

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

CIVIL CASE NO 16 OF 2022

EX-F-8347 D/C MAGNUS MACHONA NKOMOLA PLAINTIFF

VERSUS

THE INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

8th & 27th March 2023

F. H. Mahimbali, J:

This ruling is in respect of the preliminary objection raised by the respondent that this court has no jurisdiction to entertain this suit as the same was supposed first to be referred to the Minister responsible for matters relating to Police Force.

In support of the preliminary objection raised, Mr. Ndalo learned state attorney argued that the plaintiff being police officer, the issue regarding their employment and discipline affairs are regulated by Police Force and Prison Commission Act and its regulations GN 193 of 1998.

Under section 7 (5) of the Commission Act, provides that the IGP shall be the final authority for disciplinary measures in the Police Force to police officers of the rank below Assistant Inspector. If one is then aggrieved by the decision there of, ought to come to High Court by way of Judicial Review and not by normal civil suit. He also made reference to section 56 of the Police Force and Auxiliary Services Act, Cap 322 R. E. 2019 which provides that the final authority shall be the Minister responsible of Home Affairs. He submitted that by making reference to the decision of the Court of Appeal in the case of **Inspector General of Police and Attorney General vs Sgt Sylvester Nyanda**, Civil appeal No 369 of 2019, CAT at Mwanza in which made insistence that the only remedy available was to file Judicial Review. On this submission, Mr. Ndalo concluded that the suit is improperly filed before this court and is bound to be struck out.

The plaintiff who appeared in person and unrepresented argued that the suit is properly before the court as the same Court of Appeal in several decisions, held that one can access the High Court even by way of normal Civil suit. The authorities to this are **Ex – B 8356 S/Sgt Sylvester Nyanda vs IGP and AG**, Civil Appeal No 64 of 2014, which made reference to the case of **Dr. Kaijage vs Esso Standard Ltd**, Civil Appeal

No 10 of 1982 which also made reference to the decision of the same Court (Court of Appeal) in the case of **Patman Garments Industries Limited vs Tanzania Manufacturer Limited**, Civil Appeal No 15 of 1981. Furthermore, he cited several High Court's decisions which followed the principle set in the case of **Ex-B8356 S/sgt Sylvester S. Nyanda** which made reference to the earlier decisions to the case of **Dr. Kaijage and Patman**. The High Court cases referred to included: **Ex-F.8347 D/C Magnus Machoma Nkomola vs IGP and AG**, Civil Case no 69 of 2002, **X.B. 5980 cpl Boniphace J. Alex vs Commissioner General of Prison and Attorney General**, Civil case no 6 of 2022.

As there seems to be conflicting decisions of the Court of Appeal in its previous decisions from the current one (in the case of the **Inspector General of Police and Attorney General vs Ex-B 83565 Sgt Sylvester Nyanda**, Civil Appeal No 369 of 2019), Mr. Magnus Mahona Nkomola (the plaintiff) responded that, in his understanding the latter decision of the Court of Appeal cannot override the former position unless there is a clear departure of it by the full bench of the Court of Appeal. As there is none so far, he considered the preliminary objection unmerited. On this, he cited the case of **Ophir Tanzania (Block 1) Limited vs**

Commissioner General Tanzania Revenue Authority, civil Appeal NO 58 of 2020, which held that it is not within the jurisdiction of the Full court to depart from the decision of the same court, however erroneous it might be. On this submission, he prayed that this court to overrule the preliminary objection raised as being baseless.

In my digest to the position of the Court of Appeal stated in the above cases, it is still valid and I see no any clear confusion in it.

What can be gathered, is the legal position that as a matter of law where there is an injustice done or omitted to be done by any administrative body is to challenge it by way of Judicial Review. However, in rare circumstances the same can be done by normal suit in the form of civil case. However, for that to happen, recourse is to look what is the nature of remedy sought in the said normal civil suit filed if there is a triable issue which the High Court should have tried.

In the current case, the nature of reliefs the plaintiff is praying for this honorable court to grant are:

- 1. Declaration that the termination of the plaintiff's employment by 1st defendant was unlawful.*

- 2. To pay specific damage to the tune of Tshs 488,858,000/= from the date of unlawful termination that is 4/8/2016 to the date of judgment.*
- 3. An order for payment of court interest rate of 12% per annum from the date of the judgment to the final payment.*
- 4. To pay the general damages which amount to Tshs. 300,000,000/=*
- 5. Costs of this suit.*
- 6. Any other order and relief as court may deem fit and just to grant.*

Every case must be decided by its own merit/facts. In the circumstances of the current case, since the nature of reliefs sought are mainly centered on compensation, it was therefore important if the injustice issue is first established. Had the matter been a triable issue on injustice, ordinarily tried by the High Court in the form of Judicial Review, then the court would have been justified to proceed. Since the main reliefs sought in this case are dependent first on the issue whether there was any injustice done or omitted done, this case is then misplaced.

That notwithstanding, it is my understanding that the decision in the case of **Dr. Kaijige** (supra) did not legalise that any person aggrieved by

the decision of administrative authority should opt for a normal civil suit instead of the traditional mode of judicial review.

That said, while appreciating the partial research done by the plaintiff, however, it is misplaced in the circumstances of this case. I fully associate myself to the decision of the Court of Appeal in its final decision in the case of the **Inspector General of Police and Attorney General vs EX-B83565 Sgt Sylvester Nyanda**, Civil Appeal NO 369 of 2018, that despite the confusion brought by the two legislations: The Police Force and Prison Service Commission Act, 1990 and the Police Force and Auxiliary Services Act, Cap 322 R. E. 2019 (under section 7 (5) and section 56 respectively), none of the legislations provides for an avenue of an aggrieved officer to report to the court by way of an ordinary suit as it was done in the instant case.

Since jurisdiction is conferred by statute and not by a court of law's, holding, this court cannot assume the said jurisdiction as argued. As insisted that where the law provides for a special forum, ordinary civil courts should not entertain such matters (see **Elieza Zacharia Mtemi and 12 others vs The Attorney General and 3 others**, Civil Appeal no 177 of 2018, **Commissioner General, Tanzania Revenue Authority vs**

JSC Atomredme Tzoloto (ARMZ), Consolidated Civil Appeals no 5 78 of 79 Civil Appeals Nos 78 and 79 of 2018, and the **Inspector General of police and the Attorney General vs Ex-B83565 Sgt Sylvester Nyanda**, Civil Appeal NO 369 of 2019).

That said, the suit is incompetent before the court and it is hereby struck out as reasoned above.

Parties shall bear their own costs.

DATED at MUSOMA this 27th day of March, 2023.




F. H. Mahimbali

JUDGE

Court: Ruling delivered this 27th day of March, 2023 in the presence of Mr. Kitia Toroke, state attorney for the defendant, plaintiff present in person and Mr. D. C. Makunja RMA.


F. H. Mahimbali

JUDGE