

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 433 OF 2021

(From the Ruling of Commission for Mediation & Arbitration of DSM at Temeke) Dated 20 June 2019 in Labour Dispute No. CMA/DSM/TEM/701/2018/224/2018)

BETWEEN

LUGANO BLACKSON MWAMBYALE AND 95 OTHERS.....APPLICANTS

VERSUS

TANZANIA PORTS AUTHORITY.....RESPONDENT

RULING

25th April 2022 & 10th May 2022

K. T. R. MTEULE, J.

This ruling is in respect of **Miscellaneous Labour Application No. 433 of 2021** which was filed by the applicants seeking for extension of time to file Revision Application against the CMA decision in **Labour Dispute No. CMA/DSM/TEM/701/2018/224/2018**.

The application is opposed by the Respondent who raised two points of preliminary objection, to the effect that:-

- i) The application is barred by Sub Rule 3 of Rule 1 of Order XXIII of the Civil Procedure Code (Cap 33, R.E 2019) for want of the Court's leave to refile the present application following the withdrawal of Miscellaneous Labour Application No. 211 of 2021 by the applicants.

- ii) That, this application is incompetent for want of notice of joinder of the Attorney General.

Before arguing the raised preliminary objections, on 25th April 2022 another point of law was raised by the court suo moto, where the parties were asked to address the issue as to whether the Court is clothed with jurisdiction to entertain the matter, the respondent being a public authority.

In addressing the Court, Ms. Stella Simkoko, Advocate appeared and argued on behalf of the applicants while Mr. Shija Charles, State Attorney, appeared and argued on behalf of the respondent.

Ms. Stella submitted that the Court has jurisdiction to determine this application because according to **Section 3A (ii) of the Public Service Act**, a body corporate established under any written law is not a public service office and therefore its employees are not public servants. She stated that according to **Section 4 of the Ports Act of 2004**, TPA is a body corporate and therefore its employees are not public servants in accordance with Section 34 (2) of the Public Service Act as designated by the Public Service Amendment Act, where sub section 2 was added to provide that the public servant in

the Public institutions and Agencies shall also be covered by the Public service Act. In her view, the said amendment did not provide that body corporate should also be covered by public Service Act. She distinguished a Public Institution from Body corporate by citing Section 58 of the Public Corporations Act which distinguishes institutions from corporations.

Ms. Stella submitted that Public Corporations are defined under **Section S. 3 of the Public Corporations Act**, meaning any corporation where the government owns shares as sole shareholder. In her view, the **Public Service Act** covers public institutions and not Body Corporate and therefore, the Public Servants referred to under S. 32A of the Public Service Act are the people working in Public Institutions and in agencies and in the offices referred to under Section 3A of the Public Service Act. Ms. Stella submitted that the employees working in the offices listed under Section 3A (1) to (v) are not Public Servants because those are not Public Service Offices.

Ms. Stella further submitted that to prove that the Public Service Act was not applicable to the respondent, in 2019 the Ports Act was amended and Section 38A was added which shows that the Act was inapplicable to the respondent prior to those amendments.

Ms. Stella acknowledged to be aware of the recent Court of Appeal Decision of **Tanzania Posts Corporate vs. Dominic A. Kalangi**, Civil Appeal No. 12 of 2022, but she condemned it to be a bad law and urged this Court not to use it for contravening the Act of parliament. She concluded that the Respondent is a body corporate, and a body corporate is not a Public Service office, and its employees are not public servants and that the Court of Appeal decision is a bad in law.

Opposing the application Mr. Shija challenged Ms. Stella's argument that the decision of the Court of Appeal in **Tanzania Posts Corporate vs. Dominic A. Kalangi supra** is a bad law. In his view, the decision is a binding authority, and this Court cannot disregard it. He submitted that, this court has no jurisdiction to entertain this matter as the Respondent is a Public Service Office because, according to Section 3A of the Public Service Act, Public Service Office is a paid Public Service Office, in the United Republic charged with formulation of Government Policy and delivery of Public Service and since the Respondent delivers public services, it is corrects to be termed as Public Service Office and for that matter its employees are Public Servants.

Mr. Shija further submitted that the Public Service Act has always been applicable to the respondent and this can be confirmed by the decision of this court in the case of **Godfrey Ndigabo versus TPA**, Rev. No. 772 of 2019 where Hon. Muruke, J. ruled that the Applicant in that case was a public servant because the Respondent is a public service office. He therefore submitted that the applicants were required to comply with Section 32A of the Public Service Act by not filing the matter in the CMA after the coming into force Section 32A of the Act. In his view, that makes this court lacking jurisdiction.

From the submissions and the pleadings, one issue features for determination. The said issue is "whether this Court and the Commission for Mediation and Arbitration have jurisdiction to entertain the matter." I have considered the industrious work done by the parties' counsels in their submissions. I am concerned with the decision of the Court of Appeal in **Tanzania Posts Corporate vs. Dominic A. Kalangi supra**. In this case, the public entity which was involved is the Tanzania Posts Corporation which is established and governed by a specific Law just like the instant Applicant which is Tanzania Ports Authority. In this case, the Hon. Justices of Appeal

had the following to say:-

"In the premises, it can hardly be gainsaid that, having been established by an Act of Parliament and being wholly or substantially owned by the Government, the Tanzania Posts Corporation is a public service institution whose principal duty is among others, to provide the public with a national and international postal and other service. (See section 8 of the said Act). This is in line with section A. 1 (52) of the Standing Orders for the Public Service, 2009 (GN. No. 493 of 2009) made under section 35 (5) of the Public Service Act, which provides in part that:-

"For purposes of the Public Service Act - Public Service means the system or organization entrusted with the responsibility of overseeing the provision or directly providing the general public with what they need from their government or any other institution on behalf of the government as permissible by laws and include the service in the civil service; the health service; the executive agencies, the Public institutions service and the operational service", [emphasis address].

As we take it, the import of the above-quoted provisions together with a more elaborate exposition attached to it, is that the employees of the Tanzania Posts Corporation are public servants."

The Decision clearly indicated that Tanzania Ports Authority being a public institution office cannot be outside the prescription of a public service office. Even the parties acknowledge that by virtue of this decision the applicant herein is a public service officer. Their point of departure centers on the issue as to whether this court can disregard the decision by declaring it to be a bad law.

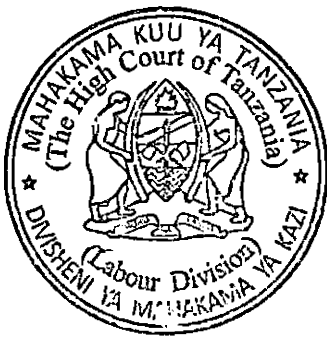
I differ with Ms. Simkoko's argument that this court should ignore the decision of the Court of Appeal on reason that it is a bad law. The doctrine of precedence requires a court to follow the decision of an upper court without any qualification.

From the guidance given in the above authority on the Tanzania Posts Corporation, I agree with Mr. Shija that the Employer in the instant Application, Tanzania Ports Authority is a public service office as per the interpretation given in the case of **Tanzania Posts Corporation** supra and therefore this court does not have

jurisdiction to entertain it.

Since this Court lacks jurisdiction to entertain matters involving public servants, I dismiss this application. Each party to take care of its own cost. It is so ordered.

Dated at Dar es Salaam this 10th day of May, 2022.




KATARINA REVOCATI MTEULE

JUDGE

10/05/2022

Labour Court TZ.