

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

**LABOUR REVISION NO. 249 OF 2021**

*Arising from Labour Dispute No. CMA/DSM/TEM/494/2019/27/2020 Kayugwa H,  
Arbitrator dated 20 May 2021*

**EDO MWAMALALA ..... APPLICANT**

**VERSUS**

**TAZARA ..... RESPONDENT**

**RULING**

**K.T.R Mteule, J**

**17 August 2022 & 24 August 2022**

This Application for revision intends to challenge the award of the Commission for Mediation and Arbitration of Dar es Salaam at Temeke in Labour Dispute No. CMA/DSM/TEM/494/2019/27/2020. Tanzania Zambia Railways Authority (TAZARA) being partly owned by the Government of Tanzania and having been one of the parties in this matter, I felt a need to ascertain the jurisdiction of the court before proceeding with the merit of this Application consequently, I called upon the parties to address me on the issue as to whether the CMA and this Court have jurisdiction to entertain the matter. Parties addressed the Court orally, where the Applicant was represented by Ms. Beatrice Advocate and the Respondent was present in person.

In her submissions, Ms. Beatrice stated that the Applicant is an employee of TAZARA which is a public corporation established by **Tanzania Zambia Railways Act Cap 143 of 2002 R.E.** which is managed by Tanzania and Zambia with 50 shares to each, doing transportation of passengers and consignments. According to Ms. Beatrice, the nature of the business falls under essential services and according to S.30 of the Public Service Act No. 8 of 2002 (PSA), servants in the executive agencies shall be covered by the laws establishing it but the Public Service Act was amended by the Act No. 8 of 2017 where subsection 2 of Section 30 was added to provide that public servants shall be governed by the PSA and under Section 30(1) & (2) it is clear that employees of TAZARA are public servants.

Referring to S.A of 1 (52) of the Standing Orders of GN No. 493 which was made under S. 35(5) of the PSA, Ms. Beatrice explained that Public Service means and includes the services rendered by the Respondent. She further referred to the amendment of the PSA of 2016 by the **Written Laws Miscellaneous Amendment Act No. 3 of 2016** where S. 32 A was added to provide that all public servants must exhaust all remedies under the PSA before seeking other forms of remedies. She is of the view that the applicant had a duty to exhaust

the remedies under the PSA because the matter was filed in 2019 when the amendment was already in place.

While making reference to the definition of a public servant under S. 3 of the Public Service Act read together with S.4 of the Interpretation of the Laws Act, Cap 1 Ms. Beatrice submitted that it is clear that the Respondent is a public corporation, and its employees are public servants.

She further referred to the recent decision of the Court of Appeal in **Tanzania Posts Corporation vs. Dominic Kalange, Civil Appeal No. 12 of 2022** and submitted that all public servants are required to comply with the PSA.

Ms. Beatrice concluded that CMA did not have jurisdiction to determine matters involving public servants and prayed for the application to be dismissed for want of jurisdiction.

In reply, the Applicant submitted that the CMA had jurisdiction because although TAZARA is a public corporation, it is a statutory corporation. He referred to the definition statutory cooperation under **Section 3 of The Public Corporations Act, No. 2 of 1992**. In his view, under this definition, an employee of TAZARA, is guided by TAZARA Act No. 4 of

1995 which gives guidance on how to deal with the management of staff.

Referring to the long title in the Act which is to give effect to the Agreement and S. 2 & 11 of TAZARA Act, which defines the composition of the management and the Board of Directors being composed of Tanzanians and Zambians, the Applicant is of the view that the corporation is international.

He further referred to S. 87 (3) of TAZARA Act which gives authority to the corporation to make conditions of service where management terms and conditions of service, collective agreement, staff regulations, public scheme of service, procurement manual, disciplinary code and grievance procedure and Nidham Cooperation have been developed. In his view, the nature of the Act gave strict procedure of operations of TAZARA hence it cannot be guided by the PSA.

He submitted that the S. 32 A of the PSA do not cover TAZARA because it is not Agent services but a statutory corporation. Distinguishing between instant case and the case of **Posts Corporations** cited by the Respondent, the Applicant claimed Posts Corporation is under CAG audit while TAZARA is audited by independent Auditors and not by the CAG.

While agreeing that each country uses its own Municipal laws, he insisted that employees of TAZARA are not covered by **S.32 A of the PSA** because the procedures therein are not fair to the TAZARA staff who are not Tanzanians. He challenged the constitutionality of S. 32 A of the 107 A (1) of the Constitution of the United Republic of Tanzania which directs dispensation of Justice to be under the Courts. He concluded that the CMA had jurisdiction and prayed for this court to entertain the matter.

On rejoinder, Ms. Beatrice SA submitted that the Sections under the TAZARA Act as stated by the applicant indicate how TAZARA is a public corporation. In view, the sections show that even its operations are public services and that no provision which exempt TAZARA employees from being public servants and that they should not exhaust remedies under PSA.

She stated that the staff from ZAMBIA get their employment while in Zambia, that they can just get transfer to TANZANIA but still guided by Zambian Laws. With regards to Article 107, Ms. Beatrice submitted that the Article covers the broad service of justice which is dispensed in accordance with the laws. She therefore opined that CMA did not have jurisdiction because the applicant was a public servant.

From the submissions of the parties, the debate centers on whether TAZARA is a public cooperation subjected to the requirement of section 32 A of the PSA. According to the Applicant, the nature of composition of the management and the Board of TAZARA makes it more of international cooperation which is not subjected to the PSA. It is not in dispute that although employees of TAZARA come from Tanzania and Zambia, they are governed by the law of their respective countries. This means Tanzanians working with TAZARA are under the Tanzanian Laws. The Respondent denies application of PSA to the Employees of TAZARA because there are specific staff regulations and guidelines for the staff working with TAZARA. I have compared the employees working with TAZARA with the ones working with the Tanzania Posts Cooperation and found that the Case cited by the Respondent, **Tanzania Posts Cooperation versus Dominic Kiangi** supra, provides a guidance which also covers TAZARA. In this case the Court provided interpretation of the laws governing employees working in Public Corporation. I will extensively quote hereunder the relevant part of the case at page 7 to 8.

*"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 added]*

*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. While section 31(1) of the Public Service Act, provides for the servants in the executive agencies and Government institution, such as the Tanzania Postal Corporation, to be governed by the provisions of the laws establishing the respective executive agency or institution, sub-section (2) makes it mandatory, thus: -*

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

*In the context of the instant case, the CMA is further kept at bay from entertaining labour disputes involving public servants by the provisions of section 32A referred to by Ms. Kinyasi, which states categorically that: -*

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

From the above quote, it is apparent that the nature of service provided by TAZARA are similar to the nature of service provided by Tanzania Posts Corporation. It is all about transportation, a service given to the Public. Employee of both Corporations are guided by Tanzania Laws and their interpretation is clearly defined in the case of Tanzania Posts Corporation.

The Respondents argument that TAZARA has its own guidelines does not change the Court of Appeal position stated above because even Tanzania Posts Cooperation is established by a specific Act of Parliament and it has its own staff guidelines, but all this did not exempt it from being subjected to the Section 32 A of the PSA.

From the above premise, and guided by the decision of the Court of Appeal in the case of **Tanzania Posts Corporation**. I am of the view that the CMA did not have jurisdiction to determine Labour Dispute No. CMA/DSM/TEM/494/2019/27/2020. The CMA proceedings and the award

therefrom are hereby quashed and set aside. Each party to bear its own costs.

Dated at Dar es Salaam this 24<sup>th</sup> Day of August 2022



KATARINA REVOCATI MTEULE

**JUDGE**

24/8/2022

