

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 68 OF 2019

DEOGRATUS JOHN LYAKWIPA.....1st APPLICANT

HENRY MAGHUBO.....2nd APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAY AUTHORITY RESPONDENT

JUDGMENT

Date of last Order 27/03/2020

Date of Judgment: 22/04/2020

Z.G.Muruke, J.

The applicants, **DEOGRATUS JOHN LYAKWIPA** and **HENRY MAGHUBO** filed the present application, seeking for a court order to quash and set aside the ruling issued by the Commission for Mediation and Arbitration (herein referred as CMA) dated 25th January, 2019 in Labour dispute No. CMA/DSM/ILA/R.598/2018, on the following grounds:

- i. Whether the arbitration ruling is based on labour law.
- ii. Whether the Commission has no jurisdiction to determine the dispute
- iii. Whether the application was bad in law for failure to exhaust available statutory dispute resolution machinery.

The brief facts of the case is that , applicants were the respondent's employees until 1st may 2018, when they were terminated from their employment after failure to submit the Original form IV Secondary Education certificates as they were required. Being aggrieved by the termination, they referred their dispute before CMA where the matter was dismissed for want of jurisdiction hence the present application.

By consent, hearing was by way of written submission, the applicants were represented by Michael Mgombozi, Personal representative, while the Respondent was represented by Mercy Chimtawi the respondent's principal officer. Gratefully, and both parties adhered to the schedule.

Supporting their application, the applicants filed a joint affidavit sworn by themselves. In opposition, the respondent filed a counter affidavit sworn by Mercy Chimtawi her principal Officer.

The applicant's representative submitted that, the applicants were employed by TAZARA and they are governed by the Tanzania Zambia Railway Act, Cap 143 and not the Public service Act. They have no local remedy to exhaust under the public Service Act. Mr. Michael Mgombozi added that CMA has jurisdiction to determine the dispute, referring Section 2(1) of the Employment and Labour Relations Act, Cap 366 as amended and revised on 2018 which clearly stated that it shall apply to all employees on public and private sectors and Section 14 (1)(a) and (b) Of The Labour Institutions Act No. 7/2004 .

The arbitrator misdirected himself to base in some of the case laws to decide, referring the case of Mbozi District Council v Michael Simbeye

Rev. No.47/2015 and Patrick Malogozi Mongela v The Registered Trustees of the Public Service Pension Fund Rev. No. 90/2016.

Responding to the applicant's averments, the respondent counsel contended that the respondent is a body corporate established under the Tanzania Zambia Railway Authority Act, Cap 143, [RE. 2002]. It provides Service to the public hence all the employees by virtue of the ownership of the respondent are public Servants, referring Section 30 of the Public Service Act No. 8/2002 that provides that the employees of the authority have to exhaust internal remedies in dispute resolutions and have to adhere to the disciplinary mechanism as per Employment and Labour Relations Act (ELRA).

Further, respondent counsel added that, the Miscellaneous Amendment Act No. 3, 2016 which amended Public Service Act, provides that all Public servant shall seek internal remedies as provided under the act before seeking remedies in other labour laws. That the CMA jurisdiction is ousted for employees on executive agencies and government institutions, hence the arbitrator was right to decide that the applicants had to follow the mechanism provided for in the Public service Act.

Having gone through the rival submission and the records, this court is called upon to determine whether CMA had jurisdiction to entertain the matter between the parties. Legally Jurisdiction refers to the authority granted by the law to the courts to rule on legal matters, and render judgments according to the subject matter of the case. It refers to limit of a legal authority. Jurisdiction is one of the first things to be established in any litigation. It warrants title to determine the matter before it.

From records it is clear that the applicants claim not to be public servants while the respondent insist that they are public servant, thus required to exhaust internal remedies as provided under the Public Service Act.

Now, who is a public servant? According to Section 3 of the Public service Act, It defines as a **person holding or acting in a public service office.**

According to the same provision supra, a public service office means:

- a. A paid public office in the united 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 prison service
- b. Any office declared by or under any other written law to be a public service office.**[emphasis is mine]**

Basing on the above provisions, it is now clear that the respondent fall under roman (ii) as it is established under written laws as per section 4 (1) of the Tanzania- Zambia Railway authority Act. Hence not a public Service office. Therefore, this means that the applicants do not fall under the category of public servant, thus not bound by the Public Service Act Disciplinary mechanism as stated by the respondent's Counsel.

Section 2 of the Employment and Labour Relations act provides for powers of CMA, It states that:

"This act shall apply to all employees including those in Public Services of the Government of Tanzania in Mailand Tanzania."

The CMA is vested with power to mediate and arbitrate the dispute referred to it when an employee is aggrieved by the decision of the employer, as provided for under Section 14 (1) (a) and (b) of the Labour Institutions Act No.7 of 2004 provided that there is existence of employer employee relation.

Basing on the above discussion, I find that CMA had jurisdiction to entertain the dispute referred by the applicant. I hereby quash and set aside CMA ruling. I remit the matter before CMA to be determined by another Arbitrator.




Z.G. Muruke

JUDGE

22/04/2020

Judgment delivered in the absence of all parties.



Z.G. Muruke

JUDGE

22/04/2020