

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM SUB REGISTRY)  
AT DAR ES SALAAM**

**CIVIL CASE NO. 174 OF 2022**

**MT. 84355 PTE CHARLES EMMANUEL MWAMPALE ..... PLAINTIFF**

**VERSUS**

**CHIEF OF TANZANIA PEOPLE DEFENCE FORCES ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**S. M. MAGHIMBI, J:**

Before me is a suit in which the Plaintiff is claiming against the defendants jointly and severally for unpaid salaries, ration allowance and beverages allowances. On the 5<sup>th</sup> day of October, 2023 while filing their Written Statement of Defence, the defendants lodged a notice of preliminary objection on points of law that:

1. This Court has no jurisdiction entertain the matter.
2. This suit is hopelessly time barred.
3. The plaintiff has not exhausted all the remedies that are available to him as provided for under Defence Act.

Shengena, Principle State Attorney. On the 25<sup>th</sup> October 2023 when the matter was scheduled for mention, hearing of the objections was ordered to proceed by way of written submissions.

In her submissions to support the objections, Ms. Shengena started with the first point of objection on jurisdiction of the court. Her submission was that this Court lacks jurisdiction on the basis that the matter emanates from employment benefits accruing from salaries and allowances of the plaintiff who was a Military Officer with the 1<sup>st</sup> defendant. That the plaintiff, being employed by the National Defence Force as a military Officer who is well covered by National Defence Act, 1966 and its regulations. She argued that the nature of the suit at hand being a labour matter, Ms. Shengena finds the Plaintiff to have rushed to this Court while statutorily, this court has no mandate to deal with labour matters as the mandate to deal with labour matters is vested with The High Court Labour Division. Further that despite the jurisdiction of the labour court in labour disputes, the Plaintiff being a military officer is excluded under section 2(1) (i) of the Employment and Labour Relation Act, 2004 to be entertained in the High Court Labour division. The case of **Inspector General of Police and Another vs EX-B 83565/SGT Sylvester Nyanda Civil Appeal No. 369 of 2019** was cited whereby the Court held that: -

*"Where the law provides for a special forum, Ordinary Court should not entertain such matters".*

From the above, Ms. Shengena concluded that, in the circumstance they find the plaintiff misconceived in lodging his case before this Honourable Court as the court has no jurisdiction. She prayed for the dismissal of the suit.

In reply, Mr. Koini submitted that jurisdiction is a creature of statute and jurisdiction of the High Court is provided for under Article 108 (1) and (2) of the Constitution of the United Republic of Tanzania as amended from time to time. It was his assertion that his understanding on jurisdiction with regards to the Constitution is that the High Court has unlimited jurisdiction. He argued that the exception arises where the Constitution itself or any other law provides that any specified matter shall be first heard by the High Court. The Plaintiff is akin that throughout the submission of the Defendant together with raising the objection on jurisdiction, Ms. Shengena has not referred any law that gives the proper forum for the Plaintiff to file his case before instituting it with this Court. It was the plaintiff's claim that the case of **EX-B 83565 SGT. SYLVESTER NYANDA** (supra) must be distinguished with the case at hand since the same related to Police Officers who are governed by the Police Auxiliary Act, while the present case relates to Military Personnel

governed by the National Defence Act of 1969. That the procedure to file complaints for the two cadres is different with the National Defence Act Cap.196 R. E. 2002 which gives power to any person aggrieved by a decision to file a suit in a Court of law within six months.

Mr. Koini also submitted that it was wrong for the Defendant to state that this Court has no jurisdiction based on the Employment and Labour Relations Act, 2004. That the Defendants ought to challenge jurisdiction of this Court by use of the Constitution of the United Republic of Tanzania and no other laws.

Since this line of objection challenges the jurisdiction of the court to determine the suit at hand, I shall determine it first before I go into determination of the other points of objection because in case it is true that I don't have jurisdiction to determine the matter, then where would I gain the jurisdiction to entertain the remaining points of objection. However, given the nature of the 3<sup>rd</sup> objection as well, it challenges the jurisdiction of this court in relation to other available remedies which the plaintiff did not exhaust, the two objections shall be determined together.

