

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

REVISION APPLICATION NO. 369 OF 2021

(Originating from an award issued by Hon. Wilbard, G.M, arbitrator dated 16th August 2021 in Labour

Dispute No. CMA/PWN/BAG.R.81/2017)

BETWEEN

TANZANIA ELECTRIC SUPPLY CO. LTD APPLICANT

AND

NKUNGA MIPATA RESPONDENT

JUDGMENT

Date of last order: 27/04/2022
Date of judgment: 28/04/2022

B. E. K. Mganga, J.

On 1st April 2017, applicant terminated employment of the respondent allegedly on ground of gross dishonest resulting in misappropriation of line materials. Respondent was unhappy with termination as a result, he filed Labour dispute No. CMA/PWN/BAG.R.81/2017 before the Commission for Mediation and

Arbitration henceforth CMA at Bagamoyo claiming to be reinstated. On 16th August 2021, Hon. Wilbard, G.M, arbitrator having heard evidence and submissions of both sides held that termination of the respondent was fair substantively but unfair procedurally. In the award, the arbitrator found that applicant proved by evidence that respondent was dishonest because he took various materials but did not deliver them to the site or to intended persons hence there was valid reason for termination. The arbitrator found that applicant did not follow procedure for termination hence unfair termination. Due to procedural unfairness, the arbitrator awarded respondent to be paid TZS 19,200,000/= being 12 months' salary compensation.

Applicant was aggrieved by the said award hence this application for revision. In the affidavit supporting the notice of application, Mr. Thadeo Geoffrey Mwabulambo, principal officer of the applicant raised two grounds namely:-

- 1. That the arbitrator erred in law and facts to entertain the matter while having no jurisdiction.*
- 2. That the arbitrator erred in law and facts when she held that termination was unfair as the procedure was not followed.*

When the application was called for hearing, Mr. Edwin Webiro, State Attorney for the applicant opted to argue only the ground relating to jurisdiction of CMA. He submitted that respondent was a Public Servant and that the dispute was filed at CMA in 2017. He argued that by that time, the Public Service Act was amended to include Section 32A that requires Public Servants to forward disputes to the Public Service Commission and not CMA. Mr. Webiro went on that, at CMA a preliminary objection was raised that CMA had no jurisdiction, but it was dismissed. State Attorney cited the case of ***Tanzania Posts Corporation V. Dominic A. Kalangi, Civil Appeal No. 12 of 2012***, CAT (unreported) to support his argument that CMA had no jurisdiction over Public Servants.

Resisting the application, Mr. Joseph Mandela Mapunda, counsel for the respondent, submitted that CMA had jurisdiction to entertain the dispute. He argued that, respondent was not a Public Servant because Section 3 of the Public Service defines who is a Public Servant and Public Office. He went on that, respondent was employed by the applicant who is a Corporate established under the written laws.

Counsel for the respondent submitted further that, in 2008 respondent was employed under fixed term contract of three years but on

21st October 2011 his contract of employment was changed to the unspecified terms. He argued further that respondent was not a public servant because unspecified period contract means that an employee can be terminated at any time. Counsel for the respondent concluded that CMA had jurisdiction over the dispute.

In rejoinder, Mr. Webiro, State Attorney for the applicant submitted that, in terms of section 14 of the Employment and Labour Relations Act [Cap. 366 R. E. 2019], unspecified term of employment means that an employee is employed on permanent basis. He concluded that since respondent's employment was for unspecified period, he was a public servant.

I have carefully examined evidence of the applicant in CMA record and find that witnesses testified that respondent was employed on permanent terms. It is undisputed that applicant is a public corporation established by the Act of Parliament and owned wholly by the government of the United Republic of Tanzania providing electricity service within the country. This squarely falls in all four corners of what was held by the Court of Appeal in ***Kalangi's case*** (supra) as it is a public institution providing service to the public. In fact, all policy issues relating to

electricity with the country starts with the applicant before to be taken to the Ministry and country level. I am of the settled mind that, respondent being employed for unspecified period was a public servant hence CMA had no jurisdiction over the dispute that was filed by him. In terms of section 32A of the Public Service Act [Cap 298 R. E. 2019) respondent was supposed to exhaust all remedies available under the Public Service Act prior filing the dispute at CMA. In other words, he was supposed to file his complaint before the Public Service Commission and not at CMA which had no jurisdiction.

For the foregoing, I allow the application, nullify CMA proceedings, quash, and set aside the award arising therefrom.

Dated at Dar es Salaam this 28th April 2022



B.E.K. Mganga
JUDGE

Judgment delivered today 28th April 2022 in the presence of Narindwa Sekimanga, State Attorney, for the applicant and Greyson Trasis, advocate, for the respondent.



B.E.K. Mganga
JUDGE