

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL CASE NO.91 OF 2005

(In the matter of an application for leave to apply for orders of certiorari

And

In the matter of the decision of Conciliation Board of Kinondoni District dated 4th
August 2005

BETWEEN

COCA COLA KWANZA LTD..... APPLICANT

AND

1. CONCILIATION BOARD OF KINONDONI... 1ST RESPONDENT
2. ATTORNEY GENERAL..... 2ND RESPONDENT

Date of last order: 21/4/2006

Date of Ruling: 21/9/2006

RULING

MANENTO, JK:

The applicant filed a chamber summons, accompanied by an affidavit of one Mario Mahenge, relations manager of the applicant, to be heard by this court for the grant of leave to the applicant. To apply for orders of certiorari to bring to the High Court and quash the decision of the Conciliation Board of Kinondoni District dated 4th August, 2005.

The application is properly filed under the relevant laws.

In his affidavit, the applicant is aggrieved by the decision of the Conciliation Board which ordered that the two employees, namely Elard Assenga and Emmanuel Bunyoga be reinstated and further more, that applicant is not allowed to appeal to the Minister against its decision. That the said Conciliation Board did not assign any reasons bearing the applicant from his statutory right of appeal to the Minister. All what is stated by the applicant in his affidavit seems to be true.

On being served with the necessary documents, the Attorney General filed a notice of preliminary objection believing that the application is incompetently filed before this Court. The point of law raised in the preliminary objection is that:

“The Court is not charged with the mandate to quash the decision made by the Conciliation Board.

The Attorney General is represented by Mr. Ngwembe, Senior State Attorney, while the applicant is represented by Mr. Arbogust, learned counsel. In his submissions, the learned state attorney submitted that the applicants application is based on the decision of the Kinondoni Conciliation Board which is a statutory decision as provided under section 26 of the Security of Employment Act, 1964 which is not final and conclusive. That decision is appealable to the Minister. He submitted that whoever fails to

follow the procedure of appeal provided by the enabling law, cannot come to this Court seeking for a judicial review. He has to exhaust the machinery provided by law before he can be allowed access to this court for judicial review. He further submitted that the statement is that:

“The employer has no legal rights to appeal to the Minister as provided under section 26(1) of the Security of Employment Act.”

The learned state attorney further urged that, by that statement of the Conciliation Board, the applicant was not precluded from appealing to the Minister as that is his statutory right secondly that judicial review is only applicable when a party has no any alternative remedy, so his rights have to be still reviewed by the Courts in its powers of prerogative powers. He cited a text book written by Lord Cliff Lewis in his book titled Judicial Remedy in Public Law, published by Maxwell in 1992 at page 231 where a test for granting leave was said:

“The court should not grant leave if the applicant had an alternative remedy. One factor which has grown noticeably more important in recent years is the existence of alternative remedy to judicial review. Such remedies may be alternative judicial

remedies such as a right of appeal to the courts or an appeal to a tribunal or inferior court. The court may refuse leave, set aside a grant of leave or may, in their discretion refuse relief at the substantive hearing if an adequate alternative remedy exists”.

The learned State Attorney concluded that the applicant had an adequate remedy to appeal to the Minister, so the application should be dismissed.

On the other hand, Mr. Arbogust, learned counsel submitted that the High Court has inherent powers and statutory powers to inquire into preciseness, legality or correctness of any decision made by any administrative tribunal or quash judicial body whose functions are of public nature. He cited section 17 of the Law Reform, Fatal Accident (Miscellaneous Provisions Cap. 360. I agree with the learned counsel that the High Court has both inherent powers and statutory powers to inquire into matters conducted by the administrative tribunals like the Conciliation boards. However, those inherent powers will only be invoked if there is no law dealing with the issue at hand. See an East African decision in Hassan Karim vs. Africa Import (1960) EA. 396 where it was said that the inherent powers of the High Court does not independently confer any powers already

prescribed elsewhere in the code and a home case. Also helicopter (T) Vs.

F.N. Jansen (1990) TLR 142 where the Court of Appeal held that:

- (1) "The inherent power of the High Court under section 95 of the Civil Procedure Code is exercisable where the law has made no provision governing the particular matter at hand."

The learned counsel for the applicant cited several cases and submitted at length issues which are not really directed to the point at issue. For example, he cited the case of the Court of Appeal in Sanai Mirumbe & another vs.

Muhere Chacha (1990) T.L.R. 54 where it was held that:

An order of certiorari is one issued by the High Court to quash the proceedings of and decisions of a subordinate court on tribunal or Public Authority on the following grounds

I say the case is not directly in issue because we have not reached to that stage of the grant or non grant of the orders of certiorari. We are still at the initial stage for the grant of leave to apply for leave to file an application for certiorari and mandamus.

Below going to the point in issue is that if there are alternative remedies to the applicant to forward his grievances, then this court can not grant leave to apply for the orders of certiorari. Mr. Ngwembe, learned Senior State Attorney submitted that the applicants had a statutory right of

appeal to the Minister if aggrieved by the decision of the Conciliation Board.

Let us see that right . Section 27 of (Cap. 387 R.E. 2002) provide as follows:

S. 27 (1) where –

(a) the summary dismissal or propose summary dismissal is confirmed by the Board; or

(b) the summary dismissal or proposed summary dismissal of an employee is not confirmed by a Board,

the employer may, within twenty eight days after receiving notice of the decision of the Board, refer the decision to the Minister.”

If the applicant did not want to exercise his legal rights as per law then he cannot be allowed to come to this Court through the back door. All the laws cited by the applicants learned counsel and those I cited are against the applicant's application. If they lied on ^{their} ~~this~~ rights, then let them suffer the consequence of their being inaction.

I have, I believe, exhausted all what the law wanted me to do and at the end of the day, I am left with only one decision and that is the dismissal

of the application. The application is accordingly dismissed for being improperly before this court.




A.R. Manento

JAJI KIONGOZI

21-9-2006

Coram: Rwakibarila – SDR-HC

For the Applicant – Absent

For the 1st Respondent)

For the 2nd Respondent) Mr. Panzi.

Court: Ruling has been delivered at DSM this 21st day of September, 2006 and right to appeal in time has been explained thoroughly to the parties.

G.K. Rwakibarila

SENIOR DEPUTY REGISTRAR-HIGH COURT

21-09-2006