

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION APPLICATION NO. 493 OF 2021

*(Arising from the Ruling of Hon. Massawe. Y, arbitrator, in Labour dispute No.
CMA/DSM/ILA/R.832/17/159/2021 at Ilala dated 8th November 2021)*

BETWEEN

SADI SHEMLIWAAPPLICANT

AND

**BOARD OF TRUSTEES OF THE NATIONAL
SOCIAL SECURITY FUND.....RESPONDENT**

RULING

*Date of Last order: 27/04/2022
Date of Ruling: 28/04/2022*

B. E. K. Mganga, J.

In 1999, the applicant was employed by Respondent as Director of Actual and Risk Management. Applicant served the same position until 2014 when he was appointed as Director of Actuarial and Risk Management, the position he served until 17th July 2017 when he was terminated on ground of misconduct. Being aggrieved with termination, on 09th August 2017, he filed the dispute before CMA for unfair termination. At CMA, respondent raised a preliminary objection that CMA had no jurisdiction to determine the dispute between the parties.

On 19th February 2018, the arbitrator delivered a ruling to that it had jurisdiction. The respondent being dissatisfied with the said ruling, she filed Revision Application No. 447 of 2018 but later withdrew it as a result the parties were ordered to go back to CMA for the matter to be heard on merit. When the parties went to CMA, the arbitrator raised jurisdiction issue to determine the dispute. After hearing the parties, the arbitrator delivered a ruling that CMA had no jurisdiction to determine the dispute. Applicant felt resentful with the ruling as a result he filed this application seeking the court to revise the said ruling.

When the matter was scheduled for hearing, before addressing the grounds for revision, I called upon the parties to address first the issue of CMA's jurisdiction in determining the dispute between the parties herein.

Mr. Richard Madibi, Counsel for the applicant submitted that applicant was an employee of the respondent under permanent and pensionable terms. Counsel submitted that applicant was terminated on 11th July 2017. Mr. Madibi further submitted that, applicant was not a Public Servant because he was not governed by Public Service Act [Cap. 298 RE. 2019]. However, during submissions counsel for the applicant conceded that respondent is a Public Institution and that her head is

appointed by the President. He further conceded that, NSSF implements Government policy on security funds of employees. Counsel added that he is aware of the ***Tanzania Posts Corporation V. Dominic A. Kalangi, Civil Appeal No. 12 of 2022*** (unreported) but he insisted that applicant was not a Public Servant.

On her part, Ms. Happiness Nyabunya, State Attorney, for the respondent submitted that, NSSF was established by Act of Parliament as Public Corporation dealing with Public Policy and that her employees are Public Servants governed by Public Service Regulations. She further submitted that; applicant was supposed to exhaust remedies available in the Public Service Act prior to filing the dispute at CMA. To support her submission, she referred to the case of ***Dominic Kalangi*** (supra).

In rejoinder, Mr. Madibi reiterated that NSSF employees are not public servants. Counsel conceded that NSSF was established by Act of Parliament and that it is wholly owned by the Government. He conceded further that respondent was established to provide pensionable security to employee which is as policy matter. He conceded also that funds of the respondent are allocated by the Government and regulated by Public Finance Act.

I have considered the submission made by both counsels on the CMA's jurisdiction. The issue of jurisdiction is so fundamental in administration of justice. It refers to the legal authority granted by the law to the courts to rule on legal matters and render judgments according to the subject matter of the case.

It is undisputed that NSSF was established by an Act of Parliament. It is undisputed further that NSSF is a Public Corporation. In terms of section 31 of the Public Service Act(supra), employees of the respondent are Public Servants. The said section 31 of the Public Service Act (supra) provides: -

*31.-(1) Servants in the executive agencies and **Government institutions** shall be governed by provisions of the laws establishing the respective executive agency or institution.*

*(2) **Without prejudice to subsection (1), public servants referred to under this section shall also be governed by the provisions of this Act.***

From the submission of the parties, it is apparent that, the respondent is a public Institution, and her employees are public servants who are bound to exhaust internal disciplinary mechanism as per Section 32A of the Public Service Act [Cap. 298 R. E. 2019], which require public servants prior to seeking

remedies provided for in the labour laws, exhaust all remedies as provided for under the Public Service Act.

The court of Appeal had an advantage of discussing a similar issue in the case of ***Tanzania Posts Corporation v. Dominic A. Kalangi, Civil Application No. 12 of 2022***, (unreported) and 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 matter at hand, it is indisputable fact that applicant has not exhausted remedies provided for under the Public Service Act (supra). That being the position, the dispute was referred to CMA prematurely and CMA had no jurisdiction to determine it.

For the foregoing, I therefore nullify CMA proceedings, quash, and set aside ruling dated 19th February 2018 and uphold CMA Ruling dated 8th November 2021 because CMA had no jurisdiction.

Dated at Dar es Salaam this 28th April 2022.



B.E.K. Mganga
JUDGE

Ruling delivered today 28th April 2022 in the presence of Greyson Trasis, Advocate holding brief of Richard Madibi, advocate for the applicant and Ms. Happiness Nyabunya and Ms. Doreen Mhina, State Attorneys, for the respondent.



A handwritten signature in black ink, appearing to read 'B.E.K. Mganga'.

B.E.K. Mganga
JUDGE

Labour Court-TZ.