

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

CIVIL CASE NO 17 OF 2004

EDWARD LENGANASA ..... PLAINTIFF

VERSUS

THE TRUSTEES OF TANZANIA]

NATIONAL PARKS ] ..... DEFENDANT

## **RULING**

**29/09/2006- 25/10/2007**

**R.SHEIKH, J.**

The Plaintiff EDWARD LENGANASA on 19/10/2004 filed this suit against the defendant THE TRUSTEES OF TANZANIA NATIONAL PARKS for damages for wrongful termination of his employment. In the plaint it is averred that the termination of his employment was unlawful and a nullity. The following reliefs are prayed for in the plaint:-

a) General damages for wrongful termination, and

b) Special damages for loss of earnings, being monthly and annual salary and specific allowances until retirement.

By notice of preliminary objection filed on 24/04/2006 Mr. Mwaluko learned counsel for the defendant had taken objection to the suit raising the following ground:-

"This Honourable court has no original jurisdiction to hear and determine labour disputes and that such jurisdiction is with the Industrial Court of Tanzania under the Industrial Court Act, 1967."

In his submission on the preliminary objection learned counsel for the defendant has submitted that going by what is pleaded in the plaint and particularly in paragraphs 25, 26 and 27 the dispute between the parties is purely a labour or trade dispute. He argued that the claim being one for unlawful and wrongful termination of employment and loss of the plaintiff's earnings, it is clearly an employment/ labour dispute for which this court has no original jurisdiction to hear or determine. He contended that the jurisdiction for determining this suit is with the Industrial Court of Tanzania under the Industrial Court of Tanzania Act (Cap 60 R.E. 2002).

In support of his contention learned counsel cited (1) the decision of the Court of Appeal of Tanzania in the case of **TAMBUENI ABDALLA & 89 OTHERS VS. THE NATIONAL SOCIAL SECURITY FUND**, Civil Appeal No 33 of 2000 (Dar es Salaam) and (2) **AMANI MWENEGOHA v. THE REGISTERED TRUSTEES OF E.L. C.T.& Others** High Court Civil Case No. 1 of 2005 (Dar es Salaam Registry).

In response Mr. Umbulla learned counsel for the plaintiff basically submitted that a suit for wrongful dismissal is not a trade dispute; that not every labour dispute is a trade dispute, that the issue in the **TAMBUENI** case was redundancy not termination and further that the **TAMBUENI** case is distinguishable and inapplicable to the present suit as it concerned a claim for wrongful declaration of redundancy. It was argued that for a labour dispute to come within the meaning of the term "trade dispute" it has to occur during the time the employee or employees is/ are still in the employment of the employer, that where a dispute arises out of a termination or dismissal of employment then it becomes an ordinary labour dispute which has to be dealt with under the Employment Ordinance, the Security of Employment Ordinance or the Law of Contract Ordinance,

depending on the nature of the dispute, and finally that the Industrial Court is not empowered to grant damages.

Section 3 of the Industrial Court of Tanzania Act, Cap 60 R.E., 2002 (the Act) defines a trade dispute as:-

“Any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non-employment or the terms of employment, or with the conditions of labour of any of those employees or such an employee.”

In the TAMBUENI case the Court of Appeal of Tanzania stated “It is our considered opinion that a declaration of redundancy and especially when it is contested by employees, is a trade dispute .....The word “non employment” in our view, includes redundancy. So this matter had to be dealt with under section 4 of the Act, as the respondent properly pointed out.....”

Admittedly in the Tambueni case the dispute was on the issue of redundancy, which is not the case in the present suit. In the instant suit it is alleged that the procedure followed in terminating the plaintiff’s employment or contract of service was wrong, that the

termination was unlawful, a nullity and of no legal effect. The key issues that this court has to address in this suit are:-

- a) Whether or not the termination of the plaintiff's employment was lawful; and
- b) the status of the employment of the plaintiff.

By challenging the legality of the termination and claiming salaries until retirement it seems to me that the plaintiff is not only claiming that he is still legally an employee of the defendant, and that his status is that of an employee of the plaintiff, but indirectly claiming re-instatement without loss of salary and benefits. Clearly the dispute is connected with the "employment or non-employment" of the plaintiff by the defendant as defined in section 3 of the Act and hence in my view a trade dispute. I am inclined to agree with Mr. Mwaluko learned counsel that in the light of the decision of the Court of Appeal of Tanzania in the Tambueni case this court has no original jurisdiction to entertain this suit which falls within the definition of trade disputes under S.3 of the Act.

As the court lacks original jurisdiction to determine this dispute the suit is struck out.

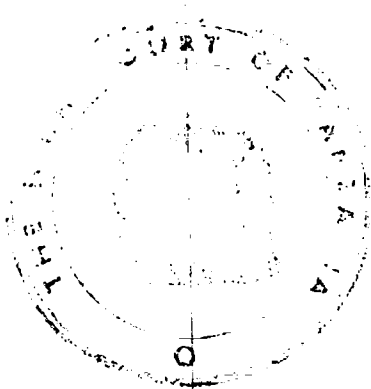
I make no order as to costs.

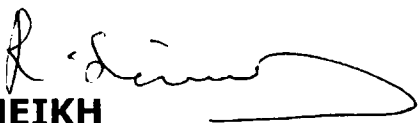
  
**R. SHEIKH**

**JUDGE**

**22/10/2007**

Ruling read this 25/10/2007 in the presence of Mr. Umbulla learned counsel for the plaintiff and also holding brief for Mr. Mwaluko learned counsel for the defendant, and Mariam B/C



  
**R. SHEIKH**

**JUDGE**

**25/10/2007**

**/mm**