

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MWANZA
AT MWANZA

LABOUR REVISION NO. 32 OF 2022

(Arising from the Labour Dispute No. CMA/MUS/180/2017 before Mwebuga, Arbitrator) dated 2nd of February, 2022.)

MAJUTO O. CHIKawe 1st APPLICANT

GEORGE S. SAINA 2nd APPLICANT

VERSUS

THE TRUSTEE OF TANZANIA NATIONAL PARKS RESPONDENT

JUDGMENT

11th May & 20th June, 2023.

ITEMBA, J.

The applicants herein were the employees of the respondent at the positions of park rangers at Serengeti National Parks until 31st August 2017 when their employments were terminated for misconduct. They referred their dispute before the Commission for Mediation and Arbitration, herein the CMA, claiming for reinstatement and compensation on the basis that the said termination was unfair. At the end, the CMA dismissed the complaint on grounds that the applicant's termination was substantively and procedurally fair. Unsatisfied, the applicants, moved this court through a revision application with only one ground that, '*the arbitrator erred in law for determining the matter in which the CMA has no jurisdiction*'. From the

respondents, the applicants were faced with a preliminary objection to wit, *'the application is bad in law for failure to join the necessary party'*.

At the hearing the 1st applicant was present while the second was absent, both were represented by Mr. Emanuel Werema learned counsel. The respondent has the services of Mr. Samuel Ochina learned counsel.

Due to the nature of the single ground for revision and the point of preliminary objection, both application and preliminary objections were argued at one time. Starting with the preliminary objection, Mr. Ochina argued at lengthy that the revision application is incompetent before the court because the respondent, the Trustee of Tanzania National Park is a Public Corporation in terms of section 8(1) of **Tanzania National Parks Act, Cap 282**. Therefore, the revision application offends section 6(3) of the Government Proceedings Act. He also cited the decision of **Godfrey Nzowa v Selemani Kova and Tanzania Building Authority** Civil Appeal no. 183 of 2019.

In reply, Mr. Werema submitted among others that this case is before the High Court for the second time, and it was before this court as a revision application and the Attorney General was not joined as a party.

That, the High Court ordered the CMA to compose another decision and thereafter the applicants filed this application and that based on the irregularities before the CMA, this is the reason why even this application is not on merit.

As explained, the single ground of preliminary objection is that the revision application is bad at law for non-joinder of a necessary party, the Attorney General. And, the revision application itself, has only one ground which touches jurisdiction of the CMA to entertain this appeal because the appellants were government employees. Looking at the preliminary objection and revision application, it appears that both parties are heading to the same destination though sailing in different boats. The applicants contend that, there is an issue of jurisdiction of CMA based on the fact that the applicants were civil servants, an aspect which is not contested by the respondent. Considering the fundamentalism of jurisdiction, the initial analysis will base on the question whether the CMA had jurisdiction to entertain the dispute referred by the applicants.

The contention raised by the applicants is that the dispute was preferred to the CMA before exhausting all remedies available under **The**

Public Service Act, Cap. 298. R.E 2019 (Cap 298). The respondent does not object the fact that the CMA did not have jurisdiction, save to the effect that the government was to be represented even if the dispute was to be heard at the CMA.

As to whether the applicants were public servants, under section 3 of the Public Service Act, a 'public servant' is defined as, '*a person holding or acting in a public service office*'.

Under the same section "public service office" is defined to mean-

(a) 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, committee or other similar body whether or not corporate, established by or under any written law;

(iii) an office the emoluments of which are payable at an hourly rate, daily rate or term contract; (iv) an office of a judge or other judicial office;

(v) an office in the police force or prisons service;

(b) any office declared by or under any other written law to be a public service office.

Public service is defined under section A. 1(52) of the Standing Orders for the Public Service, 2009 (GN No. 493 of 2009) made under section 35(5) of the Public Service Act, to mean that: -

*"For purposes of the Public Service Act — Public Service means the system or organization entrusted with the responsibility of overseeing the provision or directly providing the general public with what they need from their government or any other institution on behalf of the government as permissible by laws and include the service in the civil service; the health service; **the executive agencies, the Public institutions service and the operational service**", [emphasis added]*

According to the applicants' CMA form no. 1, they were employed as Park Rangers at Serengeti National Park until 2017, their employment was terminated. Based on the long title of the National Parks Act, Cap 282, the said Act is aiming to provide for the establishment, control and management of national parks and for related matters. Section 8 thereof creates the Board of Trustees. The section states that:

8.-(1) There shall be established for the purposes of this Act a Board of Trustees which shall— Establishment of a Board of Trustees Act No. 14 of 1975 s. 3; G.N. No. 478 of 1962

(a) be a body corporate by the name of "the Trustees of the Tanzania National Parks", with perpetual succession and a common seal;

(b) in their corporate name be capable of suing and being sued;

(c) be capable of holding, purchasing or otherwise acquiring and of alienating any movable property, and, with the consent of the Minister, any immovable property, for the purposes of any of the duties or functions conferred on the Trustees by this Act.

(2) The provisions of the Second Schedule to this Act shall have effect as to the constitution, proceeding and acts of, and otherwise in relation to, the Trustees.

(3) The President may, by order published in the Gazette, add to, amend vary or replace the Second Schedule to this Act.

Further, according to the 1st schedule of the National Parks Act, it is the President who appoint one of the trustees to be Chairman of the Board.

Under 32A. A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act.

The said remedies are found under section 25(1)(b) of the Public Service Act as follows;

'Where;

*(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; (emphasis supplied).

Section 3 of the same Act defines 'the Commission' as '*the Public Service Commission established by section 9 and includes any department or division of the Commission;*'

Based on the above cited legal provisions, it suffices to say that the National Parks are substantially under the control of the government, based on the creation, appointment and operation of the National Parks,

and; the employee thereof acts in public service and are therefore public servants.

Having mentioned that, section 31(1) and (2) of the Public Service Act, provides for the servants in the public service, such as the Tanzania National Parks, to be governed by the Public Service Act itself. Therefore, under section 32A, the proper remedies should have been the sought through the Public Service Act which refers the public servant to the commission. And that means, CMA is not the proper platform to entertain labour dispute involving public servants.

Therefore, it is undoubted 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. See also the highly influencing decision of **Tanzania Posts Corporation Vs Dominic A. Kalangi** Civil Appeal No. 12 Of 2022, Court of Appeal, Mtwara.

As correctly submitted by Mr. Werema, the CMA had no jurisdiction to adjudicate the applicant's dispute. On this explanation, this revision application is found to have merit and is accordingly allowed. The

proceedings before the CMA are quashed and the orders emanating therefrom are set aside. This being a labour dispute, I make no order as to costs.

DATED at **MWANZA** this 23rd day of June, 2023.



**L. J. ITEMBA
JUDGE**