

**IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LABOUR REVISION NO. 17 OF 2020

SALVATORY OTAITE BENGESI.....APPLICANT

VERSUS

DODOMA CITY COUNCIL RESPONDENT

**(Revision from Award of the Commission for Mediation and Arbitration-
Dodoma-Matalis, R Arbitrator)**

Dated 4th day of April, 2020

In

CMA/DOM/03/2020

JUDGMENT

08th March & 27th April, 2022

MDEMU, J:.

This labour application has been filed by way of notice of application and chamber summons in terms of the provisions of section 91(1) (a); (2) (c) of the Employment and Labour Relations Act, No. 6 of 2004 and Rules 24 (1); (2) (a) (b) (c) (d) (e) (f); (3) (a) (b) (c) (d) (e) and 28 (1) (c) (d) and (e) of the Labour Court Rules, G.N No. 106 of 2007.

The Applicant in his chamber summons pray to this Court to revise and set aside the award of the Commission for Mediation and Arbitration (the CMA) in labour dispute No. CMA/DOM/03/2020 delivered on 14th April, 2020. The application is supported by an affidavit of one Salvatory Otaite Bengesi, the Applicant herein sworn on 22nd of May, 2020.

Briefly, the Applicant was employed by the Respondent from 9th April, 1990 to 12th December, 2018 when he retired. After retirement, he made follow up of his terminal benefits. On 5th November, 2019, the Respondent declined to pay such terminal benefits. Aggrieved, the Applicant referred the matter to the Commission for Mediation and Arbitration. In the course, the Respondent raised two preliminary objections that, the application is premature and is time barred. The two objections were sustained thus, the application was dismissed. Aggrieved by such decision, the Applicant filed this application.

The application was heard by way of written submissions. The Applicant's submissions were drawn by Mr. Onesmo David Martin Issiah, Advocate and the Respondent was represented by Ms. Hellen Njowoka, learned State Attorney.

The Applicant submitted among other things that, the Arbitrator erred in law in holding that the Applicant was to exhaust firstly remedies provided for under the Public Services Act, Cap. 298 and that, the dispute was filed out of time. He said that, basing on the nature of the dispute between the parties, it was only the CMA which had jurisdiction to determine the same because the Public Service Act and its Regulations are silent as to which body/authority the Applicant was supposed to appeal against such decision of the Respondent. He said that, worse

enough, the CMA decision didn't specify categorically where the Applicant was supposed to take his complaint.

On the issue that the suit was time barred, he submitted that, according to the referral form (CMA F1), the dispute arose on 5th November, 2019 and it was filed on 20th December, 2019 hence, it was within the prescribed time of sixty days according to Rule 10(2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007.

In reply, Ms. Hellen submitted that, the Applicant was an employee of the Respondent therefore a public servant and the law governing public servants is the Public Service Act, Cap. 298. The Applicant was to refer his grievances to the Public Service Commission by way of an appeal. In this, she cited provision of Section 32A of the Act which requires a Public Servant to exhaust remedies under the Act before resorting to the CMA. She added further that, before 2016, all labour disputes involving Public Servants had to be referred to the CMA, but following the amendment in 2016 through Written Laws (Miscellaneous Amendment) Act No. 13 of 2016 employment disputes of public servants are to be referred to the Public Service Commission. Since the Applicant dispute arose around 2018, it was wrongly referred to the CMA. She bolstered her argument by the decision in **Tanzania Posts Corporation vs. Dominic A. Kalangi, Civil Appeal No. 12/ 2022** (unreported).

Regarding time limitation, she submitted that, the dispute arose in 2018 and it was filed in 2019 almost a year lapsed. She added that, even if the same was filed in time, still it was contrary to the Public Service Act, Cap. 298 as it requires a public servant to exhaust remedies available under it before resorting to labour laws.

I have carefully taken into consideration parties' submissions and the record of the CMA as a whole. The issues to be determined is whether the CMA had jurisdiction to determine labour disputes referred by public servants prior to exhausting local remedies amenable under the Public Service Act, Cap. 298.

It is trite law that, the question of jurisdiction for any Court, Commission or Tribunal is paramount and fundamental as it goes to the very root of the power of the same to adjudicate upon cases of a different nature. See the case of **Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda (1975) TLR 155**. Ms. Hellen submitted that, the CMA has no jurisdiction to adjudicate disputes referred to it by public servants prior to exhaustion of remedies provided under the Public Service Act, Cap. 298. In the first place, under Section 3 of the Public Service Act, a public servant is defined as

"A person holding or acting in the public service office".

The phrase public office is also defined under the same section 3 to mean: -

"a paid public office in the united Republic charged with the formulation of Government Policy and delivery of public services other than: -

- (i) A parliamentary office;*
- (ii) An office of a member of a council, board, panel, committed of other similar body whether or not corporate, established by or under any other written law;*
- (iii) An office the emolument of which are payable at an hourly rate, daily rate or contract term;*
- (iv) An office of a judge or other judicial office;*
- (v) An office in the police force or prison service".*

In the premises, having been established by an Act of Parliament, that is, Local Government (Urban Authorities) Act, Cap. 288 and being wholly owned by the Government providing services to the people of Dodoma City; Dodoma City Council, the Respondent herein, is a Government Institution.

Since it is not disputed that the Applicant was employed by the Respondent Government Institution, it follows that, the Applicant prior to

his retirement was a public servant. Any labour dispute with the Respondent Employer had to be governed by the Public Service Act and not otherwise. It is unless and until the remedies provided for under the Public Service Act are exhausted, the Applicant herein may not resort, as he did, to the remedies amenable under the labor laws conferring jurisdiction to the CMA.

On this, the Court of Appeal recently on 28th March, 2022 delivered its judgment in the case of **Tanzania Posts Corporation vs. Dominic A. Kalangi, Civil Appeal 12 of 2022** (unreported) at page 9 regarding this point that, and I quote: -

"...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."

This question of jurisdiction alone suffices to dispose the whole application for revision. The issue of time limitation to file the dispute to CMA, for reason stated, will not be determined.

That said and done, this application has no merit and I accordingly dismiss it. This being labour dispute, I make no order as to costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
27/04/2022

DATED at DODOMA this 27th day of April, 2022



Gerson J. Mdemu
JUDGE
27/04 /2022