IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

LABOUR REVISION NO.20 OF 2022

(Originating from the Ruling of CMA-Mwanza, Labour Dispute No.CMA/MZ/MAG/348/2020.)

MAGU DISTRICT COUNCIL ..... APPLICANT

VERSUS

SARYANKANGA SAMWEL MAGETA ..... RESPONDENT

JUDGMENT

6th September, 2022, & 21st April, 2023

ITEMBA, J.

On 20th November 2020, the respondent filed his dispute against the respondent at the Commission for Mediation and Arbitration herein the CMA. The respondent was seeking for payment of outstanding claims after being forced to retire, amounting to TZS 197,488,000/= and damages amounting to TZS 100,000,000/=. When the matter was scheduled for hearing the respondent raised four grounds of preliminary objections. The CMA dismissed all the grounds of preliminary objections and ordered for the hearing to proceed. The applicant is aggrieved with such decision hence this application.

In support of the application, is the affidavit of Merchades Wema Rusasa, the applicant's solicitor, and it sets out grounds on which the application is based as follows:

1. *That the arbitrator erred both in law and facts for allowing premature case to be entertained before CMA;*
2. *That the arbitrator erred both in law and facts for failure to order the respondent to join the attorney general and solicitor general as required by the laws;*
3. *That, the arbitrator erred in law in deciding that it was not the requirement for the complainant (respondent) to send a copy of notice of his claims to the attorney general and the solicitor general as required by the laws; and*
4. *That, the arbitrator erred in law in deciding that the commission for mediation and arbitration has jurisdiction to hear this complaint.*

Through his counter-affidavit, the respondent has denied the contentions put forth by the applicant stating that the aversion by the applicant is false. He added that the notice was issued in 2019 to the applicant. The rest of the aversion in the counter affidavit are regarding the main case which I will not discuss at this stage.

Hearing of the matter took the form of written submissions which were preferred in compliance with the filing schedule. In respect of the first

ground, the applicant's counsel's argument was that; according to section 31 (1)(a) of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 the Local Government (District Authorities) Act, (CAP. 287) no suit shall be instituted against a local government authority unless a ninety days' notice of intention to sue has been served upon the local government authority and a copy thereof to the Attorney General and the Solicitor General. He argued further that section 6(2) of the Government Proceedings Act [CAP 5 R.E 2019] provides that no suit against the Government shall be instituted unless the claimant previously submits to the Government a notice of not less than ninety days of his intention to sue the Government, and send a copy of his claim to the Attorney-General and the Solicitor General.

The counsel for the applicant expounded that at page 3 and 4 of the CMA ruling the Mediator ruled out that, the complainant complied with the requirement of the law on service of notice before instituting his complaint before CMA, but he submits that the respondent did not comply with the law since no notice was issued. He argued that this was a procedural issue and it was supposed to be complied with. He cited the decision of **Benbros Motors Tanganyika Ltd., v. Ramanlal Haribhai Patel** (1967)

H.C.D. no 435 and that of **Lala Wino vs. Karatu District Council** Court of Appeal of Tanzania at Arusha Civil Application No. 132/02/2018 (Unreported) page no 5-9.

Regarding the second issue, he argued that according to section 6 (3) of the Government proceeding Act it was not correct for the CMA to state that this application was not a suit in terms of section 6. He referred to the Black's Law Dictionary (9th edition) which define suit to mean any proceeding by a party or parties to against another in a court of law".

Submitting in respect of the third ground, he stated that the requirement of sending a copy of applicant's claim to the Attorney General and the solicitor general is mandatory in terms of section 6(2) of Cap 5 R.E 2019.

In respect of the fourth ground, the learned counsel argued that the Mediator erred by stating that the High Court ordered the dispute to be instituted before CMA. That, in terms of section 6(4) of the Government Proceedings Act [CAP 5 R.E 2019), the CMA has no jurisdiction to hear this matter. That, the respondent was required to follow the proper channels by seeking remedies provided under the Public Service Act because the respondent's cause of action arose from his employment

contract in which he was serving as a public servant. That, without the respondent's public service, there would be no claim.

Overall, the appellant prayed that the application to be allowed by nullifying the proceedings and the ruling of the CMA.

In his rebuttal submission, the respondent took a similar sequence as that adopted by the appellant. He argued the 1st and 2nd grounds jointly by stating that the circumstances in this case are quite different. He argued that this issue was previously well discussed in the CMA and it cannot be termed premature. He expounded that in labour laws there is no requirement of giving the notice of intention to sue because the CMA cannot be governed by government proceeding Act, like wise in second issue, there is no requirement of joining the Attorney General.

He also submitted that this dispute has no status of a suit. He referred the previous High Court decision between the same parties in **Civil Appeal No 41 OF 2020, Saryankanga S. Mageta V. Magu District Council and stated that** Hon. Rumanyika, J, as he then was (now the Justice of Appeal), ordered that this is a Labour

Dispute and it is supposed to be referred to the CMA and that is what the respondent did.

Regarding the third ground, the learned counsel stated that the cases cited by the applicant's counsel are distinguishable to the circumstances at hand as they demonstrated the procedure which would have been followed under the Government Proceedings Act, which is not the situation in this matter.

