

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 669 OF 2019**

**BETWEEN**

**LEONARD E. MATEPA .....APPLICANT**

**VERSUS**

**NATIONAL SOCIAL SECURITY FUND.....RESPONDENT**

**JUDGMENT**

Date of Last Order: 16/12/2020

Date of Judgment: 24/12/2020

**Aboud, J.**

Aggrieved by the ruling in Execution Application No. 352/2018 delivered on 24/07/2019 by Hon. S. K. Simfukwe, Deputy Registrar 2016, the applicant **LEONARD E. MATEPA** filed this application which was made under Rule 24(1) 24 (2)(a)(b)(c)(d)(e)(f) 24(3) (a)(b)(c)(d) (28(1)(b)(c)(d)(e) of the Labour Court Rules GN. No. 106 of 2007 (herein referred as the Labour Court Rules) and any other enabling provisions of the law. The applicant prayed for the Court to revise and set aside the ruling in question on the grounds stated under paragraph 34 of his affidavit in support of the application. In

challenging the application, the respondent **NATIONAL SOCIAL SECURITY FUND** filed the counter affidavit sworn by Luciana Joseph Kagimbo, her Principal Officer.

Brief facts of the case are that, the applicant was employed by the respondent as the Internal Auditor. He worked with the respondent until on 09/07/2001 when he was terminated on the ground of misconduct. Aggrieved with the termination the applicant referred the matter to the Conciliation Board of Mtwara district where it was ordered that, the applicant be re engaged in his former position. The Conciliation Board's decision was challenged by the respondent to the Minister of Labour where the application was dismissed for being time barred. The applicant executed the decision of Conciliation Board through the Employment Civil Case No. 53/2003 at Kisumu Resident Magistrate Court, and he was paid a sum of Tshs. 167,000,000/=. Thereafter, multiple applications were made by both parties including Civil Revision No. 126/2003 where Hon. Jundu J (as he then was) ordered the applicant to refund Tshs.167,000,000/= to the respondent. On applicant's default, in Civil Revision No. 126/2003 Mandia, J. ordered the applicant be detained as a Civil Prisoner for six (6) months.

Moreover, on 2012 the applicant appealed against the decision of the Kisumu Resident Magistrate Court where Utamwa J. nullified the decision and proceedings of the lower court. Again on 22/06/2018 the applicant filed Execution application No. 352/2018 in this Court, which was dismissed for being res judicata. The applicant being resentful with the Registrar's ruling filed the present application.

Hearing was by way of written submissions; I appreciate both parties for complying with the schedule ordered hence the present judgment. The applicant appeared in person while the respondent was represented by Learned Counsels from Legal Link Attorneys.

During preparation of this judgment I observed that there is an issue of jurisdiction of the court to be determined. Thus I decided to deal with the relevant point of law, however I found it prudent to avail the parties an opportunity to be heard on the concerned point of law raised by the court suo motto. Parties appeared in Court on 18/12/2020 and accordingly submitted on jurisdiction issue. In such situation I resorted to determine on jurisdictional issue first before embarking to other issues on merit of this application.

The applicant submitted that, according to Rule 48 (3) of the Labour Court Rules the labour court has jurisdiction to determine labour matter originated from repealed laws, to wit The Security of Employment Act. To amplify his submission he cited the case of **OTTU on behalf of PL Assenga & 100 others v. AMI Tanzania Ltd**, Civil Application No. 35/2011, CAT. It was further submitted that, Rule 55 (1) of the Labour Court Rules, gives jurisdiction of this court to apply other laws where there is a lacuna in labour laws. He strongly submitted that the court has jurisdiction to handle the matter to the finality.

On response, the Respondent's Counsel argued that, this court has no jurisdiction to determine this matter. He stated that, the dispute originated from the order of the Minister for labour dated 24<sup>th</sup> August, 2001 which was supposed to be executed by the District Magistrate as per Security of Employment Act which was applicable by then. Learned counsel further submitted that, the order of Conciliation Board of Mtwara was filed in Dar es Salaam for execution before the District Magistrate who decided that he has no jurisdiction.

It was also submitted that, this court was moved by a letter of the Labour Commissioner date 11<sup>th</sup> June, 2018 which was just a directive to the applicant to bring the dispute before this court. The Learned Counsel added that, the dispute was finally determined and reached the stage of execution where the applicant was paid Tshs. 167 million. He urged the Court to refer to the 3<sup>rd</sup> schedule item 13 of the Act.

In rejoinder, the applicant stated that he did not move this court by a Minister's letter as submitted by the Respondent's Counsel. The applicant said he formerly filled the application through form no. CC.10 on 22<sup>nd</sup> June, 2018. He also agreed to have been paid Tshs. 167 million.

Having cautiously considered the parties submissions, court records and the relevant laws, this court is called upon to determine whether it has jurisdiction to entertain this matter.

It is undisputed that this dispute originates from the repealed laws. The jurisdiction of the Labour Court over disputes originating from the repealed labour laws is limited under the circumstances provided under paragraph 13(3) (a)(b) and (4) of the third schedule

of the Act as amended by section 42 of the Written Laws (Miscellaneous Amendments (No2) Act, NO 11 of 2010 as rightly referred by the Respondent's Counsel.

Under paragraph 13(3) (a) (b) of the amended third schedule to the Act, the Labour Court have jurisdiction to determine a pending Revision of the defunct Industrial Court of Tanzania and a pending hearing before the Industrial Court of Tanzania while under paragraph 13(4) of the schedule, the Labour Court has jurisdiction to determine an appeal and an application for judicial review originating from the Industrial Court of Tanzania pending in the High Court.

Thus, the jurisdiction of the Labour Court to entertain disputes originating from the repealed labour laws is limited to and only to matters which were pending before its predecessor, the Industrial Court of Tanzania. The Labour Court lacks jurisdiction to entertain a revision, a hearing, an appeal or an application which was not pending before the Industrial Court of Tanzania on the date when the new laws came into force.

The applicant stated this court has jurisdiction to determine the matter originated from the repealed laws as per Rule 48 (3) of the Labour Court Rules, which provides for enforcement of Court's decisions. I find the applicant misdirected himself as the law meant in that provision is the decision of the Labour Court and not the Conciliation Board or any decision from the repealed laws, refer Rule 2 (2) of the Labour Court Rules.

The instant matter having not been pending before the Industrial Court is not competent before the Court for want of jurisdiction. As the result the application is struck out accordingly.

It is so ordered.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the left.

I.D. Aboud

**JUDGE**

24/12/2020