THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 115 OF 1989

ELIHUDI MATHEW NGORE . . . . . APPLICANT

versus

1. THE NATIONAL ENGINEERING CO. LTD.)
2. LABOUR COMMISSIONER) . . . RESPONDENT

R U L I N G:

BAHATI, J.

This is an application for orders of certiorari and mandamus against the decision of the Commissioner for Labour. It is supported by an affidavit of the applicant Elihudi Ngore and accompained by a statement of facts which sets out the relief claimed.

Mr. Maira, learned counsel for the applicant submitted that the counteraffidavit of the 2nd respondent's officer one Mulokozi was defective because it did not indicate which paragraphs are based on knowledge of deponent and which on his information. He prayed that the application should be granted.

In reply, Mr. Murugaruga, Senior Labour Officer for the Commissioner for Labour said that what was being challenged was the decision of the Minister. He submitted further that the applicant was dismissed under the Security of Employment Act, Cap 574 and G.N. 98 of 1965. The applicant referred the matter to the Conciliation Board. But before the hearing date the applicant requested the opinion of the Labour Officer on his status and the Labour Officer decided that the applicant was in the Management of the business of his employer and that the case should be referred to the Industrial Court. But the 2nd respondent objected to this to the Commissioner for Labour saying that the opinion of the Labour Officer disclosed manifest error of Law and that the applicant could not constitute a trade dispute against his employer. Mr. Murugaruga referred to section 3 of the Permanent Labour Tribunal Act No. 41 of 1967 and the case of Zambia Tanzania Road Services Ltd. v. J. K. Pallangyo [1982] TLR 24 to show that a single employee could not go to the Permanent

...../2.

Labour Tribunal. Mr. Mrugaruga went on to state that the Labour Commissioner reversed the decision of the Labour Officer and directed the Labour Officer to convene the meeting of the Conciliation Board and to hear the dispute. Both parties were heard and then the applicant appealed to the Minister who then confirmed the decision of the Conciliation Board. He said further that under section 27 of the Security of Employment Act, the decision of the Minister was final and conclusive. He referred to the case of Mahona v University of Dar es Salaam [1981] TLR 55 where he said that the Court held that an applicant had to follow only one law. He prayed in conclusion for the dismissal of the application.

Mr. Nassoro, learned counsel for the 2nd respondent criticised the application which had been brought under wrong provisions of the law. He criticized also the statement accompanying the application which he said was like a plaint which was seeking even damages. Concerning the affidavit sworn by Mr. Mulokozi Mr. Nassoro submitted that it was not defective in that what the deponent had said was according to his own knowledge.

Mr. Nassoro then went on to deal with the merits of the application. He set out the facts in the case and continued that the applicant was not in the management of his employer's business. He said that the applicant fell squarely within the provisions of the Security of Employment Act and that the provisions of the Act were followed. He submitted that the matter was referred to the Conciliation Board and it was while the matter was pending before the Board that the applicant sought secretly and got an opinion of the Labour Officer to the effect that he was in the management of his employer's business. But that opinion was challenged by the 2nd respondent who appealed to the Labour Commissioner who revoked this opinion which was wrong. Then the matter at the Conciliation Board was determined. The applicant appealed to the Minister against the decision of the Board. The Minister asked for a memorandum from the 2nd respondent and then made his decision which confirmed the decision of the Board. Mr. Nassoro argued that it was the applicant who made the reference to the Minister which meant that he must have written a memorandum expressing his dissatisfaction. Mr. Nassoro wondered how the applicant was complaining that he was not given a hearing. He said that section 43 of the Security of Employment Act requires only memoranda to go to the Minister and not an appearance before the Minister. He, therefore, found the application to have no basis.

...../3.

