

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SHINYANGA

CONSOLIDATED LABOUR REVISION NO. 2 & 6 OF 2018

*(Originating from Labour Disputes Nos. CMA/SHY 184 of 2017 and
CMA/SHY/185 of 2017)*

GHATI NYAMHANGA WARYUBA 1ST APPLICANT

MKAMI WANGUBO MAGESA 2ND APPLICANT

VERSUS

TANROADS RESPONDENT

Date of last Order: 28/05/2020

Date of Ruling: 28/08/2020

RULING

C.P. MKEHA, J

The applicants were employees of the respondent, employed under fixed term contracts of two years each. The applicants' respective contracts commenced on 17th February, 2017 and the same were to come to an end on 6th February, 2019. However, for what the respondent explained to be the applicants' misconducts, the said contracts were terminated on

15/08/2017. Being aggrieved with their respective termination, the applicants referred their disputes to the Commission of Mediation and Arbitration at Shinyanga.

The learned Arbitrator struck out the applicants' disputes for a reason that, the same were prematurely filed before exhausting the remedies provided under the Public Service Act. The present applications seek to challenge the CMA'S orders striking out the applicants' disputes.

The duo applications are being determined together, following an order of this court for their respective consolidation dated: 28/05/2020. The determinative issue in both applications is **whether the applicants were public servants within the meaning of the term under the Public Service Act.**

Mr. Benjamin Dotto (TAMICO representative) who represented the applicants submitted that the applicants were not required to exhaust administrative remedies provided under the Public Service Act due to the fact that they were not public servants within the meaning of the term Public Servant under the said Act, i.e, the Public Service Act. Mr. Benjamin Dotto submitted that, under section 3 of the Public Service Act a "Public Servant" is interpreted to mean "a person holding or acting in a Public Service Office." Mr. Benjamin Dotto went on to submit that, under section 3(a) of the Public Service Act the term "Public Service Office" is interpreted to mean a paid public office in the United Republic charged with the formulation of the 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 or other similar body whether or not corporate, established by or under any written law;
- (iii) An office the emoluments of which are payable at an hourly rate, daily rate or term of contract;**
- (iv) An office of a judge or other judicial office and
- (v) An office in the police force or prisons service,

According to Mr. Benjamin Dotto, basing on the definition of the term Public Servant under the relevant Act, the applicants were not subject to the provisions of the Public Service Act.

Mr. Saddy Rashid learned advocate submitted in reply that the applicants' submission that they were not Public servants for reasons that they were employed under temporary term contracts of two years and that they were not charged with formulation of government policy and delivery of public services is misconceived. In view of the learned advocate, the mere fact that the applicants were operating in a Public Service Office, renders them (the applicants'), Public servants.

The learned advocate insisted that, the applicants were obliged to abide with section 32A of the Public Service Act which makes it mandatory that a public servant should prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under that Act.

The parties are in tandem that the applicants had been employed by the respondent to hold their respective offices for a term of contract of two years only. Neither the Public Service (Amendment) Act of 2007 nor that of 2016 amended the definition section of Act No. 8 of 2002 as to make an employee, working in an office, the emoluments of which are payable at an hourly rate, daily rate or term of contract, a public servant. That kind of employee is specifically excluded from the definition of the term public servant under section 3(a) (iii) of the Public Service Act. The applicants were therefore, not public servants.

Section 32A of the Public Service Act insists that it is a **Public servant** and not any other kind of servant who should exhaust remedies provided under the Act prior to seeking remedies provided in Labour Laws. It follows therefore that the striking out of the applicant's disputes before the Commission was wrong. The Commission's orders that struck out the applicants' respective disputes are both set aside. The Commission is directed to determine the disputes on merits. Applications allowed.

Dated at **SHINYANGA** this 28th day of August, 2020.

