

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

REVISION APPLICATION NO. 877 OF 2019

BETWEEN

MKOMBOZI COMMERCIAL BANK PLC APPLICANT

AND

HUMPHREY SINGOGO RESPONDENT

RULING

Date of last Order: 25/10/2023

Date of Ruling: 10/11/2023

MLYAMBINA, J.

The novel and important issues of principle in this labour revision are three: *One*, whether the cause of action arose in Mwanza or in Ilala Dar es Salaam. *Two*, if the first issue is answered to the effect that the cause of action arose in Mwanza, whether the CMA Ilala was vested with the jurisdiction to entertain a labour matter whose cause of action arose in Mwanza. The first and second issues concerns with the weight to be attached to the fact that the Respondent was terminated while working as a Branch Manager of the Applicant at Mwanza Branch and the Applicant's Head Quarters is located at Ilala Dar es Salaam. This will require the Court to state the concepts of cause of action and territorial jurisdiction under the labour laws and their significance in adjudication of labour matters. The second is

on whether CMA has original jurisdiction on labour disputes or is the appellate body.

The background of the matter is that; Mr. Humphrey Singogo was a Branch Manager at Mkombozi Commercial Bank PLC Mwanza Branch. On 20/5/2017, he was terminated from his employment and the letter was addressed to him through his address in Mwanza.

In developing her submissions, Ms. Hamisa Nkya took as her starting point the proposition that the CMA Ilala was not vested with jurisdiction to try a labour dispute whose cause of action arose in Mwanza. To support this position, she cited the case of **Lucky Games Ltd v. Salim Madat**, Revision No. 53/2023 High Court of Tanzania, Labour Division at Dar es Salaam (unreported) p. 15.

Ms. Hamisa's essential argument was that the dispute arose in Mwanza, the area in where the cause of action arose was in Mwanza. Hence, CMA – Mwanza was automatically vested with the jurisdiction to mediate and arbitrate the matter under *Rule 22(1) of G.N. No. 64 of 2007*.

It was Ms. Hamisa's prayer for the Court to find that CMA Ilala was not vested with territorial jurisdiction to mediate and arbitrate the matter whose cause of action arose in Mwanza as the proceedings before the CMA Ilala

were a nullity. Hence, the proceedings and the award be quashed and set aside.

In reply, Mr. Barnabas Luguwa was not persuaded by the logic of Ms. Hamisa's argument. He conceded that the Respondent was employed by Mkombozi Commercial Bank PLC which has her office in Plot No. 40 Mansfield Street in Ilala District within Dar es Salaam Region.

Mr. Luguwa contended that, from the proceedings, the Respondent initially served as a Branch Manager in Mkombozi Bank PLC Dar es Salaam. He was later transferred to serve in that capacity as a Branch Manager in Mwanza. During inspection by officers from the Head Office, they noted some discrepancies on the works of his subordinates. He was found liable for those short comings for failure to supervise well his subordinates. The Head Office charged him and required him to answer the said charges and send the reply to their Head Office at Mansfield Street.

On 15/4/2017, the Respondent was summoned to appear at the Disciplinary Committee convened in the office of the Employer. The meeting was scheduled on 19/4/2017.

Mr. Luguwa went on to contend that; it was after taking evidence from both sides, the employer had one witness (Manager of Human Resource). The employee testified too. The Manager came from the Head Office. The

decision to terminate the Respondent was made at the Head Office. After the said decision, the Head Office served the Respondent with the letter of termination from employment on 20/05/2017.

Mr. Luguwa contended that; CMA does not handle an employment dispute in its original jurisdiction. It is the disciplinary Committee which receives evidence and makes decision. The letter of decision issued was enforcing the decision of the disciplinary Committee.

According to Mr. Luguwa, a party who is aggrieved by the decision, he files a referral form seeking to challenge the said decision before CMA. What is heard at CMA is a Reference of the employment decision from the respective organ.

It was the strong view of Mr. Luguwa that the whole process of hearing, receiving evidence and award was made in Dar es Salaam Ilala District. What goes to CMA is to challenge the decision of the disciplinary Committee. The cause of action is the termination of the employee which was done by the Disciplinary Committee and the employer at Mansfield Street, Dar es Salaam. The Respondent is the Manager. That is why he was disciplined at the Head Quarter. Even the investigators came from Head Quarters and wrote their report from Head Quarters.

In the light of the afore reasons, Mr. Luguwa maintained that the CMA which has jurisdiction to mediate and arbitrate a reference arising from a decision of the disciplinary Committee constituted in Mansfield Street in Ilala Dar es Salaam and confirmed by the Employer in Ilala District is the CMA Ilala. Thus, referring the decision to the Respondent in Mwanza by itself does not change the jurisdiction. It was not the decision made in Mwanza.

Further, Mr. Luguwa averred that; it is not in dispute that some of the evidence might have been corrected in Mwanza but that was only to assist to buttress their case at the Head Quarters. The facts concerning the fairness of the termination process were the facts brought from Mansfield Ilala. Thus, the cited decision in **the case of Lucky** (*supra*) is proper but irrelevant in this case because the employee in that case had conceded that the cause of action arose in Ilala but he filed the complaint in Kinondoni. Ilala CMA had jurisdiction and properly determined the dispute.

