

**THE HIGH COURT OF TANZANIA**  
**LABOUR DIVISION**  
**AT DAR ES SALAAM**  
**REVISION APPLICATION NO. 42 OF 2021**

*(Arising from Ruling of Hon. M. Batenga, arbitrator, in Labour dispute No. CMA/DSM/TEM/706/18/81/19  
at Temeke dated 21<sup>st</sup> February 2021)*

**BETWEEN**

**GRACE EMMANUEL MOYO & ANOTHER ..... APPLICANTS**

**AND**

**TANZANIA PORTS AUTHORITY ..... RESPONDENT**

**JUDGMENT**

Date last order: 08/03/2023  
Date of judgment: 20/4/2022

**B. E. K. Mganga, J.**

On 26<sup>th</sup> November 2018, Grace Emmanuel Moyo, the 1<sup>st</sup> applicant, Lynda Ritha Okayo, the 2<sup>nd</sup> applicant and Ahmad Ally Fungameza who is not part to this application, filed Labour dispute No. CMA/DSM/TEM/706/18/81/19 before the Commission for Mediation and Arbitration hereinafter referred to as CMA claiming to be paid TZS 100,000,000/= as terminal benefits for unlawful retrenchment. In the Referral Form referring the dispute to CMA, the applicants, and the said

Ahmad Ally Fungameza did not fill part B of the said Form. Part B of the CMA Form No. 1 (CMA F1) is supposed to be filled by an employee who files the dispute for unfair termination of employment. At CMA, the herein applicants signed a form appointing and mandating Ahmad Ally Fungameza to pursue the dispute on their behalf. In the said form, they indicated that 1<sup>st</sup> applicant's employment started in 2011 as a messenger and was issued with Check No. 95438. It was further indicated that she was terminated on 27<sup>th</sup> September 2018 by that time earning TZS 718,000/= monthly salary. In the said Form, they further showed that, the 2<sup>nd</sup> applicant's employment started on 1<sup>st</sup> January 2000 as Clerk "A" and that was issued with Check No. 93921. They further showed that 2<sup>nd</sup> applicant was terminated on 28<sup>th</sup> September 2018 by that time earning TZS 1,200,000/=monthly salary.

On 20<sup>th</sup> August 2019, the respondent filed a preliminary objection that CMA had no jurisdiction to entertain the dispute because the complainants did not exhaust remedies provided for under the Public Service Act. On 25<sup>th</sup> February 2020, Hon. Kokusiima, L, Arbitrator, having considered various conflicting decisions of this court, issued a ruling that CMA had jurisdiction and ordered the dispute to proceed to the hearing

stage. Parties to the dispute including Ahmad Ally Fungameza filed their respective document they were intending to rely on to prove their case. On 21<sup>st</sup> October 2020, respondent filed another preliminary objection that the dispute was filed out of time. Having heard and considered submissions of both sides, on 21<sup>st</sup> December 2020, Hon. M. Batenga, arbitrator, delivered the ruling *inter-alia* that the dispute was time barred and proceeded to struck it out.

Applicants were aggrieved by the said ruling hence this application for revision. In their joint affidavit in support of the notice of application, applicants raised four legal issues namely:-

- (a) Whether the arbitrator erred in facts and in law in reaching a finding that the dispute was about the legality of the retrenchment hence it ought to have adhered to rule 10(1).*
- (b) Whether the arbitrator erred in facts and in law in reaching a finding that the dispute as could be seen in part 3 of CMA F1 was about claims for 'unlawful retrenchment'.*
- (c) Whether the arbitrator erred in facts and in law in reaching a finding that the dispute was about claims for 'unlawful retrenchment' and that such a claim falls under the dispute about fairness of termination of employment.*
- (d) Whether the arbitrator erred in facts and in law in reaching a finding that the dispute is time barred.*

In resisting the application, the respondent filed the counter affidavit sworn by Kulwa Mumbuli, her principal officer. When the application was

called for orders, the parties prayed the matter be disposed by way of written submissions. The prayer was given to that effect and parties complied with submission schedules.

When I went through written submissions made by parties and the CMA record with a view of composing the judgment, I found that the jurisdictional issue of CMA that was raised at CMA was not raised at this time. I therefore resummoned counsels for both sides to address the court as whether CMA had jurisdiction over the dispute between the parties or not.

Submitting on the issue raised by the court, Advocate Stella Simkoko for the applicants, submitted that CMA had jurisdiction because Section 3A (i) of Public Service Act excludes body corporate from Public Service Offices. She argued that applicants were employed by Tanzania Ports Authority which is a body corporate as per the Ports Act. She further submitted that; the Chief Executive Officer of the respondent is appointed by the President in terms of a Public Corporation Act.

On the other hand, Ms. Kause Kilonzo, State Attorney, for the respondent, submitted that, there is no dispute that applicants were

employees of the Tanzania Ports Authority which is a public corporation. She argued that its Chief Executive Officer is appointed by the president and the board members are appointed by the Minister. She further submitted that, in terms of Section 32A of the Public Service Act, public servants are required to exhaust remedies provided for under the Act. She went on that the dispute was filed at CMA after amendment and that applicants were supposed to follow specific law and not general law. To bolster her submission, Ms. Kilonzo, referred the court to the case of ***Tanzania Ports Corporation v. Dominic Kalangi, Civil Appeal No. 12 of 2022*** (unreported). She insisted that the respondent is owned by the government by 100%. Therefore, CMA had no jurisdiction.

In rejoinder, Ms. Simkoko maintained that the respondent is not a Public Service hence, applicants are not public servants. She distinguished the ***Kalangi's case*** (supra) by stating that the Court of Appeal did not properly interpret the law. She conceded that the respondent is owned by the government.

From the CMA record and submissions of the parties, it is undisputed that applicants were public servants. It is further undisputed that the



respondent is a Public Corporation. It is also undisputed that, they did not exhaust remedies available under the Public Service Act [Cap. 298 R. E. 2019]. It is clear in my mind that, prior to filing the dispute at CMA, applicants were supposed to exhaust remedies available under Cap. 298 R. E. 2019 (supra). Section 32A of the said Act provided:-

*" A public servant shall, prior to seeking remedies provided for in the labour laws, exhaust all remedies as provided for under the Act".*

A similar situation happened in the case of ***Tanzania Posts Corporation v. Dominic A. Kalangi, Civil Application No. 12 of 2022***, (unreported) wherein the court of Appeal held that:-

*"...it is unambiguous 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...CMA has no jurisdiction to adjudicate upon such matters."*

In the ***Kalangi's case*** (supra), the Court of Appeal nullified both CMA and High Court proceedings, quashed and set aside the orders arising therefrom. Guided by that Court of Appeal decision, I hereby nullify CMA proceedings, quash, and set aside the orders arising therefrom. The issue raised by the court has disposed the whole application. I will not therefore

consider issues raised by the applicants in their joint affidavit in support of the notice of application.

Dated at Dar es Salaam this 20<sup>th</sup> April 2022.



B.E.K. Mganga  
**JUDGE**

Judgment delivered on this 20<sup>th</sup> April 2022 in the presence of Stella Simkoko, Advocate for the applicant and Kause Kilonzo, State Attorney for the respondent.



B.E.K. Mganga  
**JUDGE**