

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO.6 OF 2005

MRS ALICE B. KATITI..... PLAINTIFF

VERSUS

AIR TANZANIA COMPANY LTD..... DEFENDANT

RULING

MANENTO, JK:

The plaintiff Mrs. Alice B. Katiti had been employed by the defendant company in a capacity of Commercial Director for a term of three years, starting from 1st April 2003 to 31/12/2004 when her contract of service were terminated. She believed that her contract of employment were terminated. She therefore filed the suit at the High Court for damages, monthly salary of the unexpired time of contract, interests and costs of the suit. The defendant company on being served with the copy of the plaint, filed a written statement of defence and a notice of preliminary objection on a point of law.

The plaintiff is represented by the firm of advocate in the name of Epitome Advocates while the defendants are represented by Mzirya, A. Ndama advocate. The preliminary objection has been urged by way of written submissions.

The preliminary objections on points of law are that:

- (1) The suit is bad in law in that, being a labour dispute it is not actionable in a civil court.
- (2) The plaint is incurably defective for lack of being properly verified, as required under the relevant laws.

Submitting for the first objection, the learned counsel for the defendants submitted that this court has no original jurisdiction to determine labour disputes, that the court vested with such jurisdiction is the Industrial Court under the Industrial Court Act, 1967. That position is amply demonstrated under section 4(1) of the Industrial Court Act, read together with section 2(a) section 8(a) and (b) and section 15(1) of the Act which provides that all disputes should be filed in the Industrial Court. The learned counsel further submitted that the issue before this court is a trade dispute within the meaning of section 3 of the Industrial Court Act, 1967 as amended. The learned counsel further submitted that the suit is based on termination of employment, so plaintiff's argument that it is based on a breach of contract is misconceived. What the plaintiff is for are the damages for the breach of employment contract and so the matter is squarely a labour dispute issue, which then disposes the High Court of its original jurisdiction.

The learned counsel for the defendant had relied upon the decision of the court of appeal in **Tambueni. Abdallah and 89 others Vs. National Social Security Fund, Civil Appeal No.33 of 2000** (unreported) where among other things, the Court of Appeal held that:-

“The High Court has no original jurisdiction to entertain trade disputes. Such matters are dealt with in accordance with the Act.

The learned counsel submitted that an employee has a choice in an employment cause, to refer his trade dispute to the Industrial Court or to institute it to a court with original jurisdiction. The reason for saying so is based on section 15(2)(a) of the Industrial Court Act, Cap. 60 RE. 200/= which is now section 16 of the Act states as follows:-

16(a1) There is hereby established an Industrial Court

Which shall, subject to this Act, have jurisdiction in respect of matters specified in subsection (2).

(2) The court shall have jurisdiction

(a) to hear and determine any trade dispute referred to it

under the provisions of this Act; Having cited that subsection, the learned counsel submitted that under the said act, a person wishing to vindicate

his/her rights in an employment contract has an option to refer a matter as a trade dispute to the Industrial Court or to a Court having Civil jurisdiction. Thus, the plaintiff chose to institute the proceedings in this court and not to the Industrial Court.

In his submissions, the learned counsel for the plaintiff did not dispute that the suit is based on a trade dispute, but he wants this court to hold that this court having unlimited jurisdiction in all civil matters should not desist from hearing this case. That is because the Parliament did not specifically say so. The Counsel also wanted this court to take into consideration the persuasive authority from the works of Guru Prasanna Singh. 8th edn.

Where the author of Principles of Statutory Interpretation had said that:

“The exclusion of jurisdiction of Courts is therefore not to be readily interfered and such exclusion must either explicitly expressed or clearly implied. --- As a necessary corollary of this rule provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed”.

The learned counsel for the plaintiff after that citation, went on to submit that section 15(2)(a) of the Industrial Court Act does not confer exclusive jurisdiction on the Industrial Court and the Counsel for the

defendant have failed to discharge his burden of proof in that the Industrial Court has an exclusive jurisdiction on the matter.