To begin with, the term jurisdiction was well elaborated by the Court of appeal in its decision **in Civil Appeal No. 84 of 2009, Tanzania Revenue Authority vs Tango Transport Company Limited Arusha Registry** (unreported) where Hon. Othman CJ (as he then was) relying

on paragraph 314 of **Halsbury's Laws of England, Vol. 10**, he noted that, a term "jurisdiction" is defined as:

*"The authority which a Court has to decide matter that, are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. The limits of this authority are imposed by the statute; charter or commission under which the Court is constituted, and may be extended or restrained by similar means. A limitation maybe either as to the kind and nature of the claim, or it may partake of both these characteristics (Emphasis added)".*

It was Ms. Shengena's submission that the Plaintiff has wrongly filed Civil suit No. 174 of 2023 before this High Court, since the matter arises out of Employment relationship. It also apparent on the records that the plaintiff is claiming against the defendants his unpaid salaries, beverage allowances and unpaid ration allowances. The claims arose from his employment by the Tanzania Police Defence Force, the question is whether such claims, from their very nature, can be directly lodged to this court. The plaintiff admits the fact that he was released on 22/03/2022. Claims against the 1<sup>st</sup> defendant is based on his unpaid salaries, unpaid ration allowances and beverage allowances. It is undisputed that all these allowances originated from his employment and in order to prove that

they were or were not paid, then the plaintiff will have to prove that in his contract, such were his entitlements. An employment contract or term of service may only be determined by the Labour Division of this Court. However, the criteria that the plaintiff was employed by the Tanzania People's Defence Force under section 2 (1) (i) of the Employment and Labour Relations Act excludes the plaintiff from being accommodated by the said Court.

Being Employed by the Tanzania People's Defence Force, and having worked with the 1<sup>st</sup> Defendant for 17 years the plaintiff's affairs were governed by The National Defence Act Cap. 192 R. E. 2002 and its Regulations which are subsidiary to the above Act. People employed by the 1<sup>st</sup> defendant have their own rules that govern their affairs. **Regulation 12.26** of the **Defence Forces Regulations, Volume 1** provides redress of grievances. Therefore, from this regulation it is apposite to say that the plaintiff having been covered by the National Defence Force Act had an avenue to redress his grievance which from the regulation is an administrative avenue under **Regulation 12.26, (1) - (5)**. The regulation is clear that once an officer or a man has been aggrieved, he shall file complaints to the Commanding Officer if the Commanding officer does not redress the complaint there is room to forward the complaint to the Chief of Personnel. Where from the latter

there is room again to the Chief of Defence Forces, and the to the Minister. The Minister may forward the complaint to the President.

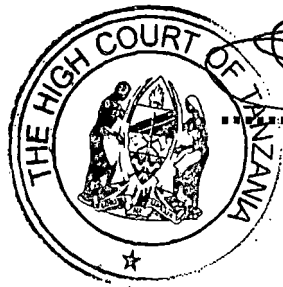
Should the party be aggrieved by the line of decision above, he may therefrom institute a judicial review before this Court. This is practicable where a Complainant has exhausted all necessary remedies avail on him/her in adherence of the laws that would govern the subject matter. Having dissected the submission of the plaintiff in opposition, I have not come across the Plaintiff stating to have exhausted the available avenues to have filed his claims. However, the plaintiff claims not to be lawfully covered under this Regulation in respect of the definition of the word "a man" and "an officer" since he was already released from his employment. I find the definition of the word "a man" accommodates the plaintiff too, the interpretation by the plaintiff is hence a misconception. In the case of Inspector **General of Police and Another vs EX- B 83565/ Sgt. Sylvester Nyanda, Civil Appeal No. 369 of 2019** the Court held that:-

*"Where the law provides for a special forum. Ordinary Civil Court should not entertain such matters".*

On the above findings, I find the first and third of objections to be meritorious and they are hereby sustained. This Court has no jurisdiction to entertain the current suit as the Plaintiff had not exhausted necessary available remedies. Since the two objections suffice to dismiss the suit, I

will not proceed with the determination of the remaining objection as it will be but an academic exercise. All said and done the suit before me is hereby struck out with no order as to costs.

Dated at Dar es Salaam this 21<sup>st</sup> Day of February, 2024.



**S. M. MAGIMBI**

**JUDGE**