In rejoinder, Ms. Hamisa was of argument that where the meeting was convened and where the documents were submitted, does not change his current employment station which is in Mwanza.

The cause of action is failure to supervise the subordinates in Mwanza. The origin source of everything done in Mansfield Street Ilala is failure to supervise the subordinates in Mwanza.

The meeting being in Mansfield Ilala and Mr. Humphrey Singogo being in Mansfield Ilala does not in any way insinuate that he works at Mkombozi Ilala. He was a Branch Manager of Mkombozi Bank PLC Mwanza.

On the point that CMA does not hear labour matters in its original jurisdiction, Ms. Hamisa rejoined that the CMA hears labour disputes in its original jurisdiction. That is why the CMA looks into substantive and procedural irregularities. The referral form is just a name because evidence is rendered by both parties. That is why relief(s) are granted at the end.

Even the investigations went to collect information at Mwanza. That is where the cause of action arose. The venue of the Disciplinary Committee does not invalidate where the cause of action arose.

From the foregoing argument, although my reasoning differs in some respects from that of Mr. Luguwa, I'am partly in agreement with his supposition that CMA does not handle an employment dispute in its original jurisdiction. It is partly true in cases of termination; it is the disciplinary Committee which receives evidence and makes decision. But in cases like of payment of salaries, the CMA has original jurisdiction. Indeed, under the provisions of *Rule 22 up to 27 of GN No. 67 of 2007*, CMA receives evidence.

A party who is aggrieved by the decision, he files a referral form (CMA Form No. 1) seeking to challenge the said decision before CMA. It is true

that what is heard at CMA is a Reference from the decision of the employment of the respective organ. On that basis, the respective organ seats like a Primary Court.

However, the issue of territorial jurisdiction is fundamental. The dispute must be filed at the place where the cause of action arose. One of the reasons is that, among other rights to be claimed in the reliefs, is repatriation from duty station to the area of recruitment. The cause of action are essential facts which the Applicant laid down and had to prove it before the Disciplinary Committee. Such facts were about not supervising the subordinates properly at Mwanza Branch. It was not at Ilala Head Quarters.

It is the findings of this Court that the decision to conduct disciplinary hearing at the Head Office was an administrative issue. It can't change the workstation of the Respondent. He was the employee stationed at Mwanza and terminated while working at Mwanza. *Rule 22 (1) of GN. No. 64 of 2007* provides:

A dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose, unless the Commission directs otherwise.

In the instant case, the cause action is termination of employment arising from failure to supervise subordinates at Mwanza Branch. That

means, the cause of action arose in Mwanza. As submitted by Ms. Hamisa, CMA Ilala had no territorial or geographical jurisdiction to mediate and arbitrate the dispute. Unless CMA Mwanza had directed otherwise.

It is further findings of this Court that even the disciplinary hearing was based on the evidence procured at Mwanza during inspection. The inspection was not done at Ilala Head Quarters. In the case of **Bulyanhulu Gold Mine Ltd v. Gastor Myovela**, Revision No. 117 of 2014, High Court Labour Division at Dar es Salaam (2013) LCCD1, p.22 it was held:

Under the current law, the only CMA Office with jurisdiction in labour dispute is the office responsible for the area where the dispute arose unless permitted otherwise by the CMA.

Similary, in the case of **Elias Mgasa and 7 Others v. Singita Grumet Reserve**, Revision No. 38 of 2013 High Court Labour Division at Arusha (2013) LCCD1, the Court held:

It is crystal clear that the cause of action arose in Muguni Serengeti which is in Mara and the dispute was supposed to be arbitrated by Musoma CMA which is the office of the CMA having responsibilities for the respective area in which the cause of action arose unless the CMA would have directed to be arbitrated in Arusha as the Applicant would wish to do.

One of the objects of limiting territorial jurisdiction to the area where cause of action arose is to limit forum shopping. In this case, there is no any submission as to whether CMA Mwanza directed the matter be mediated and arbitrated in Ilala. It was a forum shopping to file a referral at CMA Ilala on the matter whose cause of action arose in Mwanza. Such action was a purely manipulation of the legal system which requires the dispute be referred at the territorial jurisdiction of CMA where the cause of action arose in terms of *Rule 22 (1) (supra)*.

As regards **Lucky's case** (*supra*), I agree with Mr. Luguwa that the context was, of course, different. But the principle, in therein, in my view applies generally and is apposite to what Mr. Luguwa maintains. The cause of action in this matter arose in Mwanza where the Respondent was working as a Branch Manager till his termination by the Head Quarters of his employer.

In the premises of the above, I nullify the proceedings and Award of CMA in *Labour Dispute No. CMA/DSM/ILA/R.644/57/751* dated 19th November, 2019 for want of territorial jurisdiction. Costs be shared.



Y.J. MLYAMBINA

JUDGE

10/11/2023

Ruling delivered and dated 10th November, 2023 in the presence of, learned Counsel Hamisa Nkya for the Applicant and the Respondent in person.



Y. J. MLYAMBINA

JUDGE

10/11/2023

