

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISC. LABOUR APPLICATION NO. 251 OF 2021

BONAVENTURE NGOWI..... APPLICANT
VERSUS
UNIVERSITY OF DAR ES SALAAM..... RESPONDENT

RULING

Date of Last Order: 26/07/2021

Date of Ruling: 09/08/2021

B.E.K. MGANGA, J.

On 8th July 2021, the Applicant filed this application under certificate of urgency seeking for an order that this court be pleased to restrain the Respondent from evicting him from House No. 10 Sinza Area in Kinondoni Municipality pending hearing and determination of complaint number CMA/DSM/KIN/R.159/17 which is pending at the Commission for Mediation and Arbitration (hereinafter referred to as CMA) in Dar es Salaam Zone. Due to late service to the Respondent by the Applicant, when the matter came for orders on 26th July, 2021, the Respondent sought and was granted leave to file a counter affidavit by 28th July 2021. Together with the counter affidavit, the Respondent raised four grounds of preliminary objection on point of law namely;

1. That, this honourable court has no jurisdiction to entertain this matter;
2. That, this honourable court is not properly moved to entertain this matter and grant the sought reliefs for non-citing of enabling provisions;
3. That, the Applicant is not legally represented before this honourable court; and
4. That, the Application is incurably defective as it is supported by a defective Affidavit.

When the application came for hearing on 30th July 2021, Mr. Mutakyamirwa Philemon Advocate appeared and argued for and on behalf of the Applicant while Petro Mselewa Advocated being assisted by Gerson Moshia Advocate represented the Respondent. Counsels argued the aforementioned preliminary objection of which I was supposed to make a ruling before hearing the main application but it turned out to be clear to the parties that by nature of the arguments, the issue of jurisdiction cannot be covered well without touching evidence in the main application.

In arguing the jurisdictional issue, Mr. Mselewa advocate for the Respondent submitted that, the subject matter of the application is house

No. 10 Sinza area situated within the compounds of the Respondent. He submitted that the said house is owned by the Respondent and that the Applicant is the tenant of the Respondent. He conceded that, the Applicant's affidavit disclosed the issue of employer- employee relationship and that the same touches also the said house. He concluded that the Applicant was supposed to file the application in the High Court (Land Division) as per section 37 of the Land Dispute Court Act, [Cap. 216 R.E.2019].

On his part, Mr. Mutakyamirwa Advocate for the Applicant, maintained that this court has jurisdiction to entertain the application. He submitted that, the house in question was allocated to the Applicant by the Respondent because of their employer- employee relationship. He went on that, the said relationship was unfairly terminated by the Respondent as a result the Applicant filed an Application before CMA and that the said application is pending determination. He was of the view that, there is competitive issue of Land and Labour on the house in question that makes this court to be clothed with jurisdiction. To cement on his argument, he cited the unreported High Court decision in the case of ***Smart Global Limited vs. Tanzania Communication Regulatory Authority,***

Commercial Case No. 77 of 2009 (Dar es salaam Registry) and prayed the jurisdiction issue be dismissed.

Having in mind that lack of jurisdiction if sustained, the application will be dismissed, while the rest P.O makes it to be struck out, I allowed the parties to argue the main application. In making that decision, I was alive that, the relationship between the parties and the house in question that leads to jurisdictional issue cannot be properly determined without touching evidence of the parties.

In arguing the main application, Mr. Mutakyamirwa adopted the affidavit of Bonaventure Ngowi, the Applicant. He submitted that, the Applicant was recruited by the Respondent from Moshi and that in 2015 he was unfairly terminated. I will not deal with the issue of termination and grounds thereof as the matter is not before me, but it suffices to say that, it was alleged to be unfair termination. When I asked him to address the court the connection available between the Applicant and the house in question, Mr. Mutakyamirwa submitted that, the Applicant was allocated the said house by the Respondent as a privilege by virtue of his employment. He conceded that, the Applicant was paying monthly rent of Two Hundred Sixty-One Thousand Tanzanian Shillings (TZS 261,000/=)

only. He was quick to argue that after being allocated as a privilege, it turned out to be rights to the Applicant. When I further probed him as to the current employment status of the Applicant, Mr. Mutakyamirwa submitted that, the Applicant attained compulsory retirement age on 2nd February 2018 as indicated in annexure EA-4 to the Applicant's affidavit. It was further submitted on behalf of the Applicant that the Respondent has nothing to lose for continual stay in the house by the Applicant, because the Respondent will be compensated by deducting whatever amount from terminal benefits of the Applicant. He maintained that, the Applicant has not been discharged properly which is why, he is resisting eviction from the house in question.

