

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZAN

**IN THE DISTRICT REGISTRY
AT MWANZA**

HC. CIVIL CASE NO.16 OF 2007

**1. YONA MASANJA
2. EDWARD ISEMBE
3. RAPHAEL DAMAS
4. SOSPETER KWITEGA** }**PLAINTIFFS**

Versus

**1. ALKARIM LADHA
2. RON PALMER** }**DEFENDANTS**

RULING

G. K. RWAKIBARILA, J:

Yona Masanja, Edward Igembe, Raphael Damas and Sospeter Kwitega are the First, Second, Third and Fourth plaintiffs respectively in this suit which was instituted on 13.08.2007. They are claiming, among other things, reinstatement to their job and payment of their salary arrears from Alkarim Ladha and Ron Palmer who are the First and Second defendants respectively but both t/a Savannah Exploration Ltd.

At the commencement of hearing of this suit on 03.02.2009, learned counsel for both defendants Mr. Galati raised a preliminary objection that this court has no jurisdiction to preside over this suit whose cause of action is on a labour issue. In fact both Mr. Galati and the plaintiffs did not object this

status of what has been pointed out as a cause of action. However, the plaintiffs through the first plaintiff made an oral explanation in court, praying on this court to invoke her powers judiciously and continue to hear this suit until determination of their rights.

Under section 94 (1) of the **Employment and Labour Relations Act, No. 6 of 2004**, jurisdiction on Labour matters is exclusively vested on the Labour courts. And under Section 51 of the **Labour Institutions Act, No. 7 of 2004**, jurisdiction on labour matters is also vested exclusively on the labour courts too. Act No. 6 of 2004 (supra) commenced on 05.01.2006 vide GN. No. 1 of 2006. And Act No. 7 of 2004 (supra) commenced on 01.02.2005 vide GN. No. 24 of 2005. Therefore on 13.08.2008 when this suit was instituted, both **Employment and Labour Relations Act, No. 6 of 2004** and **Labour Institutions Act No. 7 of 2004** were already in force. Jurisdiction of ordinary courts like this one over labour matters was ousted when application of the said two statutes commenced either on 01.02.2005 (in respect of the **Labour Relations Act**) or 05.01.2006 (in respect of the **Employment and Labour Institutions Act**).

The situation similar to the cause of action referred to in this suit was considered by Hon. Nyangarika, J. in **Malegesi Mussa Nyatalila Vs Alkarim Ladha and Another** (Mwanza High

Court Registry – Civil Case No. 17 of 2007; unreported). It is interesting to note that defendants in that case were also sued in this suit but by another set of plaintiffs. And in common, plaintiffs in that case and this suit were disputing termination from employment and claiming refund of their salary arrears. Hon. Nyangarika, J correctly pointed out, *inter alia*, that:

"All labour disputes are resolved under the procedure . provided under sections 86 – 95 of the Employment and Labour Relations Act, No. 6 of 2004 through mediators and arbitrators appointed by the commission or Labour court presided over by a judge of the High Court".

Hon. Nyangarika, J pronounced the decision in the said case on 26.09.2008 which is now hardly five months from that day. Plaintiffs in this case who were co-employees with plaintiffs in the **Malegesi Musa Nyatalila** case are obviously aware of that decision to an extent that they are ostensibly now ***"flogging a dead horse"***.

It follows that the defendants' preliminary objection is sustained because this court has no jurisdiction to preside over this matter. This suit is dismissed. But plaintiffs are not barred to pursue their case in the appropriate labour court, subject to limitation.

For this Labour case, parties shall shoulder their own costs.

**G. K. RWAKIBARILA
JUDGE**

***At Mwanza
4/2/2009***

Court:

Ruling delivered at Mwanza this 6th day of February, 2009 at presence of all four plaintiffs but at absence of defendants and their counsel. Moreover, right to appeal in time has been explained.



A handwritten signature in dark ink, appearing to read "G. K. Rwakibarila", written over a horizontal line.

**G. K. RWAKIBARILA
JUDGE**