IN THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

(CORAM: MUGASHA, J.A., SEHEL, J.A and MWAMPASHI, J.A.)

CIVIL APPEAL NO. 474 OF 2020

TANZANIA POSTS CORPORATION.....APPELLANT

VERSUS

JEREMIAH MWANDI..... RESPONDENT

(Appeal from the Ruling and down Order of the High Court of Tanzania at Kigoma Registry)

(Matuma, J.)

dated the 13th day of May, 2020

in

Labour Revision No. 06 of 2019

.....

JUDGMENT OF THE COURT

5rd & 9th June, 2023

MUGASHA, J.A.:

Jeremiah Mwandi, the respondent, was employed by the appellant as a clerk up to 16/1/2019 when he was terminated by the appellant's Regional Manager on allegations of misconduct. His appeal to the appellant's Post Master General was dismissed. Still aggrieved, the respondent filed Labour Dispute No. CMA/KIG/DISP/99/2019 in the Commission for Mediation and Arbitration (the CMA) for Kigoma at Kigoma claiming compensation for being unfairly and un-procedurally terminated by the appellant.

Apart from disputing the respondent's claims, the appellant lodged a notice of preliminary objection inviting the CMA to strike out the complaint

because it had no jurisdiction to entertain it. The ground advanced in the notice was that: the complaint was prematurely lodged before the CMA because the respondent had not exhausted the available internal dispute settlement remedies prescribed under regulation F.4 of Tanzania Posts Corporation Staff Regulations 2014 (the Staff Regulations) and section 32A of the Public Service Act [Cap 298 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2016 (the Public Service Act).

After hearing the parties, the CMA sustained the objections and struck out the respondent's labour dispute for the reason that it had no jurisdiction to preside over a labour matter which involves a public servant on one hand and a public body on the other in terms of section 32A of the Public Service Act, which provides that:

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

In the said decision, the CMA relied on a number of the decisions of the High Court including the **BOARD OF TRUSTEES OF THE PUBLIC SERVICE PENSIONS FUND VS. JALIA MAYANJA AND GODFREY NGONYANI**, Labour Revision No. 248 of 2017, Nyerere J. (as she then was) (unreported).

Aggrieved by the decision of the CMA, the respondent filed Labour Revision No. 06 of 2020, before the High Court to have the ruling and order of

the CMA revised on ground that, the CMA had jurisdiction to hear and determine his grievance. Before the High Court, the substantive question for determination was whether the CMA had jurisdiction to hear and determine the respondent's complaint that had been struck out.

Having considered the provisions of the Public Service Act and the appellant's Staff Regulations and other laws, the High Court agreed with the respondent that indeed the CMA had jurisdiction to hear and determine the labour dispute. Consequently, the High Court ordered that the record be remitted to the CMA for determination of the respondent's complaint on merits. The appellant was aggrieved with the decision of the High Court which overturned the findings of the CMA. It is against the said backdrop; the appellant has preferred the present appeal on the following grounds;

1. *That the honourable Court erred in holding that the Public Service Act, Cap 298 RE 2002 as amended by Act No. 03 of 2016 does not cater for all public Servants including the respondent.*
2. *That, the honourable Court erred in law and fact by holding that the Commission for Mediation and Arbitration had jurisdiction to entertain employment complaints for public servants before exhausting internal remedies provided under the Public Service Act.*
3. *That the honourable Court misdirected itself on the interpretation of regulation A.3 of the Tanzania Posts Corporation Staff Regulations, 2014.*

At the hearing Messrs. Lameck Merumba and Allan Shija, both learned Senior State Attorneys and Mr. Erigh Rumisha, learned State Attorney appeared for the appellant whereas the respondent had the services of Mr. Sadiki Aliki, learned counsel. The learned counsel for either side adopted written submissions filed earlier on containing arguments for and against the appeal.

