

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: KWARIKO, J.A., SEHEL, J.A. And MAIGE, J.A.)

CIVIL APPEAL NO. 66 OF 2022

LADISLAUS S. NGOMELA APPELLANT

VERSUS

THE TREASURY REGISTRAR 1st RESPONDENT

THE ATTORNEY GENERAL 2nd RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Tanga)**

(Mruma, J.)

dated the 20th day of November, 2020

in

Labour Revision No. 29 of 2017

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RULING OF THE COURT

6th & 12th May, 2022

SEHEL, J.A.:

The appellant, Ladislaus S. Ngomela, lodged an appeal to this Court against the decision of the High Court of Tanzania at Tanga in Labour Revision No. 29 of 2020.

After being served with the record of appeal, pursuant to Rule 107 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (henceforth

“the Rules”), the respondents’ attorneys filed a notice of preliminary objection raising one point of law that:

"This appeal is grounded on points of facts; hence it is incompetent as it contravenes section 57 of the Labour Institutions Act, 2004."

The facts relevant to the objection are straight forward. They go as follows: initially, the appellant instituted a suit in the High Court of Tanzania at Tanga, Civil Case No. 17 of 1995 wherein it was found that there was a misjoinder of causes of action and misjoinder of parties. Hence, the High Court (Mkwawa, J.) allowed the appellant to file a separate suit.

Following that order, the appellant instituted another suit before the same court against Sikh Saw Mills (T) Ltd (SSM) and the Presidential Parastatal Sector Reform Commission (PSRC) the 1st and 2nd respondents, respectively. That suit was struck out because the High Court (Teemba, J.) found that it had no jurisdiction to deal with a trade dispute.

On 6th November, 2009 the appellant filed a trade dispute against SSM and Consolidated Holding Corporation (CHC) in the High Court, Labour

Division, a Trade Dispute No. 80 of 2009. The High Court (Mipawa, J.) found that the court had no jurisdiction to determine it under section 42 of the Employment and Labour Relations Act, Cap. 366 R.E. 2019 (henceforth "the ELRA") because the dispute was filed after the ELRA came into force on 5th January, 2007 and after the industrial court formally became *defunct*. As such, the trade dispute was struck out and the file was remitted to the Commission for Mediation and Arbitration (CMA).

Upon filling CMA F1, the dispute was registered as Employment Dispute No. KZ/U.10/MG.34.2009. After a full trial, the CMA found that the applicant was employed and was an employee of Tanzania Woods Industry Corporation (TWICO) up to his termination and that TWICO fully paid him all his benefits entitled from the termination of his contract.

Aggrieved by that decision, the appellant approached the High Court of Tanzania, Labour Division (the High Court) seeking to revise the CMA's decision as he was alleging that at the time of his termination, he was an employee of SSM and not TWICO and that he was yet to be paid his statutory entitlements. In dismissing the appellant's application for revision, the High Court found that the appellant was an employee of TWICO, and

his employment status never changed till he was legally terminated from service in 1997.

Concerning his entitlements, the High Court observed that:

"I have carefully perused and reviewed all documents tendered by the parties during the hearing before the Commission for Mediation and Arbitration and particularly the Offer of Appointment (exhibit C1) and Confirmation to the Post of Marketing Manager letter (exhibit b collectively) which constitute his employment contract there is no provision that he was entitled to house allowance, fuel allowance and General Manager's salary during the period he was acting."

It thus found that since the appellant was acting in the post of the General Manager, which was a temporary post, he was not entitled to be paid the salary of the General Manager, the least he could have been paid is the acting allowance. At the end, the High Court held that the appellant was fully paid by TWICO all of his entitlements. Still aggrieved, the appellant filed the present appeal advancing the following three grounds of appeal: -

1. *That, the Honourable revising Judge erred in fact for observing that the appellant relied on correspondences between Sikh Saw Mills Ltd and TWICO (Exhibits C4 and C7) as a ground for his claim for transfer of his employment from TUICO (sic.) to Sikh Saw Mills Ltd.*
2. *That, the Honourable revising Judge erred in fact for observing that there was ample evidence the appellant was terminated by TUICO (sic.) and paid his terminal benefits (Exhibits C11, C12 and C13) and other entitlements by TWICO.*
3. *That, the Honourable revising Judge erred in law and fact for failing to consider that since TWICO was the holding corporation of SSM and both were under restructuring by then PSRC, the misunderstanding between SSM and TWICO during their restructuring; as to who was the employer of the appellant; could not have prejudiced the appellant's unpaid and underpaid statutory employment terminal benefits by the then PSRC; on behalf of SSM, after restructuring of the two public organizations.*

At the hearing of the appeal, the appellant appeared in person, unrepresented, whereas Mr. Edwin Webiro, Mr. Rashid Mohamed and Ms. Lucy Kimaryo, all learned State Attorneys, appeared for the respondents.

Since it is the practice of the Court that where a preliminary objection is raised, the Court will have to determine it first before going into the merits of the appeal. We therefore invited the learned State Attorneys to address us first on the point of law.

It was Mr. Mohammed who argued it on behalf of the respondent. He forcefully submitted that all the three grounds of appeal are purely issues of facts and not law. Referring us to the memorandum of appeal, appearing at pages 5 -6 of the record of appeal, Mr. Mohamed submitted that the 1st ground of appeal calls for the re-evaluation of exhibits C4 & C7 and the same applies to the 2nd ground of appeal whereby the Court is invited to re-appraise the admitted exhibits C11, C12 & C13. As for the 3rd ground of appeal, Mr. Mohamed argued that it purely raises factual and evidential issues. It was his submission that since all the three grounds of appeal do not raise a point of law, they contravene the provisions of section 57 of the Labour Institutions Act, Cap. 300 R.E. 2019 (henceforth

“the LIA”) thus the Court has no jurisdiction to determine them. To cement his argument, he relied upon the decision of this Court in the case of **Remigious Muganga v. Barrick Bulyanhulu Gold Mine**, Civil Appeal No. 47 of 2017 (unreported), where it was held that an appeal arising from a decision of the Labour Court must be based on a point of law only. He thus concluded by urging the Court to strike out the appeal.

In reply, the appellant contended that all of his grounds of appeal raise point of laws and they are not based on facts. In an attempt to elaborate his contention, he made his submission on the merits of appeal that in the 1st ground of appeal he testified before CMA that he was employed by TWICO vide exhibit C1 and later on the appointing and disciplinary authority changed from TWICO to its subsidiaries, for his case, it was SSM as evidenced by the 50th Board Meeting, exhibit C13. It was his contention that given that evidence in record, the High Court Judge erred to hold that his claim was based on exhibits C4 and C7.

Regarding the 2nd ground of appeal, he submitted that the payments shown in exhibits C11 and C12 were a lumpsum of pension and severance allowance respectively, while exhibit C13 was a bundle of minutes of Board

Meetings of TWICO and SSM which were tendered in the CMA by **PW3-Joshna Mzirai Msakamari** during the hearing of the dispute. He added that exhibits C11, C12 and C13 do not prove that he was paid his terminal benefits.

For the 3rd ground of appeal, he contended that the restructuring of TWICO did not affect his terminal rights as he is entitled to be paid by the body that assumed the functions and responsibilities of TWICO. He outlined the different stages where TWICO passed through that the Government Gazette (G.N.) No. 324 of 1996 dated 26th October, 1996, TWICO and SSM were placed under receivership under PSRC. When the period of PPSRC expired, its functions were transferred to CHC through G.N. No. 203 of 2014 dated 27th June, 2014. Later on, the functions and some employees were transferred to the 1st respondent, thus, his entitlements ought to be paid by the 1st respondent.

Having outlined the essence of his grounds of appeal, he concluded that since the High Court Judge did not properly appraise the evidence then this Court has jurisdiction to determine the grounds of appeal. To fortify his submission, he cited the case of **Severo Mutegeki & Another**

v. Mamlaka ya Maji na Usafi wa Mazingira Mjini Dododma (DUWASA), Civil Appeal No. 343 of 2019 (unreported) where it was held that a point of law includes a misapprehension of evidence thus within the ambit of section 57 of the LIA.

In rejoinder, the learned State Attorney accepted the position stated in the case of **Severo Mutegeki** (supra) but insisted his earlier submission that the three grounds of appeal do not raise point of law. He therefore urged the Court to find that it has no jurisdiction to determine them.

Having considered the submissions of the parties and critically reviewed the record of appeal, we note that parties are not in dispute that, in terms of section 57 of LIA, the jurisdiction of the Court, appeals arising from the High Court, Labour division, are restricted to points of law. Therefore, the issue for our consideration is whether the three grounds of appeal advanced by the appellant raise points of law thus within the ambit of the provisions of section 57 of the LIA which provides:

"A party to the proceedings in the Labour Court may appeal against the decision of that court to the Court of Appeal of Tanzania on a point of law."

It follows then that there is an automatic right of appeal to the Court, on point (s) of law only, against the decision arising from the High Court, Labour Division– see the case of **Tanzania Teachers Union v. The Chief Secretary and 3 Others**, Civil Appeal No. 96 of 2012 (unreported).

As to what entails “**a point of law**” in the provisions of section 57 of the LIA, in the case of **Patrick Magologozi Mongella v. The Board of Trustees of the Public Service Social Security Fund**, Civil Application No. 324/18 of 2019 (unreported), the Court looked at the **Black’s Law Dictionary** and said thus:

"According to Black’s Law Dictionary, 4th Edition, St. Paul, Minnesota, West Publishing Co., 1968, at page 1,130, the term "matter of fact" means that which is to be ascertained by the senses, or by the testimony of witnesses describing what they have perceived" while a matter of law is expressed as "whatever is to be ascertained or decided by the application of statutory rules or the principles and determinations of the law, as distinguished from the investigation of particular facts."

It further stated:

*"In the case of **CMA – CGM Tanzania Limited v. Justine Baruti**, Civil Appeal No. 23 of 2020 (unreported), the Court adopted in a labour dispute the definition of a point of law in tax matters as expressed in the cases of **Atlas Copco Tanzania Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 167 of 2019; and **Kilombero Sugar Company Limited v. Commissioner General (TRA)**, Civil Appeal No. 14 of 2007 (unreported) as follows:*

*"Thus, for the purpose of section 25 (2) of the TRAA, we think, a question of law means any of the following: **first**, an issue on the interpretation of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine on tax revenue administration. **Secondly**, a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record. **Finally**, a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there is no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it."*

The bolded last part of the above definition is in consonant with what we said in the case of **Severo Mutegeki** (supra) cited to us by the appellant and it was the submission of the appellant that the three grounds of appeal are based on that part of the definition.

Let us now critically examine the three grounds of appeal in the context of the above definition. We start with the 1st ground that faults the High Court Judge for observing that the appellant rely on exhibits C4 and C7 as a ground for his claim that there was transfer of his employment from TWICO to SSM. With great respect, we are not persuaded with the submission by the appellant that the essence of this ground is the failure by the High Court Judge to properly appraise the evidence regarding exhibits C4 and C7. Our reading of this ground is that it invites the Court to re-evaluate exhibits C4 and C7 and hold that the appellant's disciplinary authority was SSM and not TWICO. In other words, the appellant is inviting the Court to re-evaluate the evidence and at the end interfere with the concurrent findings of fact arrived by the CMA and the High Court. However, in terms of the provisions of section 57 of the LIA, the Court has no jurisdiction to do so.

We now turn to the 2nd ground of appeal. Having tentatively heard the appellant's submission, we note that he was trying very hard to impress us to find that it centres on the misapprehension of evidence thus the Court has jurisdiction to determine. Our reading of this ground of appeal, we find that it does not fit squarely within the ambit of section 57 of the LIA because it calls upon the Court to re-assess evidence concerning his termination and whether he was fully paid up his terminal benefits including pension and severance allowances as evidenced by exhibits C11 and C12. That being the case, we hold that, in terms of section 57 of the LIA, we have no jurisdiction to determine it.

Lastly, it is the third ground of appeal. Deduced from the appellant's submission, it is obvious that the appellant himself failed to persuade the Court that the ground is on point of law. He merely made a submission that the Court should find that the restructuring of TWICO did not affect his terminal benefits whereas we have shown herein that both the CMA and the High Court concurred in facts that he was fully paid. Consequently, we find that this ground of appeal also does not raise issue of law. Therefore, the Court has no jurisdiction to determine.

Having found that all three grounds of appeal are not on points of law, we are inclined to agree with the learned State Attorney's submission that the Court is not conferred with jurisdiction to determine them. Accordingly, we sustain the point of the preliminary objection and strike out the incompetent appeal with no order as to costs because the dispute arose from a labour dispute.

DATED at TANGA this 11th day of May, 2022.

M. A. KWARIKO
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

This Ruling delivered this 12th day of May, 2022 in the presence of Mr. Ladislaus S. Ngomela, the Appellant in person and Ms. Donata Kazungu, State Attorney for the respondent, is hereby certified as a true copy of the original.




R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL