

IN THE HIGH COURT OF TANZANIA**AT DAR ES SALAAM****CIVIL APPEAL NO.96 OF 2004**

MOHAMED MOHAMED DAMLA.... 1ST APPELLANT
PETER KWIGWA..... 2ND APPELLANT
SELEMAN JUMA RAMADHANI..... 3RD APPELLANT

VERSUS**MZIZIMA IMPORT & EXPORT LTD..... RESPONDENT**

Date of last order: 8/5/2006
Date of ruling: 13/7/2006

JUDGMENT**MANENTO, JK:**

The appellant Mohamed M. Damla and two others had instituted a labour case before the Kisutu Resident Magistrates Court, claiming for some payments due to them after their services with the respondent were terminated. At the time of reference of the dispute to the Court by a labour officer, the appellant and two others were earning shs.30,000/= per month. The counsel for the respondent, Mr. Rutabingwa, learned counsel raised a preliminary objection on point of jurisdiction, saying the court had no such jurisdiction to hear and determine the matter. The reasons given was that employees earning shs.700/= and above were exempted from the application

of the Ordinance by virtue of Government Notice No.26/1961. The objection was upheld and it was dismissed for the reason that the labour officer could not have used section 132 of the Employment Ordinance, Cap.366. That ruling was made on 18/2/2004.

The appellant was aggrieved by that ruling and he appealed to this court. He filed six grounds of appeal, which were all irrelevant to the ruling of the trial court except ground No.6 which stated as follows:

6. The learned counsel erred in law by contending that there is an exemption in law by GN.26/1961 that whoever gets paid beyond shs.700/= per month should not get heard by the courts. ... He is trying to mislead this court.

Besides ground number six of the memorandum of appeal, the appellant had complained in his fourth ground of appeal by saying that the trial magistrate just heard the learned counsel on the point of law without giving him the right to be heard on reply. That is very true from the records. The magistrate ignored the appellant on a reason that being a lay person, he could not make any useful reply. That was an error to the principles of natural justice. No one should be condemned unheard.

Now, going on the merits of the appeal, especially ground number six which I have reproduced above, Mr. Rutabingwa, learned counsel for the

respondent still urged that the trial magistrate was right, only that he ought to have struck the case instead of dismissing it for want of jurisdiction. The appellant being unrepresented had nothing in reply, but left it to the court to decide.

It is true that under GN. 26/1961 of the Employment Ordinance (Exemption) Order, 1961 employees shown in the schedule were exempted from the application of the Employment Ordinance in the following words:

SCHEDULE

- a) “Any person who is in receipt of wages exceeding eight thousand four hundred shillings per annum or the equivalent monthly rate;”

By simple arithmetic, the monthly employment for an employee earning shs. eight thousand four hundred shillings per annum was equivalent to shs.700/= per month. That was the basis of the argument of the learned counsel for the respondent before the trial court and before this court. The appellant submitted that the learned counsel by doing so, mislead the trial magistrate who accepted to be misled. I think I have more reasons to concur with the appellant in his 6th ground of Appeal than with the learned counsel for the respondent.

GN. 26/1961 exempted employees above the wages of shs.700/= per month from the application of the Employment Ordinance. However, in 1963 the district magistrates of all grades were given unlimited jurisdiction to hear and determine any labour dispute referred to it by a labour officer. That was by Act No.55/1963 6th Schedule and later on, embodied in the Employment Ordinance, Section 133 which is now section 142 of the Employment Act, (cap.366 R.E. 2002) which I would like to reproduce as hereunder:

1.142. (1) Every District Magistrate (whether or not he is a civil magistrate) shall have jurisdiction, notwithstanding to the contrary contained in any Act or written laws respecting the jurisdiction of such magistrate, in all cases on matters arising between employers and their employees and with reference to their relative rights and duties or to any matter or thing or offence for which provision is made in this Act.

(2)

(3)

Now if the learned counsel misled the court and the trial magistrate did not mind to refresh his memories on the relevant laws, then what is left

for this court is to quash the ruling of trial court and order that the appellant and other two employees be heard by the subordinate court.

The proceedings before the trial court and before this court shows that the learned counsel for the respondent had been duly dealing much on the technicalities instead of the substantial justice required in the proviso to section 143 (Cap 366 R.E. 2002 and in particular subsection (3) which provides as follows:

143 (3): The provisions of the Civil Procedure Code, shall, in so far as they may be applicable, apply to proceedings under this section:

Provided that the magistrate shall hear and determine such proceedings according to substantial justice without undue regard to technicalities of procedure”.

With this guidelines, the magistrate to be assigned should be guided by the law which I have already cited and other relevant law without being observed by endless technicalities which lead to unnecessary delays and contrary to the thirsty of the Labour laws.

Having said so, the appeal is allowed, quashing the ruling of the trial magistrate and ordering that the court should proceed to determine the issue

referred to him by the labour officer as per section 143 of the Employment Act, (Cap. 366 R.E. 2002).




A.R. Manento

JAJI KIONGOZI.

13/7/2006

13/7/2006

Coram: P.A. Lyimo DR

Appellant: Present

Respondent: Present.

Order: Judgment delivered in open court this 13th July, 2006 in the presence of both parties.

P.A. Lyimo

DISTRICT REGISTRAR-DSM

13/7/2006