On taking the floor, Mr. Rumisha who argued the appeal on behalf of the appellant, challenged the decision of the High and implored on the Court to reverse it. He began the address commencing with the 3rd ground of appeal in which the High Court is faulted to have misdirected itself on the interpretation of Regulations F4 and A.3 of the Staff Regulations. On this, it was pointed out that, Regulation F4 of the Staff Regulations provides for a remedy of first appeal against termination of an employee from employment, in the event the initial appeal is not successful, a remedy of second appeal lies with the Board of Directors of the appellant which is one of the appellant's appellate bodies in terms of Rule A3 of the Staff Regulations. It was thus argued that, it was not proper for the respondent to invoke the jurisdiction of the Commission for Mediation and Arbitration (the CMA), without initially exhausting the available internal remedy of filing a second appeal to the Board of Directors. To support the proposition, he cited to us the case of **PARIS A. A. JAFFER AND OTHERS VS. ABDALLAH JAFFER AND TWO OTHERS** (1996) T.L.R. 116.

It was also submitted by Mr. Rumisha that, although the learned High Court Judge had agreed with the principle underlying the essence of exhausting available internal remedies, yet, he wrongly interpreted the proviso to Regulation F4 of the Staff Regulations having concluded that, the respondent was not obliged to lodge an appeal to the Board of Directors and as such, he had the liberty of lodging the employment dispute to the CMA. He argued that the construction of the proviso by the learned High Court Judge did not take into account the context of the Regulations whose purpose is to give effect the internal dispute resolving mechanism before invoking remedies available under other laws. He referred us to the case of **DICKSON SAUL LUTEMBA VS. CRDB BANK**, Civil Appeal No. 70 of 2008 (unreported). With this submission, he urged us to reverse the verdict of the High Court.

As to the 1st and 2nd grounds of appeal which were argued together, the High Court is faulted to have decided that, the respondent was not a public officer as envisaged under the Public Service Act (CAP 298 R.E.2002) and thus, not bound by the requisite disciplinary procedures thereunder, which entitled him to invoke the jurisdiction of the CMA to lodge the employment dispute. Mr. Rumisha submitted that, the respondent was the employee of the Tanzania Posts Corporation which is a public office in terms of the provisions of sections 3 and 31 (1) (2) of the Public Service Act. In this regard, it was argued, the respondent was bound by the disciplinary procedures in the public service whereby, in terms of section 3A he ought to have exhausted internal

remedies available within the public service before invoking the jurisdiction of the CMA. To support the proposition, he cited to us the recent case of **TANZANIA POSTS CORPORATION VS. DOMINIC KALANGI,** Civil Appeal No. 12 of 2022 (unreported). That apart, it was submitted that, since the law improvises a special forum of resolving employment disputes involving employees in public offices, the jurisdiction of the CMA was prematurely invoked and as such, the respondent's case was correctly struck out. He thus urged us to reverse the decision of the High Court and reiterated the earlier prayer that the appeal be allowed.

On the other hand, supporting the submission by Mr. Rumisha in respect of the first two grounds of appeal, Mr. Aliki made a concession and implored on us to allow those grounds. However, he opposed the 3rd ground of appeal arguing that the proviso under Regulation 4 did not inhibit the respondent to invoke the jurisdiction of the CMA for he had exhausted the available internal remedies following the dismissal of his appeal by the Post Master General. In a nutshell, Mr. Aliki agreed with the reasoning and verdict of the learned Judge of the High Court.

Having considered the contending submissions and the record before us, we have conveniently, opted to initially resolve the first two grounds of appeal as to whether the CMA had jurisdiction to entertain the employment

dispute before the respondent had exhausted remedies under the Public Service Act.

