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ROSE LYIMO AND OTHERS v. PRICE-WATER-HOUSE-COOPERS CONSULTANTS LTD.

HIGH COURT OF TANZANIA
 AT DAR ES SALAAM
 (Manento, J.)

CIVIL CASE No. 216 OF 1999

Labour Law – Employees terminated from employment by their Employer – Whether Security of Employment Act 1964 is applicable.

Labour Law – Termination of employment – Alternative and equally effective forum is available to handle employees' claims – Whether the High Court has jurisdiction.

The plaintiffs filed a suit against the defendants for illegal and wrongful termination of their services. They were nine in total. Their claim, for alleged unlawful termination of employment, was TZS. 75 436 960 being special and general damages. The defendants denied the allegations. Before the suit came up for hearing Counsel for the defendants raised preliminary objections on points of law that this Court was not competent to entertain the suit as the plaintiffs failed to follow the proper procedure and that there was an alternative and equally effective forum and remedy to determine the plaintiffs' matter.

Held: (i) From the provisions of section 40A of the Security of Employment Act Number 1 of 1975, it is clear that reference to the Board by an aggrieved employee is made not only on summary dismissal, but even on termination and on other factors stated in section 23 of the Security of Employment Act 1964 and *James Sankey v. Caltex Oil (T) Ltd* (1) is no longer good law;

(ii) The Security of Employment Act 1964 as amended by Act Number 1 of 1975 applied to the plaintiffs, as such, they were to refer their respective termination to the Conciliation Board under that Act in their individual capacities and if they were of the opinion that they had a common complaint arising out of same transactions, then they would have instituted their case in the Industrial Court of Tanzania; as a trade dispute,

- A (iii) The High Court had no jurisdiction to entertain the suit.

Suit struck out

Cases referred to:

- B (1) *James Sankey v. Caltex Oil (T) Ltd* [1973] LRT n. 46
- (2) *Republic v. Civil Service Appeal Board ex parte Bruce* [1988] 3 All ER 686
- C 3) *Republic v. Secretary of State for Home Department ex parte Swati* [1986] 1 All ER 717

Statutory provision referred to:

- D 1. Security of Employment Act 1964, sections 21(2)(b), 23, 23(1), 28(1), 40A(1) and 42(1)

Mr Rweikiza, for the Plaintiffs

Dr Mapunda, for the Defendant

E

RULING

(Date 12 May 2000)

- F **Manento J.:** The plaintiffs/respondents filed civil suit against the defendants for what is termed illegal and wrongful termination of their services. They claimed a total of TZS.754 356 960 being special and general damages for wrongful termination of their employment with the defendant. The defendant denied the allegations. Before further actions, the defendants raised preliminary objections based on points of law which are the subject matter of this ruling. They are as follows:

- G
- H (a) That this Court is not competent to entertain the suit as the plaintiffs have not followed the proper procedure in instituting the suit and therefore the suit should be struck out with costs.
- I (b) That there is an alternative and equally effective forum and remedy for the determination of the matter which the plaintiffs have not exhausted;

- (c) That the suit has been brought against the wrong defendants. A

- (d) That there is no cause of action against the defendants. B

In the first place it is submitted and conceded by the counsel for the plaintiffs that the procedure for employees, who are not part of the management to institute complaints concerning their employment is regulated by the Security of Employment Act 1964 as amended by Act Number 1 of 1975. Whereas the counsel for the defendants argued that the other avenue for complaints concerning employment is the Industrial Court, the plaintiffs Counsel Mr Rweikiza is of a different opinion. He submitted that the Industrial Court Act is only limited to matter relating to employees employed in the management of the business of their employers. He cited section 10 of the Industrial Court Act Number 3 of 1990. Likewise, the learned counsel submitted further that institution of complaints in regard to Employment by employees under Security of Employment Act 1964 whereby complaints are lodged in the Conciliation board is mandatory only when the claim arises out of summary dismissal as clearly provided by section 23(1) of the Act and subsequently the jurisdiction of the Court is ousted by section 28(1) of the same Act. Therefore the controversial thing here is whether the Security of Employment Act 1964 as amended by Act Number of 1975 is equally applicable to employees whose services have been terminated and not summarily dismissed. The plaintiffs were terminated from services of their employer. C D E F

The suit before this Court is filed by nine employees who were each terminated by their employer. They have common complaint. In reading the Security of Employment Act 1964 as amended from time to time, it shows that employers do take disciplinary actions against *an individual* in his personal capacity and that an *employee* is required to forward his complaint to the Conciliation Board. My argument gets support in sections 21(2)(b) where it is stated that: G H

Where an employer proposes to impose a disciplinary penalty to an *employee* [emphasis supplied] for a breach of disciplinary code, he shall: I

- A Section 23(1) where an employee:
- (a) is summarily dismissed
 - (b) is informed of by his employer that the employer proposes to dismiss him summarily; or
 - B (c) suffers a deduction by way of a disciplinary penalty from the wages due to him from his employer.

C In all the three items above, an employee may refer the complaint to the Board. The plaintiffs never referred their complaints individually to the board because section 23 of the Security of Employment Act 1964 does not cater for employees whose services have been terminated. Just ending at that section only, one can rule that the plaintiff's whose services were terminated had no access to the Conciliation Board, so they resorted to filing their case in the High Court. Their action is correctly taken against the employer in the support of the case of *James Sankey v. Caltex Oil (T) Ltd* (1) where it was clearly stated that the Conciliation Board is the forum open for employees aggrieved by the summary dismissal imposed upon them by their employers.