On his part, Mr. Mselewa Advocate for the Respondent submitted that, there is no evidence to show that, there is a pending application before CMA to justify the Applicant to remain in the house in question after termination of employment in 2015. Responding to the issues raised by the court, Mr. Mselewa Advocate for the Respondent submitted that, Applicant was allocated the house in question by the Respondent and that he was paying monthly rent. He submitted further that, the relationship that existed between the Applicant and the Respondent was that of landlord

and tenant as the Applicant was paying monthly rent. He went on that, the Applicant has defaulted to pay rent amounting to Thirty-Four Million Five Hundred Thousand Tanzanian Shillings (TZS 34,500,000/=) only as stated in both annexure UD/BN2 to the counter affidavit and paragraph 11 of the counter affidavit of Prof. David Alfred Mfinanga, the Deputy Vice Chancellor responsible for administration of the Respondent and that the amount is rising. Responding to the argument that, the Respondent may recover that money from the terminal benefits of the Applicant, Mr. Mselewa argued me to reject it on ground that, the rent payable may have exceeded the terminal benefit. In such situation, the respondent will suffer an irreparable loss.

Having heard submissions of the parties, I am of the settled view, as correctly submitted by counsel for the Respondent and rightly conceded by counsel for the Applicant that, the relationship that existed between the parties over the house in question is that of landlord and Tenant. Hence the matter is a land issue that is the domain of the High Court (Land Division) and not this court. Reasons for this is not far. It is clear that, the Applicant was paying monthly rent as indicated in annexure EA-4 to the Applicant's affidavit and annexure UD/BN/2 to the counter affidavit. This

created landlord and tenant relationship. Counsel for the Applicant submitted that the said house was allocated to the Applicant as privilege which turned to be a right of the Applicant to hook it to the pending application before CMA and cloth this court with jurisdiction as a Labour issue. With due respect, it is not indicated as to how and when the so called "privilege" changed into right. More so, if the said house was a right of the Applicant tied to his employment, in no way he was supposed to pay for the right that accrued to him. In annexure EA-4 to the Applicant's affidavit and annexure UD/BN/2 to the Counter affidavit, the word indicated therein is **rent** and the amount deducted from his salary for that purpose and not otherwise. I am of the settled mind that rent is payable when there is Landlord and Tenant relationship and not otherwise.

The case of **Smart Global Limited (supra)** was cited by counsel for the Applicant to show that, there is competitive jurisdictional issue i.e., Land and Labour and that in the said case, the High Court found that whenever there is competitive jurisdictional issue either of the Court has power to entertain the matter. With due respect to counsel for the Applicant, I have read that case and find that, the court neither discussed nor decided the competitive jurisdictional issue raised herein. In short, that

case was read out of context. The competitive jurisdictional issue does not arise in this application for two reasons. One, the Applicant was paying rent in respect of the house in question. Therefore, that becomes a land issue of which this court has no jurisdiction. Two, the Applicant reached compulsory retirement age on 2nd February 2018 that is more than three years ago. He therefore, by operation of law, ceased to be a public servant. I therefore, see no possibility of the CMA to order reinstatement of the Applicant that will allow him to continue staying in the house in question. Putting it in other way, CMA has no power even if the Applicant succeeds to prove that he was unfairly terminated, to order the Applicant to continue working to compensate the three-year period (2015 to 2018) after attainment of the Compulsory retirement age for him to be allowed to stay in the said house.

I therefore, sustain the objection that this court has no jurisdiction and consequently dismiss the application. Because, the central issue of controversy between the parties over the house in question, falls in the jurisdiction of the Land Division of the High Court and not in this court. Since the jurisdictional issue has disposed the whole application, I will not deal with the remaining issues.

It is so ordered.



B.E.K. Mganga

JUDGE

09/08/2021



Labour Court TZ.