We begin with the legal framework which define the public servants and the modality governing the related disciplinary procedures. Section 4 of the Interpretation of Laws Act [CAP 1 R.E.2002] gives the following definition:

> *"Public officer" or "public department" extends to and includes every officer or department invested with or performing duties of a public nature, whether under the immediate control of the President or not, and includes an officer or department under the control of a local authority, the Community, or a public corporation".*

In the light of the above, a public corporation such as the appellant is embraced as a public department whilst its employees are categorized as public officers. That said, we are aware that, in terms of section 3 of the Public Service Act, the appellant who is a public corporation solely owned by the Government, is as well embraced as a public service office and its employees are public servants. Besides, according to section 2 of the Employment and Labour Relations Act [CAP 366 R.E.2019] (the ELRA) is applicable to all employees including those in the public service of the Government but excludes members of the Tanzania Peoples Defence Forces, the Police Force, the Prisons Services or the National Services. However, section 2 of the ERLA must be read together with section 32A introduced vide

the amendment of the Public Service Act vide Written Laws (Miscellaneous Amendments) (No. 3) Act of 2016. Section 32A requires a public servant to exhaust the remedies provided under the Act before seeking remedies provided for in the labour laws. On this, aspect the Court has categorically pronounced itself the case of **TANZANIA POSTS CORPORATION VS. DOMINIC A. KALANGI** (supra) having considered the provisions which regulate the disciplinary mechanism for the employees in the public service, the Court held:

> *"As we take it, the import of the above-quoted provisions together with a more elaborate exposition attached to it, is that the employees of the Tanzania Posts Corporation are public servants.*
>
> *While section 31(1) of the Public Service Act, provides for the servants in the executive agencies and Government institution, such as the Tanzania Postal Corporation, to be governed by the provisions of the laws establishing the respective executive agency or institution, subsection (2) makes it mandatory, thus:*
>
> *"Without prejudice to sub-section (1), public servants referred to under this section shall also be governed by the provisions of this Act".*
>
> *In the context of the instant case, the CMA is further kept at bay from entertaining labour disputes involving public servants by the provisions of section*

32A referred to by Ms. Kinyasi, which states categorically that:

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

From the foregoing analysis and conclusions, we are satisfied that, the respondent in the present case was a public servant who was employed in a public office. Thus, upon termination and exhausting internal remedies in the appellant's corporation, the provisions of section 25 (1) (a) and (b) of the Public Service Act would have come into play because it clearly stipulates that, all disciplinary matters or disputes involving public servants are exclusively within the domain of the Public Service Commission whose decision is appealable to the President".

On account of the position stated by the Court, we therefore agree with Mr. Rumisha that, the CMA had no jurisdiction to entertain the respondent's employment dispute. Thus, the CMA was justified to so hold and with respect, the learned High Court Judge misdirected himself to hold otherwise. We find the two grounds of appeal merited.

Having decided the two grounds of appeal we would have ended there. However, it is prudent to determine the 3rd ground of appeal, which is a pure point of law in terms of section 57 of the Labour Institution Act [CAP 300 R.E 2019] and it has a bearing as to when could the respondent invoke the

remedies under the Public Service Act. In the said ground of appeal, the High Court is faulted to have concluded that, the respondent was entitled to seek remedy by invoking the jurisdiction of the CMA without exhausting the available internal remedy of appealing to the Board of Directors.

The disciplinary matters of the appellant are regulated by its staff regulations titled **SHIRIKA LA POSTA TANZANIA, KANUNI ZA UTUMISHI WA SHIRIKA, TOLEO LA NNE**; DESEMBA 2014. In the event an employee is aggrieved with the disciplinary committee, Regulation F4 stipulates as follows:

> ***"UTARATIBU WA RUFAA KATIKA MASUALA YA NIDHAMU***
>
> *Adhabu yoyote, kwa kanuni hizi, ıkitolewa na Mamlaka ya Nidhamu kwa mfanyakazi, mfanyakazi huyo anaweza kukata rufaa dhidi ya uamuzi huo kwa Postamasta Mkuu na asiporidhika atafuata ngazi za mamlaka nyingine kwa mujibu wa sheria.*
>
> *Isipokuwa mfanyakazi atakuwa huru kukata rufaa nje ya Shirika kama ilivyowekwa na sheria halali".*

The unofficial English rendering is to the effect that, any employee who is aggrieved by the disciplinary committee may appeal to the Post Master General and if not satisfied, may invoke other authorities in terms of the law, save that the employee shall be at liberty to invoke remedies provided beyond the corporation.

