

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

LABOUR REVIEW NO. 64 OF 2023

BETWEEN

A/INSPECTOR GERUNTIUS ISHENGOMA RWEKAZA APPLICANT

VERSUS

THE COMMISSIONER GENERAL OF PRISON 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

Date of Last Order: 08/06/2023

Date of Ruling: 30/06/2023

MLYAMBINA, J.

An important issue in this application which is of public consideration is; *whether this Court has jurisdiction to entertain labour dispute arising out of employment of members of the Prison Army.* The gist of this issue is to assess whether the Labour Laws allows the Labour Court to entertain issues of the members of the Armies such as Prison Army. In determining such issue, I find not necessary to go through a dilation of all the facts. It suffices to take note that Assistant Inspector Geruntius Ishengoma Rwekaza (P.

7604) was employed by the first Respondent in 2007. He alleged that the contract was in renewable terms. Later in November 2015, he was elected to join the University of Mzumbi to pursue his first degree in Bachelor of Human Resource Management for three years.

The Applicant alleged to have been permitted by the first Respondent to attend his course and promised that the letter will follow. While in the course of waiting the permission, he was unfairly terminated on 29th January, 2016. Thereafter, his name was removed from payroll.

It was further alleged that; on 15th March, 2016, the Applicant was instructed by the first Respondent to write an apology letter. He was reinstated on 10th May, 2016. He continued with his course until 2018 but his salaries and ration allowances were stopped by July, 2019. From August, 2019 to April, 2022, he was paid fully but later on the payment stopped. Thereafter, the Applicant was being paid monthly ration allowances and package only.

The Applicant, therefore, filed this application seeking for grant of an order preventing the first Respondent from retaining/withholding his monthly salary, release his 53 months' salary arrears and paying all his outstanding claims totaling TZS 96,392,000/= . The claims included monthly ration

allowance TZS 44,410,000/=, transportation from Dar es Salaam-Bukoba-Dar es Salaam TZS 10,558,000/=, disturbance allowances TZS 8,040,000/=, loan from bank, monthly salary arrears, allowance from April to February, 2023 and transportation from Segerea Prison to Kitwanga- Kigoma TZS 7,014,000/=

The application was supported by the Applicant's affidavit setting out the following grounds:

- i. That, whether the first Respondent has probably, reasonable legal cause for his act of illegally retaining or withholding and nonpaying those claims established by the Applicant.
- ii. That, whether the Applicant is entitled for being paid by the first Respondent those claimed outstanding monies areas total TZS 96,392,000/= and other entitled benefits which will be accrued or increased effectively from date of ruling to date of execution of decree.
- iii. That, to what relief(s) are the parties entitled to.

Before the hearing of this application started, both Respondents raised preliminary objections to the effect that:

1. The Court lacks jurisdiction to determine the matter.

2. The affidavit in support of the application is defective for contravening *Rule 24(3)(d) of the Labour Court Rules, G.N. No. 106 of 2007* .

Consequently, the preliminary objections raised was argued by way of written submission. Ms. Adelaida Ernest, State Attorney argued on behalf of both Respondents while Mr. Mohamed Manyanga, Advocated for the Applicant.

On the first preliminary objection, Ms. Adelaida submitted that this Court has no jurisdiction to determine the matter in terms of *Section 2(1)(iii) of the Employment and Labour Relations Act [Cap 366 Revised Edition 2019] (henceforth ELRA)*. She added that the Applicant being the employee of the Prisons Service is excluded *ab-initio* to make an application to this Court. To cement on her point, she referred to the case of **Inspector General of Police, The Attorney General v. EX-B 83565/SGT Sylivester Nyanda**, Civil Appeal No. 369 of 2019, pp. 12-13.

It was contended by Ms. Adelaida that the Prisons Service has a special law regulating affairs applicable to prisons officers which is *the Police Force, Prisons Service, Fire and Rescue Force and Immigration Service Commission Act, Cap. 214*. To support her point, she cited the case of

Mlenga Kalunde Mirobo v. The Trustees of Tanzania National Parks and The Attorney General, Labour Revision Application No. 6 of 2021, High Court at Iringa which referred the case of **The Permanent Secretary (Establishments) for Home Affairs and The Attorney General v. Hilal Hamed Rashid and 4 Others** (2005) TLR 121, pp. 16-17.

It was the view of Ms. Adelaida that the Applicant being a prison officer with a rank of Assistant Inspector of Prisons is excluded from filing his application under the Labour Laws in the Labour Court. The Applicant's matter must be made under *Order 146(i-iv) of the Prison Standing Order, 4th Edition of 2003* and for the Award under *Regulation 37(1) of the Prisons Service Regulations of 1997*. As such, this Court lacks jurisdiction to entertain the matter.

