

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MTWARA**

**(CORAM: NDIKA, J.A., KEREFU, J.A. And KENTE, J.A.)**

**CIVIL APPEAL NO. 12 OF 2022**

**TANZANIA POSTS CORPORATION ..... APPELLANT**

**VERSUS**

**DOMINIC A. KALANGI ..... RESPONDENT**

**(Appeal from the Judgment and Decree of the High Court  
of Tanzania (Labour Division)**

**at Mtwara)**

**(Ngwembe, J.)**

**dated the 30<sup>th</sup> day of December, 2019**

**in**

**Revision No. 10 of 2018**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

21<sup>st</sup> & 28<sup>th</sup> March, 2022

**KENTE, J.A.:**

The facts giving rise to this appeal as established by the two courts below are very simple. The respondent Dominic A. Kalangi is an undisputed former employee of the appellant Tanzania Posts Corporation. Until the termination of his employment contract, he was posted at Lindi where he worked as Regional Manager. However, his services were terminated on 10<sup>th</sup> July 2017 following allegations of gross misconduct and dishonesty.

Aggrieved by the termination of his employment contract, the respondent referred his grievances to the Commission for Mediation and

Arbitration for Lindi (the CMA), which, after hearing the parties, ruled in his disfavour holding that his contract of employment was both procedurally and substantially terminated fairly. Undaunted, he applied to the High Court seeking revision of the decision of the CMA but all to no avail. However, it is worthwhile that, having found no merit in the application for revision and subsequently dismissed it, the learned High Court Judge (Ngwembe,J) went on and held in conclusion, thus:-

*"Likewise, the employer had fair reasons to terminate the employment of the employee. However, he failed to consider the length of time the employee worked with the employer without causing any loss or defaulting any procedure laid down by the employer. That alone I would order the employer to compensate the employee a token amount to a tune of six months' salaries."*

It is with the above - quoted order for compensation that the appellant corporation is aggrieved. The mainstay of the appellant's complaint in this appeal is that, having found and decided that the termination of the respondent's employment contract was fair both substantively and procedurally, it was not open for the learned High Court Judge to order the appellant to compensate him to the tune of six months' salary without any legal basis.

At the hearing of this appeal, the appellant's case was advocated for by a team of five learned State Attorneys. These were Ms. Debora

Mcharo, Ms. Getrude Songoi, Mr. Charles Mtae, Ms. Jacqueline Kinyasi and Mr. Maximillian Erick. On the other hand, it was the respondent who appeared in person to resist the appeal. At the outset, Mr. Mtae prayed for and obtained leave of the Court, under Rule 113 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules), to argue an additional ground of appeal which faults the CMA and by extension the High Court, for entertaining this dispute given the contention that the appellant was a public servant. Put otherwise, the learned State Attorney invited us to determine the question as to whether or not, the CMA had the requisite jurisdiction to entertain a labour dispute involving a public servant.

Submitting in support of the proposition that the CMA was not clothed with the requisite jurisdiction to entertain this matter, Ms. Kinyasi who addressed the Court on behalf of her colleagues, begun by taking us back to the Tanzania Posts Corporation Act (Cap 303 R.E 2019) with particular reference to section 3 of the said Act, which established the appellant corporation. She went on submitting that, the appellant corporation is a public corporation whose Chairman of Board of Directors is appointed by the President and its functions are regulated by the Ministry responsible for, among others, postal matters. The

learned State Attorney submitted therefore that, prior to the termination of his employment the respondent was a public servant.

Based on the foregoing premise that the respondent was a public servant, a fact which was gracefully conceded by the respondent himself, the learned State Attorney submitted further that, pursuant to section 25 of the Public Service Act (Cap 298 R.E. 2019) as amended by the Written Laws Miscellaneous Amendment Act (Act No. 13 of 2016), the respondent ought to have referred his grievances to the Public Service Commission by way of an appeal. She added that, pursuant to section 32A which was introduced by the said amendments in the year 2016, which requires a public servant to exhaust the avenue available under the Public Service Act, the respondent should have referred his complaints to the Public Service Commission before resorting to the CMA. The learned State Attorney conceded the fact that before the amendment of the law in 2016, labour disputes involving public servants could be referred to the CMA. However, she was quick to point out that, since the respondent's contract of service was terminated on 10<sup>th</sup> July 2017, after the coming into force of the new law, it was wrong for the respondent to refer this dispute to the CMA on 27<sup>th</sup> July, 2017 contrary to the mandatory requirements of the law. Ms. Kinyasi rested her submission by pleading with us to sustain this ground, quash and set

aside the proceedings and orders both before the CMA and the High Court for want of jurisdiction. The learned State Attorney referred us to our earlier decision in **Joseph Khenan v Nkasi District Council**, Civil Appeal No. 126 of 2019 (unreported) to reinforce her argument.

In reply, the respondent was, as expected, very brief. He submitted that, following the termination of his employment contract, he appealed to the Post Master General where he was advised to refer his grievances to the CMA. According to him, for the appellant to turn around today and say that he was supposed to appeal to the Public Service Commission while they are the ones who advised him to go to the CMA, that amounts to speaking with a double-tongue. He pleaded with us to proceed with the hearing of the appeal and determine it on merit.

Now, as we held in **Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda** [1975] TLR 155 and in number of cases that followed thereafter, the question of jurisdiction for any court is very fundamental as it goes to the very root of the power of the court to adjudicate upon cases of a different nature. It follows therefore that, the determination of this appeal turns around the question as to whether the CMA had jurisdiction to entertain this dispute, given the seemingly uncontested fact that the respondent was a civil servant.

With respect, we think that Ms. Kinyasi advanced a very lucid and compelling argument in support of the view that the CMA had no jurisdiction to adjudicate upon this dispute. However, in addition to the learned State Attorney's brief submission on that score, we think that before reaching to the same conclusion as she did, this subject deserves more consideration. And the noblest route to that conclusion is to identify and examine in detail the relevant provisions of the law which are instructive.

While under section 3 of the Public Service Act, a "public servant" is defined as, *"a person holding or acting in the public service office"*, the phrase "public service office" is defined under the same section as: -

*"a paid public office in the United Republic charged with the formulation of Government Policy and delivery of public services other than:-*

- i) a parliamentary office;*
- ii) an office of a member of a council, board, panel, committee of other similar body whether or not corporate, established by or under any other written law;*
- iii) an office the emolument of which are payable at an hourly rate, daily rate or contract term;*
- iv) an office of a judge or other judicial office;*
- v) an office in the police force or prisons service".*

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 services. (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 foregoing analysis and conclusions, we entertain no doubt whatsoever that, the respondent in the present case was a public servant and therefore, upon termination of his contract of service and, on being aggrieved by the said termination, the provisions of section 25 (1) (a) and (b) of the Public Service Act would have come into play. In other words, this is an issue which was governed by the above- quoted provisions of the law which states that: -

*"Where-*

*(b) a Permanent Secretary, Head of an Independent Department, Regional Administrative Secretary of*



*a local government authority exercises disciplinary authority as stipulated under section 6 by reducing the rank of a public servant who had been promoted or appointed on trial, or reduces the salary or **dismisses the public servant, that public servant may appeal to the Commission against the decision of the disciplinary authority** and the Commission may confirm, vary or rescind the decision of that disciplinary authority;*

*(c) a public servant or the disciplinary authority is aggrieved with the decision in (a) and (b), that public servant or disciplinary authority shall appeal to the President, whose decision shall be final". [Emphasis added]*

Notably, section 3 of the said Act defines the term "Commission" to mean *"a Public Service Commission established by section 9 and includes any department or division of the Commission"*.

Going by the wording of the above-quoted provision, it is unambiguously clear that all disciplinary matters or disputes involving public servants are exclusively within the domain of the Public Service Commission whose decision is appealable to the President. As correctly submitted by Ms. Kinyasi and as amply demonstrated above, the CMA has no jurisdiction to adjudicate upon such matters.

For this reason, it is our conclusion that, indeed the CMA had no jurisdiction to entertain the dispute between the appellant and the respondent who was a public servant. On this account, without recourse to the remaining ground of appeal, this appeal is found to have merit and is accordingly allowed. The proceedings before the CMA and the High Court are quashed and the orders emanating therefrom are set aside. This being a labour dispute, we make no order as to costs.

**DATED at MTWARA** this 26<sup>th</sup> day of March, 2022.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

This Judgment delivered on 28<sup>th</sup> day of March, 2022 in the presence of Ms. Getruda Songoi learned State Attorney for the appellant and Mr. Evaristo Miho on behalf of Dominic A. Kalangi, the Respondent is hereby certified as a true copy of the original.



  
D. R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**