In the present case, besides, F4 stating that an appeal against the disciplinary committee lies with the Post Master General, it as well prescribes that in the event of being aggrieved one can still appeal to 'other authority' as prescribed by the law. The question to be answered is which is the other appellate authority in the scheme of the Staff Regulations. Apparently, the interpretation Regulation A3 stipulates as follows:

> *"Mamlaka ya Rufaa" maana yake ni Bodi ya Wakurugenzi ya Posta na Posta Masta Mkuu".*

The unofficial English rendering is to the effect that, the appellate authority means the Board of Directors and the Post Master General.

In Regulation A3, the catch word there is the word 'na' which means 'and' which is a conjunction used to connect words or phrases of the same pattern and not to exclude one from the other. See: Cambridge Advanced Learners' Dictionary 4th edition published by Cambridge University. In this regard, the use of word in Regulation A3 has a plain connotation that the appellant has two appellate bodies in respect of disciplinary matters. Therefore, it is our considered view, the Board of Directors being a supreme body of the appellant, it is mandated with final say on matters relating to employment disputes and that is why under PART A of the Regulations the Board of Directors is prescribed as the overall Disciplinary Authority of the Tanzania Posts Corporation.

That said, while the learned High Court Judge was of the view that the proviso creates room for an employee not to seek and exhaust remedy available to the Board of Directors the parties locked horns on the matter. While Mr. Rumisha argued that, the law requires the proviso to be read in the context which entails reading together Regulations A3 and F4, Mr. Aliki had a different view and supported the reasoning of the Judge.

In a Book titled: Introduction to Interpretation of statutes by AVTAR SINGH and HARPREET KAUR, 4th Edition; the learned authors observed at pages 5 and 6 as follows:

> *"**The most and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law.** In the court of law what the legislature intended to be done or not to be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication.*
>
> ***But the whole of what is enacted 'by necessary implication can hardly be determined without keeping in the purpose of object of the statute. A bare mechanical interpretation of the words and application of legislative intent***

devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility....

Ordinarily, the determining factor of intention of a statute is the language employed in the statute. *Gajendragadkar J, said in a case that* ***'the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself..."***

In the bolded expressions it has been emphasized that, **firstly,** one of the most rational methods for interpreting a statute is to explore the intention of the legislature through among others, the context of such legislation; **secondly,** the initial and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself in order to give effect the intent and purpose of legislation. The principle is applicable in interpreting delegated legislation, as is the case here so as to give effect without distorting or extending the purpose for which the Staff Regulations were made. This was emphasized in the case of **DICKSON SAUL LUTEMBA VS. COOPERATIVE AND RURAL DEVELOPMENT BANK** (supra) where the Court discussed about the preferred approach to statutory interpretation having borrowed a leaf from Wales cases where it was held:

"Today there is only principle or approach, namely the words of an Act are to be read in their entire context and in their in grammatical and ordinary

sense harmoniously with the scheme of the Act, object of the Act, and the intention of Parliament (Rizzo Rizzo Shoes Ltd (Re), (1998) I.S.C.R. 27 at para 21 citing E.A. Driedger, Construction of Statutes (2nd ed 1983) at page 87, ***Notham v. London Borough of Barnet*** *(1978) W.L.R. 220".*

At page 223 of the record of appeal, the learned High Court Judge having considered Regulation A3 which creates two appellate bodies that is the Board of Directors and the Post Master General yet he concluded:

