

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

CIVIL CASE NO. 5 OF 2022

MWL ANGELA STANLEY MIDAHO PLAINTIFF

VERSUS

KASULU DISTRICT COUNCIL1ST DEFENDANT

HON. ATTORNEY GENERAL2ND DEFENDANT

RULING

2/9/2022 & 4/10/2022

L.M. Mlacha,J

The plaintiff Mwalimu Angela Stanley Midaho filed a suit against the defendants, Kasulu District Council and the Hon. Attorney General (herein after referred to as the first and second defendants respectively) claiming Tshs 14,213,693/= being money accruing from her arrears of salaries from November 2011 to October 2015 and interest total Tshs 45,013,693/=. The claim is based on the decision of the Commission for Mediation and Arbitration of Kigoma (the CMA) made in CMA/KAS/Disp/74/013 dated 23/10/2013. The defendants on being served have come with a preliminary objection which reads as under: -

1. That the plaint is bad in law for lodging a suit in a wrong forum, therefore being in contravention to section 25 (a), (b), 31 (1) and 32A of the Public Service Act, Cap 298 R.E 2019.

Mr. Method Kabuguzi appeared for the plaintiff while the defendants were represented by Mr. Anold Simeo state attorney. Hearing was done by written submissions. It was the submission of Mr. Anold Simeo that the case is in a wrong forum in terms of section 32 A of the Public service Act cap 293 R.E 2019 and section 5 (c) 13(2), 13(3) and 60(5) of the Teachers Service Commission Act No. 5 of 2015. Counsel submitted that the two laws have a forum of resolving disputes of civil servants which ends up to the president as the final authority. There is no room of coming to court, he said. The case was therefore wrongly filed, he submitted.

Submitting in reply, Mr. Kabuguzi told the court that the plaintiff's suit is based on the tort of unlawful conversion not labour as such. He went on to say that there were desiplinary proceedings against the plaintiff which ended in the CMA in CMA/KAS/Disp/74/2013. The award of the CMA is the basis of his claim. It has legal force equal to a judgment or decree of a court of law up on which a suit can be based. Counsel submitted that such a suit has to be filed within 12 years in terms of paragraph 16 of part I of

the Schedule to the Law of Limitation Act, cap 89 R.E. 2019. It is therefore properly before the court, he submitted.

I had time to read the plaint and the annextures. I have read the settlement of CMA. It reads in part as under:

"PANDE KATIKA MGOGORO HUU ZIMEKUBALIANA YAFUATAYO

1. WALALAMIKAJI WAREJEE VITUONI MARA MOJA.

2. MISHAHARA YA WALALAMIKAJI IANZE KULIPWA OCTOBER 2013

3. KILA MLALAMIKAJI AKATWE SHILINGI ELFU TANO,5,000 KAMA ADHABU

4. MLALAMIKIWA AWASILIANE NA HAZINA ILI MALIMBIKIZO YA MISHAHARA YA WALALAMIKAJI YALIPWE NDANI YA SIKU TISINI (90)

5. WALALAMIKAJI WALIOPO MASOMONI WAPEWE MISHAHARA YAO MARA WATAKAPOREJEA VITUONI NA PANDE ZIONDOE RUFAA KATIKA VYOMBO VINGINE"(Emphasis added)

The plaintiffs claim is reflected in para 4 of the plaint which reads in part as under:

*"4. That the plaintiff's cause of action against the defendants jointly and or severally is **founded on the award of the Commission for Mediation and Arbitration (CMA) at***

Kigoma vide CMA/KAS/Disp/74/013 dated 23.10.2013
from which the plaintiff claims from the defendants the Principle
*sum of a total of Tshs 14,213,693/= as **being the money***
***accruing from the plaintiff's arrears of salaries** as from*
November 2011 to October 2015 which was unlawfully
converted by the 1st defendant. The plaintiff also claims against
the defendants payment of interest at 22 percent... total Tshs
45,013,693/=..."(Emphasis added)

I have also considered the what is provided above in line with counsel submission carefully. The record is clear that the case is based on unpaid salaries. It is founded on the CMA award. It is a labour matter so to say. Much as I agree that there may be a valid claim for unpaid salaries, but with respect, I think that the case is before a wrong forum because this court has no jurisdiction over labour matters. Labour matters have their own forums and laws. There is the scheme for civil servants which starts with the disciplinary committees like the Teachers Service Commission Committee for Kasulu district and end up to the President and the scheme for other category of employees which starts at the CMA and ends up at the Court of Appeal. Now if plaintiff has a problem of none compliance with the CMA award, the solution in my view, was not to file a suit. The solution was to file an application for execution before the High Court Labour

Division after obtaining the orders for extension of time. It is the High Court Labour Division which has jurisdiction in this matter, not this court. And I don't think that the decision made by the Court of Appeal made in **Tanzania Posts Corporation v. Dominic A. Kilagi**, Civil case No. 12 of 2022 can prevent the application to be filed because the award was made by CMA long before the passing of the decision of the Court of Appeal.

It follows that the case is improperly before the court and it is struck out. I make no order for costs. It is ordered so.



L.M. Mlacha

Judge

4/10/2022

Court: Ruling delivered. Right of Appeal Explained.



L.M. Mlacha

Judge

4/10/2022