In a further reply, Mr. Maira argued that there was the issue whether the applicant was an employee in terms of section 3 of the Security of Employment Act and that it was the certificate of the Labour Officer which was relevant and further that once the certificate is issued it cannot be revoked and the Act does not become operative vis a vis the applicant. He went on to submit that even under the Security of Employment Act the rules of natural justice were not adhered to since there was no evidence that any memoranda were submitted. Concerning the application itself, Mr. Maira submitted that since the same was filed by a layman and since the defects were matters of form and not of substance, there was nothing substantially wrong with the application. He still submitted that the affidavit of the 2nd respondent was defective in form and that the Commissioner had no jurisdiction in the matter.

I propose to deal with the question of defect first for the statement and the counter affidavit. It is true as conceded to by Mr. Maira that the statement and title of the action are defective in that the title is referring to "the Commissioner for Labour Tribunal under the Permanent Labour Tribunal No. 18 of 1977" whereas there is no such thing in this matter. There was no Permanent Labour Tribunal nor is there a "Commissioner of Labour Tribunal." Secondly the claim of compensation and costs is misguided. There is no such thing in such an application. However, in view of the fact that leave was given by this Court to apply for the orders with this statement of facts, and in view of the fact that the person who filed this application was not a lawyer, and further in view that the defects go to form rather than substance, I will allow the application to stand and to be determined.

As for the counteraffidavit of the 2nd respondent, I agree with Mr. Nassaro that there is nothing wrong with this as the deponent has verified that what he has deposed is true according to his knowledge. In any case, even if the counter-affidavit of 2nd respondent is struck out and not acted upon, there is still the counteraffidavit of the 1st respondent.

Now I propose to deal with the merits of the application. Reading through the statement one gets the impression that the complaint of the applicant is that he was not given an opportunity to present his case before the Labour Commissioner. (See paragraphs 9, 10 and 11).

...../4.

There is some mention of the applicant having been re-instated by the Labour Officer in paragraphs 7 and 8 of the statement. There is also an allegation that the procedure of solving labour disputes was not followed. In the affidavits of the applicant there is an allegation that the General Manager had no power to terminate the applicant's services.

There is no doubt that the Tonoko District Labour Officer gave an opinion that the applicant was in the management of his employer's business. But his decision was overruled by the Labour Commissioner. Mr. Maira has argued that the revocation of the Labour Officer's opinion by the Labour Commissioner was not effectual. Mr. Mrugaruga and Mr. Nassoro argued that the revocation was effective and as a result the matter was dealt with by the Conciliation Board. I prefer the argument of the respondents because the Commissioner for Labour as the head of the Labour Division must have power to rectify what he finds to be wrong. It cannot be seriously argued that the Labour Commissioner is not competent to overrule or revoke what a Labour Officer has done where he deems it fit. This is what the Commissioner did. Then there followed the meeting of the Conciliation Board which decided to terminate the services of the applicant. Then the applicant appealed to the Minister. Here again I agree with the respondents that since the applicant appealed to the Minister, he must have presented a memorandum to the Minister. I also agree that such a memorandum of appeal would be an opportunity to be heard. The applicant cannot complain that he was not given an opportunity to be heard when it is he who appealed to the Minister. Surely the appeal was not made orally but in writing.

The prayers of the applicant are that the decision of the Commissioner was wrong and it should be quashed. But in accordance with section 27 of the Act, the decision is final and conclusive and cannot be challenged in any court except on the question of lack of jurisdiction or infringement of the rules of natural justice. The applicant has not proved lack of jurisdiction or breach of the rules of natural justice. Nor has it been proved that there is an error apparent on the record in the decision of the Labour Commissioner. Needless to say the Commissioner was performing the duties of the Minister by virtue of a delegation of those duties to him.

...../5.

It is clear from the above that the application has not been established. It must fail and I dismiss it.

A. BAHATI
JUDGE
11/9/1992

Delivered to the applicant
Mr. Nassoro & Mr. Mrugaruga for the respondents present.

A. BAHATI
JUDGE

AT DAR ES SALAAM
11 SEPTEMBER, 1992