"Therefore, ***it is plainly*** *on the face of the regulations that within the corporation the appellate bodies are two, the Board of Directors and Post Master General.*

Although the regulation does not state expressly that *an appeal from Post Master General be lodged and referred to the Board of Directors, the necessary implication implies as such. This is due to the Composition and role of two appellate bodies under the Tanzania Post Corporation Act (supra).*

Post master General under section 6 of the Act is a composition of only one individual appointed by the president to be the ***Chief Executive Officer of the Corporation,*** *while the Board of Directors is a composition of several members chaired by a chairperson who is also a presidential appointee.*

Then, at page 226 of the record he concludes:

"Most important is that the proviso to regulation F.4 provides a wide range of choice to an employee of Tanzania Post Corporation as to where should he refer his appeal against the decision of a Disciplinary Body. It does not restrict him to exhaust all the appellate stages in the corporation with clear word, ***isipokuwa mfanyakazi atakuwa huru kukata rufaa nje ya shirika kama ilivyowekwa na sheria halali****. This does not provide with the decision can be challenged outside the internal channels between the three i.e., that of the Disciplinary Board, or that of the Post Master General in an appeal or that of the Board of Directors in its appellate capacity."*

At the outset, since it is the role of the courts to interpret statutes and delegated legislation by invoking the appropriate canons of construction, the absence of express words that an employee must appeal to the Board of Directors, brings into play the essence of construing the relevant provision in the context instead of treating the proviso to Regulation F4 in isolation as suggested by the learned High Court Judge. That said, with respect, we found the construction of the proviso by the High Court Judge wanting and it fell short of giving effect to the intention of the Staff Regulations. We are fortified in that regard due to the following reasons: **one,** the plain language used in Regulation A3 clearly stipulates existence of two appellate bodies within the Corporation that is, the Post Master General and the Board of Directors; **two,**

the proviso to Rule 4 does not exclude the application of Regulation A3 as that was not intended or else it would have been expressly stated which is not the case because a statute says in a statute what it says there; **three,** the line of construction invoked by the learned High Court Judge was beyond the intents and purposes of the Regulations which must be avoided because there is no ambiguity and the language used is plain. This was underscored the in **REPUBLIC VS. MWESIGE GEOFREY AND ANOTHER,** Criminal Appeal No. 355 of 2014 (unreported) the Court said that:

> *"... in the familiar canon of statutory construction of plain language, when the words of a statute are unambiguous, judicial inquiry is complete because the courts must presume that a legislature says in a statute what means and means in a statute what is says there. As such, there is no need for interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation."*

In the light of the foregoing discussion, it was incumbent on the respondent to lodge his appeal to the Board of Directors so as to exhaust the internal remedies available prior to invoking other remedies available under the law and to be precise, the Public Service Act. In other words, the CMA had no jurisdiction to entertain the respondent's case as it so held.

We thus find the appeal merited and it is allowed. We quash and set aside the proceedings and judgment of the High Court. In the circumstances, it is incumbent on the respondent to exhaust the available internal remedies within the Post Corporation before attempting to invoke remedies available under the Public Service Act.

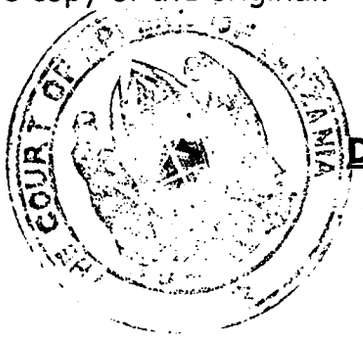
DATED at **KIGOMA** this 9th day of June, 2023.

S. E. A. MUGASHA
JUSTICE OF APPEAL

B. M. A. SEHEL
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

The Judgment delivered this 9th day of June, 2023 in the presence of Mr. Anold Simeo, learned State Attorney for the Appellant/Solicitor General and Mr. Sadiki Aliki, learned counsel for the Respondent, is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL