to elaborate his complaint against the respondent from paragraphs 3 (a) to 3 (k). Therefore, it is not true that the complainant has no cause of action against the respondent as purportedly suggested by the learned


counsel for the respondent. in the result this point of preliminary objection is also bound to fail.

As to the **third limb of the preliminary objection**, this court is of the same view as that of the complainant's advocate that, this point canvassed by the respondent's counsel does not suffice to be named as a preliminary objection in the sense that it does not contain a pure point of law as correctly demonstrated in the famous case of **Mukisa Biscuits manufacturing Company Limited vs West End Distributors Limited** (1969) E.A 696. It follows therefore, the third limb of the respondent's preliminary objection is not worthy for consideration by the court since it is not possible for the court to be in better position to know if this suit is frivolous and vexatious at the pre-liminary hearing.

The above being told, the preliminary points of objection raised by the respondent's counsel are hereby dismissed. The matter to be heard on merit.

It is so ordered.




M. R. GWAE
JUDGE
18/03/2022