Going now to the issues before the court, it is clear and not disputed that this is a trade dispute. Secondly that, from the reply to the submissions of the plaintiffs counsel, it is true that the parties had submitted themselves to the Courts of this country, including the Industrial Court as the courts vested with jurisdiction to determine any dispute arising on their contract of service. The Industrial Court is a court and not a tribunal or any other authority as suggested by the counsel for the plaintiff when he cited the observations in the witting of Guru Prassenna Singh , 8th edition. The **Tambueni's** case (supra) is clear on this matter and in addition to that, I don't hesitate to say that the Industrial Court is a specialized court in Industrial disputes and when an issue arises whereby a specialized court has been established, then the other civil courts should desist to hear and determine such cases. The High Court has, at different occasions, in its unreported cases, decided the issue, that the High Court has no jurisdiction to determine employment causes in their original jurisdiction. Court of Appeal was very specific on its judgment in **Tambueni Abdallahs** case whereby it said in page 13 of the typed judgment that:

“It is clear to us that trade disputes have to follow the prescribed procedure and there is no room for going to the High Court straight. The High Court has no original jurisdiction to entertain trade disputes. Such matters are dealt with in accordance with the Act”.

Again, in reading between lines, the Court of Appeal had long time, in 1995 dealt with issues of specialized courts or forums and determined them in the affirmative for the first objection. In **Attorney General Vs. Olay Korari and Joseph Olay** (1995) TLR 80, whereby the Court of Appeal was confronted with section 6 of the Regulation of Land Tenure (Established Villages) Act, 1992 which purported to oust access to courts and the court said:

“Clearly this section is unconstitutional to the extent that it purports to exclude access to courts. The offending parts may Be severed so that, would leave the door open for an aggrieved party to seek a remedy in the courts, although such courts would not normally entertain the matter for which a special forum has been established, unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum”

See also the High Court decisions in the same matter, which are not yet reported:

Rose Lyimo & 8 others V. Price Water House Coopers Consultants, Civil Case No.216/1999, and Tanzania Plantations and Agricultural Workers Union on behalf of Stanley Kimaro Civil Case No.89 of 2004. In conclusion therefore, the High Court has no jurisdiction to hear and determine this trade dispute, in the name of breach of contract.

Even though the first objection disposes of the matter, yet I think I should also deal with the second ground, though briefly. The defendants counsel raised the objection in that;

The plaint is incurably defective for lack of being verified as required under the relevant laws.

In his short but clear submissions, the learned counsel submitted that the pleadings are not properly verified, due to the fact that, the person so verifying did not state the date on which and the place at which it was signed. He submitted that, that omission is fatal because the law puts that condition as mandatory, as per order VI rule 15(3) of the Civil Procedure A Code, 1966.

Though the learned counsel for the plaintiff does not object to the requirement, yet he submitted in defensive mechanism that, that omission is

a mere technicality which should not be allowed to override the Constitutional requirements to do substantial justice at all. In the alternative, he submitted that in the event the Court rules that the plaint offends order VI r 15 (3) for want of date, signature or place, the Court ought to allow the plaintiff to rectify the omission as this would not occasion injustice to the defendant, and at the same time, the requirements for substantial justice would be achieved.

It is clear that order VI r 15(3) makes it mandatory for the verification to signed by the person making it, dated and the place at which it was signed. Looking at the plaint, what the plaintiff verified are paragraphs 1 to 22 all being true to the best of his own knowledge information and belief. It is also signed but not dated or indicated the place where it was signed. The words used in rule 15(3) of Order VI are **shall**, meaning mandatory, yet the counsel requests this court to order otherwise.

Usually, in labour matters, substantial justice take priority rather than technicalities found in ordinary civil suits. However, the plaintiff chose to use this forum whereby adherence of the Civil Procedure Code, 1966 in mandatory. Just because I have ruled on the competence of this suit before this court, then I would not go into details of this objection. What I have

already said is enough for the purpose of this preliminary objection. Finally, the suit is dismissed for want of jurisdiction.


A.R. Manento

JAJI KIONGOZI.

24-11-2005

Coram: Shayo, RHC

For the plaintiff

For the Defendant) Absent. But duly served.

Cc: Livanga

Order: Ruling delivered in chambers today 24th November 2005 in the absence of both parties who were duly served. They are to be notified of this ruling.

A.A. Shayo

REGISTRAR-HIGH COURT

24/11/05