On the second preliminary objection, Ms. Adelaida submitted that the affidavit is defective as it is contrary to *Rule 24(3)(d) of the Labour Court Rules, G.N. No. 106 of 2007*. It was her view that whatever has been provided by the law has to be adhered. She added that paragraph 14 is not clear whether they are reliefs or facts. She added the word 'shall' used in the rule means a mandatory requirement. To buttress her position, she cited *Section 53(2) of the Interpretation of Law Act [Cap. 1 Revised Edition 2019]*.

She then prayed for the application to be dismissed for its affidavit being unclear.

Ms. Adelaida went on to submit further that the rules for drafting affidavit should be followed. To cement her point, she referred the cases of **Reli Assets Holding Company Ltd v. Japhet Kasmir and 1500 Others**, Revision No. 10 of 2014 (2015) LLCD (1), Labour Division at Tabora and Johnson **Mwakisoma v. Ipsos Tanzania Limited**, Revision No. 975 of 2019, pp. 5-6. She then prayed for the application to be dismissed.

In reply, Mr. Manyanga submitted that the order in *Application No. 464 of 2023* is not concerned with the Applicant's matter. He then stated that the Respondents have failed to comply with the Court scheduled order. Consequently, they have failed to defend their case. Mr. Manyanga, therefore, prayed for the preliminary objections to be dismissed for want of prosecution.

On the first preliminary objection, Mr. Manyanga replied that this Court has jurisdiction to entertain the matter due to the nature of the case of nonpayment of salaries and other entitled allowance. He added that; if the first Respondent could have followed procedure by conducting disciplinary committee and give the decision as per *Police Force and Prisons*

Services Commission Act, No. 8 of 1990 R.E. 2002 and the Prison Services Regulation of 1997 Revised Edition 2002, the Applicant could have a room to file his application to the High Court Main Registry. To cement his point, he referred to the case of **E-x Robert Mugisha Kasenene v. The Commissioner General of Prison and the Attorney General**, Misc. Application No. 60 of 2022, High Court of Tanzania at Dar es Salaam (unreported), p. 9.

Further, Mr. Manyanga replied that; even though *Section 2(1)(ii) of ELRA (supra)* involves those mentioned members but *Rule 23 and 24 of the Labour Court Rules, G.N. No. 106 of 2007* gives this Court power to hear the matter according to the nature and circumstances at hand. He continued to reply that the State Attorney misconstrued *Section 9(1) of Act No. 8 of 1990, Revised Edition 2002* as it excludes the Applicant whose salary has been forfeited and not reduced contrary to *Regulation 18 (supra)*.

According to Mr. Manyanga, the referred *Order 146(i-iv) of the Prison Standing Order, 4th Edition of 2003* which mention a way of resolving dispute or complaint through administrative measures s not mandatory, it is discretionary and therefore not binding. He then prayed for this Court to apply overriding principle or doctrine of *Lex specialis* which requires the

Court to apply specific law which governs internal procedure and ignoring general law. He added that the first Respondent did not comply with *Order 181 and 182 of the Prison Standing Order, 4th Edition of 2003 and Regulation 25 of the Prison Service Regulation, 1997 Revised Edition 2019* which disqualified the Applicant from filling the application of judicial review in the ordinary High Court Main Registry.

On the second preliminary objection, Mr. Menyanga was of reply submission that paragraph 14 of the affidavit shows reliefs. According to him, the affidavit has complied with *Rule 24(3)(d) of the Labour Court Rules*.

In the light of the above submissions of the Parties, I have noted that the Respondent filed their written submission on 17th May, 2023 as per the Court's order. As such, the argument by Mr. Menyanga that the Respondent filed their submission out of time is out of place. I will therefore start with the first preliminary objection on the issue of jurisdiction. In the case of **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (unreported), it was held:

Jurisdiction is the bedrock on which the Court's authority and competence to entertain and decide matters rests.

The State Attorney stated that this Court has no jurisdiction to entertain the matter as the Applicant is the Assistant Inspector of Prison. Thus, he is not covered with the labour laws. Whereas the Applicant was of view that this Court has jurisdiction to entertain the matter as it deals with labour matters on salaries.

I do agree that this Court deals with labour matters and uses labour laws on determination of the disputes thereof. The same has been provided under *Section 51 of the Labour Institutions Act [Cap 300 R.E. 2019]* which states:

Subject to the constitution and the labour laws and over employment matter falling under Common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court, the Labour Court has exclusive Civil jurisdiction over any matter reserved for its decision by the labour law.

However, there is a significant feature under *Section 2(1) of the ELRA (supra)* which provides for the application on all other categories of employees with *inter alia* exceptions of Members of Prisons Army. For easy of reference, *Section 2 (1) supra* provides:

This Act shall apply to all employees including those in the public service of the Government of Tanzania in Mainland Tanzania but shall not apply to members, whether temporary or permanent, in the services of:

- (i) N/A*
- (ii) N/A*
- (iii) The Prisons Service: or*
- (iv) N/A"*

The consciously wording of *Section 2(3), 5, 6, and 7 of ELRA (supra)* provides for this Act to apply to those mentioned members under *subsection (1)* on only circumstances of *prohibition of child labour, prohibition of forced labour and prohibition of discrimination in the work-place*. In the matter at hand, the Applicant is claiming for the first Respondent to retain his salaries and arears. His claim is not in any of the exceptions named above.

The Applicant in his affidavit claimed that the salary arears happened as a result of his course attendance at the Mzumbe University without permission of his employer. It was his submission that not only his salaries were retained but also he was later terminated. Such act was a disciplinary one.

There is no dispute and it is not a matter of debate that the law which governs prisons services is *the Police Force and Prisons Service Commission Act (supra)*. Regulation C 3(1) (*supra*) provides for disciplinary measures to the officer of the rank of Assistant Inspector in the following tone:

Subject to the provisions of section 7(3) of the Police Force and Prisons Service Commission Act, the disciplinary authority in the case of any Police Officer of the rank of Assistant Inspector to the rank of Assistant Commissioner shall be the Inspector General, and the final disciplinary authority is vested in the Commission.

*The major deal of Regulation C 3(1) (supra) is to provide for the procedure which should be taken on the matter of an officer of the rank of the Assistant Inspector. It requires the matter be taken to the Inspector General and thereafter to the Commission which is the final disciplinary authority. The same has been held in the case of **Lameck Richard Rweyongeza v. The Police Force, Immigration and Prison Service Commission & 3 Others**, Misc. Civil Cause No. 25 of 2021 (unreported), p.6:*

From the above quoted provisions of the law, it is crystal clear that in the present application, the disciplinary authority in respect to the Applicant is vested to Inspector General of Police ...


Also, *Section 7(3) of the Police and Prison Services Commission Act of 1990*, which is one of the Court's main plank, states clear about the disciplinary authorities to the effect that:

The final disciplinary authority in respect of officers of the rank of Assistant Inspector to the rank of the Assistant Commissioner is vested in the Commission.


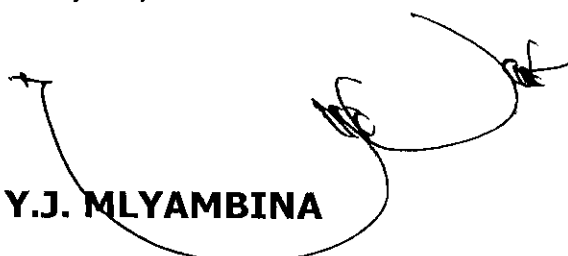
If the provisions of *Section 7(3) of the Police and Prison Services Commission Act (supra)* is literally applied to the instant case, it means that the Applicant being aggrieved with the act done by the first Respondent which resulted to retaining of his salary, was supposed to have referred the matter to the Inspector General. Thereafter, he could refer the matter to the Commission. It is the findings of this Court that it was wrong for the Applicant to file the application to this Court. Indeed, his application was contrary to *Section 2(1) of ELRA (supra)*, *Regulation C 3(1) of Cap 241 (supra)* and *Section 7(3) of the Police Force and Prison Services Commission Act (supra)*.

I'm constrained to observe that the rule of procedure is intended to subserve the cause of justice. The provisions of *Section 7 (3) of the Prisons Service Commission Act (supra)* do operate in the manner that the Applicant must channel his claim to the relevant organs and not before the Labour Court.

To conclude, from the above findings, it is absolutely clear that this Court lacks jurisdiction to entertain the application. Consequently, the application is hereby dismissed with no order as to costs.


Y.J. MLYAMBINA
JUDGE
30/06/2023

Ruling delivered and dated 30th June, 2023 in the presence of the Applicant and Fortunatus Mombeki Mtalemwa, Legal Officer of the 1st Respondent. Right of Appeal fully explained.



Y.J. MLYAMBINA
JUDGE
30/06/2023