F Neither the counsel for the plaintiffs nor the counsel for the defendant submitted as to whether *James Sankeys* case (1) still remains good law or not with the enactment of Act Number 1 of 1975. The *James Sankeys* case (1) was decided in 1973 before the enactment of Act Number 1 of 1975.

G Act Number 1 of 1975 Part III amended the Security of Employment Act 1964 and it is provided that it should be read as one with the Security of Employment Act 1964. Section 40A(1) of the Security of Employment Act Number 1 of 1975 included references to the Board for complaints against termination of employments of employee by the employer. The section provides that:

I 40A(1) Notwithstanding any other provision of this Act or of any other written law, where an employer terminates the employment of any employee or summarily dismisses any employee and the employee is aggrieved by such termination or dismissal, the employee may at any time

A before the expiration of fourteen days from the date on which such termination or dismissal takes effect, *refer such termination or dismissal* to the Board and the Board may, if it is satisfied ... [emphasis supplied]

B From the said quotation of section 40A of the Security of Employment Act Number 1 of 1975, it is clear that reference to the Board by an aggrieved employee is made not only on summary dismissal, but even on termination and on other factors stated in section 23 of the Security of Employment Act 1964 and therefore *James Sankeys* case (1) is no longer good law on this point. C

D As I have been saying above, the Security of Employment Act deals with matters concerning single employee on matters relating to disciplinary penalties. The plaintiffs are nine in number and they found it fit to file their dispute before this Court. However, if they were individually terminated from their services, their avenues is not this Court as the jurisdiction of the Courts is ousted by section 28(1) of the Security of Employment Act 1964 read together with section 40A which has added termination of services as matters to be referred to the Conciliation Board and section 42(1) which excludes all civil proceedings from being entertained in Civil Court with regard to the liability of an employer to pay or the entitlement of an employee to, any statutory compensation. Under this section again, the Courts are not allowed to entertain any liability of an employer in regard to payment or the entitlement of an employee to any statutory compensation. E F G

H Dr Mapunda, learned counsel for the defendants, without much elaboration submitted in his first ground of objection that as the plaintiffs failed to refer their grievances to the Conciliation Board, their second or alternative remedy was the Industrial Court. On the other hand, Mr Rweikiza, learned counsel for the plaintiffs submitted that the Industrial Court is not the proper Court for the plaintiffs as they were not in the management of the employers business. I think and believe that Mr Rweikiza's contention could be right if the plaintiffs I

A were to institute the proceedings each in individual capacity of an employee. He cited section 10 of the Industrial Court Act Number 3 of 1990 to justify that the plaintiffs could not have access to that Court as they were not in the management of the employers business.

B I differ with him. That section deals with a situation where the complaint is by a single employee as opposed to a complaint by employees, that is to say more than one employee. As we shall see later on, the Industrial Court Act 1967 deals with matters concerning *employees*

C [emphasis supplied] and on exceptional cases, an employee who is in the management of the employers business. Hence section 10 of the Industrial Court Act 1990 provides that:

(1) Without prejudice to the provision of this Act a trade dispute may be between an employee and an employer provided that no employee shall institute a trade dispute under this Act without a certificate of Labour Officer that he is employed in the management of the business of his employer.

E The Industrial Court Act 1967 as amended by Act Number 3 of 1990 opens its doors to the employees or an employee to institute proceedings in the Industrial Court in matters connected with the employment or non employment of such employees or such an employee. This

F is particularly found in the interpretation section 3 of the Act which interprets the word trade dispute to mean:

"The trade dispute" means any dispute between an employer and employees or an employee in the employment of that employer connected with the employment or non employment or the term of the employment or with the conditions of labour of any of those employees or such an employee.

H This makes me reach to the conclusion that though Dr Mapunda did not elaborate on the jurisdiction of the Industrial Court, yet it is that Court specifically created to cater for disputes between employers and employees and between an employer and employee provided that such an employee fulfils conditions stipulated in section 10 of the Industrial Court Act Number 3 of 1990.

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A Though to a certain extent I have dealt with issues raised in other preliminary objections when dealing with the first ground, for further clarity, I shall proceed, though in a nut shell as to whether the plaintiffs had an alternative and effective remedy. It is clear that when there are alternative and effective remedy, Courts are reluctant to entertain cases in civil suits. That is the contention of Dr Mapunda. However, the cases he cited and the line of his arguments related to judicial review. Such cases though decided in England are persuasive in this Court. They are *Republic v. Civil Service Appeal Board ex parte Bruce* (2) where judicial review was denied and held that the most appropriate forum for resolving dismissal disputes was the Industrial Tribunal; *Republic v. Secretary of State for Home Department, ex parte Swati* (3) and many others. The suit before this Court is not a judicial review so that English cases cited in this part or the part of objection are irrelevant for the determination of the issue at hand, though the decisions can help this Court to rule out that "where there is a court specifically created to cater for particular type of cases, such as trade disputes between employers and employees, the ordinary Civil Courts should desist from entertaining such suits unless there are exceptional circumstances so to do". Such exceptional circumstances do not exist in this suit.

F I have ruled above that the Security of Employment Act 1964 as amended by Act Number 1 of 1975 applied to the plaintiffs as such they were to refer their respective termination to the conciliation board under that Act in their individual capacities and if they were of the opinion that they had a common complaint arising out of same transactions, then they would have instituted their case in the Industrial Court of Tanzania as a trade dispute, a court most suited for such disputes between the employer and employees. These Courts for example Industrial Court of Tanzania or Conciliation Board would have been in a proper position to decide the issues regarding to the rights and duties of employer and employees in the event of termination of services and not this Court where the case is based on a law other than laws relating to relationship between employer and employees.

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