The last ground was argued that this dispute existed since the year 2019 even before the amendment of laws which provides for mandatory requirement of joining the Attorney General and the amended law cannot operate retrospectively on a matter which was in court's corridor before the legal amendments.

The respondent finally prayed for the court to dismiss the application with costs as it lacks merits.

Having reviewed the rival submissions, the singular question to be tackled in respect of this revision application is whether the impugned decision of the CMA is tainted with errors.

Given the decisive importance on the issue of jurisdiction, I find it apt to start evaluating the first, second and fourth grounds of appeal jointly.

The question is whether the CMA was right in holding that it has the jurisdiction to entertain the dispute between the parties. To start with, section 3 of the Public Service Act, (Cap 298) defines a public service office as follows:

> *"public service office" for the purpose of this Act means:*
>
> *(a)* ***a paid public office in the United Republic charged with the formulation of 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 contract;*
>
> *(iv) an office of a judge or other judicial office;*
>
> *(v) an office in the police force or prisons service;*
>
> *(b) any office declared by or under any other written law to be a public service office;*
>
> [Emphasis added].

Section 32A of Cap. 298 sets out a condition precedent to public servants whenever they wish to pursue disputes to courts, tribunals or other dispute resolution bodies such as the CMA. It provides as follows:

> *"A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act."*

In ***Fanuel Mantiri Ng'unda v. Herman M. Ng'unda***, CAT-Civil Appeal No. 8 of 1995 (unreported), in which it was held:

> *"The jurisdiction of any court is basic, it goes to the very root of the authority of the Court to adjudicate upon cases of different nature … the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.* ***It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case.***" [Emphasis supplied].

In respect of jurisdiction the applicant states that the objection before the CMA was in three folds; first; section 6 (4) of the Government Proceedings Act (CAP 5 R.E 2019) provided that all suits against the government shall be instituted in the High Court by delivering a claim in the Registry of the High Court within the area where the claim arose.

Secondly, according to section 7 of the Government proceedings Act no civil proceedings against the Government may be in instituted in any court other than the High Court. And, third, that according to section 32A of the Public Service Act, a public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under the Act.

The respondent stated that CMA had jurisdiction because all labour matters are tired by the CMA. He adds that the dispute arose since 2019 when the law was not yet amended and it was not mandatory to join the AG as a party.

The High Court decision by Hon. Rumanyika J (as he then was, now the Justice of Appeal) was to the effect that disputes which are governed by specific laws and procedures should be treated by those specific laws. In this decision, Hon Judge Rumanyika cited the decision in **Tanzania Revenue Authority v Kotra** Civil Appeal No. 12 2019 where in that matter the dispute which emanated from taxation was filed before the High Court and the issue was whether the High Court has jurisdiction. It was held that the parties should have exhausted specific remedies. In **Tanzania Revenue Authority v Kotra**, the Court was referring to

parties utilizing the existing of the Tax Tribunal. However, the High Court decision was silent on which are the specific remedies. That was left to the parties, and, based on that, the respondent herein chose to move the CMA believing that it is a specific platform for resolving labour disputes. However, I find that, the respondent was at fault for the following reasons; **One,** the matter at hand is a labour dispute because it is between the employer and employee**. Two,** at the CMA, the respondent was complaining against the employer, which is a government agency. **Three**, at the time when the dispute was filed at the CMA, that is November 2020, the law which governed the nature of dispute between the government employee and their employer was Government Proceedings Act and the amendments of 2019 were already done.

Therefore, although this is a labour dispute, as one of the parties was a government agency, the specific remedy available was exhausting the remedies in the Public Service Act according to the Public Service Act, and if not satisfied thereof, the respondent may move to the High Court, according to the Government Proceedings Act, but definitely not to the CMA.

There are two obvious issues to note here, One, there is no evidence that the respondent has complied with section 32A by seeking the available remedies from his employer but he went straight to seek other remedies. Two, as the dispute was filed at CMA in November 2020 which was post amendments of 2019 of the Government Proceedings Act therefore, compliance to the Act was inevitable. Even if the dispute would have arisen prior to 2019, it is trite law that procedural law may apply retrospectively unless there are reasons to the contrary. See the decision in **Lala Wino v Karatu District Council** (supra).

The respondent does not dispute that he was a civil servant whose disciplinary process follows what is provided for under Cap. 298. This means that he truncated the internal disciplinary process within the Public Service through the Public Service Commission. Needless to say, the dispute that bred the instant proceedings was instituted in the CMA before it was ripe for preference to CMA, as provided for under section 32A of Cap. 298. The dispute was simply pre-mature and the CMA was yet to be seized with jurisdiction to try the matter.

That being said, I agree with the applicant on the 1st, 2nd and 4th ground that the CMA has no jurisdiction to hear the parties' dispute. As this

ground touches the jurisdiction of the court, it suffices to dispose the appeal.

Application is allowed. There are no orders of costs due to the nature of dispute.

It is so ordered.

DATED at **MWANZA** this 21st day of April, 2023.

L. J. ITEMBA

JUDGE

Judgment delivered in chamber in the presence of Mr. John Charles and Ms. Selestina Kuwambi, state attorneys for the applicant, the respondent in person and Ms. Josephine RMA.

L. J. ITEMBA
JUDGE
21.04.2023