

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

CIVIL CASE NO. 11 OF 2023

MARWA JOSEPH WAMBURA-----PLAINTIFF

VERSUS

MAMLAKA YA MAJI SAFI NA USAFI WA MAZINGIRA

JIJINI MWANZA (MWAUWASA)-----1ST DEFENDANT

THE ATTORNEY GENERAL-----2ND DEFENDANT

SOLICITOR GENERAL-----3RD DEFENDANT

RULING

July 11th & 28th, 2023

Morris, J

This is a case by Marwa Joseph Wambura against three defendants above. It, however, does not seem to commence with a smooth take off. The defendants have raised a preliminary objection (PO). To them, this court has no jurisdiction by virtue of section 44 (3) and (4) of the ***Social Security (Regulatory Authority) Act***, Cap. 135 R.E. 2018 (elsewhere, 'the Act') as amended by ***the Written Law (Misc. Amendment) Act*** No. 6 of 2019.

Parties were given leave to and they did file respective written submissions for and against the PO. The plaintiff enjoyed the services of

Advocate Costantine Ramadhani (retained only for drawing submissions). However, Messrs. Felician Mseti and Oscar Twakazi, learned State Attorneys, acted for the defendants. In support of PO, it was submitted that jurisdiction is fundamental issue which goes to the root of the case.

Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda and 2 Others, [1995] TLR 155 was cited in support of the defendants' assertion hereof.

It was submitted further that, the plaintiff claims that the 1st defendant failed in a threefold undertaking: not to deduct 10% from his salary; failure to add employer's 10% contribution to the employee's share; and neglecting to remit the aggregate of both portions (20%) to the Public Social Security Fund (PSSSF) for the plaintiff's future retirement benefits. Nevertheless, in his submissions, the plaintiff altered the parties' shares of contribution to 5% and 15% for the plaintiff and 1st defendant respectively. All the same, to the defendants, such claims squarely constitute a dispute relating to social security disagreements.

In view of the above conclusion, the dispute in this suit should be resolved under ***the Act***. The defendants-objectors referred to section 44 (3) of ***the Act***, and argued that the dispute between the member or beneficiary and scheme should be referred to the Division within the ministry responsible for social security matters. It was submitted further

that the PSSSF has its internal mechanisms of resolving disputes pursuant to section 44 (4) of ***the Act***.

Further, the objectors referred me to the case of ***Karibueli J. Molla v Tanzania Zambia Railway Authority and Another***, Labour Dispute No. 8 of 2022 (unreported); to buttress their position. Also, they argued that according to section 62 of ***the Public Service Social Security Fund Act***, 2018; NSSSF's board is the only organ mandated to recover debts at the instance of the Director General by way of summary suit. They reiterated the defence prayer that the suit is accordingly premature and/or incompetent for want of this Court's jurisdiction.

In reply, the plaintiff submitted that the matter is purely a civil case. To him, the suit has nothing to do with the scheme because he had no written employment contract with the 1st defendant. The plaintiff also argued that he previously instituted labour dispute No. 1 of 2021 but it was dismissed for lacking a requisite criterion. So, he resorted to filing the present case on the basis of this Court's reasoning. Moreover, he contended that this Court enjoys unlimited jurisdiction. On such basis, he argued that the authorities cited by the defendants are accordingly distinguishable.

In rejoinder, defendants reiterated their submissions in chief. However, they added that the plaintiff's argument that this Court has

unlimited jurisdiction in all civil matters is irrelevant and misplaced. It was insisted that jurisdiction of courts is a statutory creation; no more no less.

Having heard parties' submissions, it is upon this court to decide whether it is clothed with jurisdiction to determine this suit. I have been largely referred to section 44 (3) and (4) of ***the Act***. The defendants allege that the matter at hand ought to be referred to internal disputes-resolution architecture within PSSSF. And that, thereafter, where need so dictates; to the Division before such dispute being escalated to the court. They cited ***Karibuei J. Molla v Tanzania Zambia Railway Authority and Another*** (*supra*) to typify the stated procedure.

As correctly submitted by the learned state attorneys, where there is alternative mechanism of resolving the dispute in accordance with the law; the court lacks jurisdiction to determine the same. It must firstly be referred to the respective channel. The justification for that approach is not hard to find. **First**, it is a cardinal principle of law for cases to be tried by lowest competent fora. The objective of setting judicial and quasi-judicial bodies in ascertainable legal hierarchies is not superficial. Indeed, different sets of disputes are categorically specified for a given body so as to harness advantages associated with specialties, expertise, timeframes, effective resources allocations and management; to mention but a few.

Second, it is advantageous to allow autonomy of parties' will and supremacy of sound social intercourse. Hence, individuals and groups of society members need to embark on internal or mutually-set mechanisms of disputes settlement prior to resorting to complex and multidisciplinary apparatuses of resolving such disputes between them. That is, accessing the latter disputes-resolving infrastructures is spared, as a last resort, for those eligible only. Such strategy not only it saves time and money, but also, it builds harmony within the precepts of social intercourse.

In the matter at hand, the plaintiff is alleging that the 1st defendant defaulted to deduct and remit the contributions to PSSSF for his terminal/retirement benefits. Having traversed parties' pleadings and written submissions, three things are clear. **One**, the plaintiff alleges to had never been registered as a member to the PSSSF. **Two**, the amounts allegedly not deducted and remitted to the PSSSF, if any, is still contestable between parties herein. It is, thus, not easily ascertainable if such debt is or is not due to the board for recovery under summary procedure. That is, it is not conclusive as having been earned for and on behalf of the Fund yet. **Three**, the internal dispute mechanism and/or board is spared for specific people or entity pursuant to law.

It was the submissions by the defendants that the plaintiff should first refer the matter in internal dispute mechanism of PSSSF; and

thereafter to the Division. The cited section 44(3) of **the Act** provides that;

*"(3) Subject to subsection (1), a dispute **between a member or beneficiary and a scheme**, a scheme and a scheme, or a member and a manager shall be referred to the division"* (emphasis added).

From the above subsection, therefore, for one to be eligible to refer the dispute to internal infrastructure and/or Division; he must be a member or beneficiary. A member is defined by section 3 of **the Act** to mean; "an employee or worker **registered by a scheme** and includes a person entitled to or receiving a benefit under a scheme". Looking at the words, as I emphasize them in bold, membership is subject to registration.

The plaintiff was neither registered nor was he entitled to receive any benefit from PSSSF. Pleadings are clear in this connection. Therefore, I am of the considered opinion that the mechanisms provided under section 44 (3) **the Act**, do not cater for him. Moreover, the plaintiff cannot resort to internal dispute resolution under section 44 (4) of **the Act** for he is not a member to PSSSF. Indeed, the latter has no any information or contributions concerning him. As such, he does not hold a dispute with the scheme (or manager for that matter). The internal mechanism will, thus, have no dispute to determine in the absence of the scheme as a

party. In other words, the dispute before the court exists between the plaintiff and his employer.

Before I pen off, I received the defendants' professional invitation to be persuaded by the holding in ***Karibuei J. Molla v Tanzania Zambia Railway Authority and Another*** (*supra*). With respect, I decline their kind gesture. Circumstances in the cited case and the present matter, are diametrical. In the former, the dispute partly involved a member to and the Fund. Though the large part of the blame was cast on the employer, there were unproven allegations of the employer deducting the money from the employee but not remitting the same (together with its contribution) to the scheme.

Reading the said caselaw, one discovers that the employer therein (TAZARA) pleaded by denying non-remittance of the contribution and that the complainant's due share, if any, was with the scheme. On such argument, my learned brother, Mganga, J. held at page 12 of the judgement as follows: -

"..since the complaint (sic) is claiming to be paid balance of his entitlements as pension relating to the amount that was deducted from his salary as contribution to the Social Security Fund and the National Insurance Corporation, his claims fall in the jurisdiction of the Division as quoted hereinabove and not before this court. It is my view that submissions on behalf of the

complainant that even if the law provides that the jurisdiction is vested to another authority the court still have jurisdiction cannot be accepted."

With adequate respect, I fail to appreciate the motive of the defendants' counsel to interpret the said case in a plot to mislead this Court. It is an inappropriate approach and professionally unhealthy.

Above analysis having been done and for the given reasons, the point of preliminary objection lacks merit. I accordingly overrule it. In consequence, the suit stands held to continue from its current stage. I make no order as to costs. It is so ordered.



C.K.K. Morris

Judge

July 28th, 2023

The ruling is delivered this 28th day of July 2023 in the Plaintiff's presence and Messrs. Kasanda Mitungo and Felician Daniel, learned State Attorneys for the Defendants.

A handwritten signature in blue ink, appearing to read 'C.K.K. Morris', with a large, sweeping flourish extending to the right.

C.K.K. Morris

Judge

July 28th, 2023