

TANZANIA / JUDGMENT

# alfan amiri vs abecombie kent t ltd 2022 tzhc 32 25 january 2022

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TZHCDECIDED  
25 January 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE DISTRICT REGISTRY OF ARUSHA) AT ARUSHA CIVIL APPEAL NO. 24 OF 2020 (Originating from Misc, Civil Application No. 08 of 2010 in the District Court of ArUsha at Arusha) ALFAN AMIRI.....APPELLANT VERSUS ABECOMBIE & KENT (T) LTD .....RESPONDENT JUDGMENT OF THE COURT 27/10/2021 & 25/01/2022 GWAE, J in the year 2009, the then minister of labour (Prof. Juma Kapuya) by virtue of section 27 (2) of the Security of Employment Act, Chapter 387, Revised Edition, 2002 ordered that the appellant herein be reinstated to his employment and be paid his statutory benefits due to the fact that the employer, respondent did not follow retrenchment procedure. Subsequent to the decision of the Minister, the appellant filed an application for execution in the District Court of Arusha at Arusha on the 3rd August 2010 requesting compliance of the Minister's decision by compelling the respondent to reinstate and pay the appellant's salaries. According to i the record, the appellant was paid a total of Tshs. 1,974,000/= being 12 months' salary compensation and severance pay. The said payment in favour of the appellant by the respondent was effected through the labour office Arusha as evidently established by a payment receipt dated 2nd February 2010. Seemingly, the appellant was not satisfied with the above payment, he thus filed another application for execution praying for payment of Tshs. 8,060,000/=. On the 17th December 2010, one Emanyata Court broker was appointed by the District Court to attach the respondent's motor vehicle. The record further reveals that the said court broker was paid a cheque with No. 018597 worth Tshs. 8, 060, 000/=though it is not evidently clear if the same amount was received by the appellant. The appellant's brawls to have the Minister's decision fully complied with did not end up by payment of Tshs. 8,060,000/= as it is plainly clear from the record of the District Court that, on the 30th April 2019, the appellant knocked the doors of the District Court for full compliance of the Minister's decision especially on the ordered reinstatement and payment of Tshs. 19,006,032. 2 The respondents counsel having been served with the copy of the latest application for execution, he canvassed a preliminary objection in that, the appellants application is res-judicata and therefore not tenable and that the District Court lacked jurisdiction. Relying on the Employment and Labour Relations, Act No. 4 of 2004 (ELRA), the learned Resident Magistrate sitting at the District Court was persuaded by the arguments of the respondents counsel that, the District Court lacked jurisdiction as the

transitional period stipulated under section 103 of the ELRA together with Written Laws (Miscellaneous Amendments No. 2 of 2010) extending three years from its date of operation. She therefore sustained the respondent's PO and dismissed the appellant's application for execution. Hence, this appeal. The appellant advanced four grounds of appeal however in essence it is one ground that, the Resident Magistrate erred in law and fact by holding that the District Court lacked the requisite jurisdiction. When this appeal was called on for hearing before me, the appellant and respondent were represented by the learned advocates namely; Mr. Eliakimu Sikawa and Mr. Qamara (Senior) respectively. 3 Arguing in support of the appellant's appeal, Mr. Sikawa stated that the appellant was to be reinstated to his employment as per the Minister's decision and be paid his salaries' arrears adding that the Ministers decision was issued on the 22nd of August 2009 whereas the dispute arose in 2006. He further added that the enforcement or execution was partly satisfied vide Application No. 8/2010 as he was not reinstated till when the applicant filed his application to be reinstated and be paid his arrears from 2011-2019. Similarly, the appellant's counsel argued that he is of the opinion that, the executing court had jurisdiction as per Cap 366 in the 3rd schedule paragraph/item 10z 11 and 13 and that the appellant ought to have been reinstated pursuant to S.26 (1) (a) of 387. On his resistance to this appeal, Mr. Qamara vigorously argued that since the jurisdiction of the court is a creature of a statute, then the District Court lacked jurisdiction as per section 94 of the ELRA which provides for powers to labour court in relation to Labour disputes taking into account extended three (3) years lapsed in the year 2013 as provided by Act No. 2/2010 (supra). He added that that Security of Employment Act, Cap 387 was repealed. In the 2007 the Labour disputes are entertainable by the 4 Commission for Mediation and Arbitration and Labour court and not the District Court. In his rejoinder, the respondent's advocate reiterated ly stated that, the execution No. 8 of 2010 was partly executed, the latest or subsequent application for execution was nothing new but a prayer of full satisfaction of the decree as per Chapter 366 under 3rd schedule which empowers the District Court to entertain all disputes originating from the repealed Labour Laws to continue to be dealt with District Court or ordinary High Court. Having briefly detailed what transpired in the District Court and this court, I am not bound to ascertain, whether the District Court lacked jurisdiction to entertain the labour disputes including applications for execution emanating from the repealed labour laws. I am not unsound of the principle that, the issue of jurisdiction is fundamental in any judicial proceedings conducted without it, shall, on an appeal or revisional, be declared a nullity. Hence, there is serious need of ascertaining jurisdiction of a court in a filing of a suit or application (See Tanzania harbours Authority v. Liner Agencies Co. Ltd (2004) TLR 127 and Uganda v. Mulala [1967] EA 390). 5. Similarly/ I am aware that since enactment of the labour laws to wit; the Employment and Labour Relations Act, No. 6 of 2004 (CAP 366) and Labour Institution Act, No. 7 of 2004, ordinary courts of our country patently lacked jurisdiction to hear and determine labour disputes except the Labour Court, Division of the High Court and Commission established under section 50 and 12 of the Labour Institution Act, Cap 387 Revised Edition, 2019 respectively as correctly asserted by Mr. Qamara. However, the there was a transition period set by the law that is Written Laws (Miscellaneous Amendments) No. 2 of 2010 which extended three years for the ordinary courts to entertain all labour disputes and applications for execution pending immediately before the application of the Act No. 2 of 2010 as

if the repealed labour laws were still in operation (See section 42 of Act No. 2 of 2010). Nevertheless, under section 42 (9) of Act No. 2 of 2010, the Minister was entitled, upon consultation with Labour Council and by Notice in the Gazette, to extend that period for an aggregate not exceeding three years. That being the case, the period was extended by the Minister after expiry of three years initially set by the law and it was further extended by the Act of Legislature (ELRA, 2019) by amending the third schedule under 6 section 42 of the Written Laws (Miscellaneous Amendments) Act No. 2 of

2010) as well as written Law (Miscellaneous Amendments) Act No. 4 of 2016 13 (1) All disputes originating from the repealed laws shall be determined by the substantive laws applicable immediately before the commencement of this Act.

(2) All disputes pending and all applications for executions filed arising from the decision of the Minister in the subordinate courts prior to the commencement of this Act shall proceed to be determined by such courts". In our instant dispute, the appellant filed another application for execution in the District Court using the same execution number (8/2010) in the year 2019, April when it is not clear whether the Minister extended further period or not. I am saying so since neither of the parties was able to prove or disprove that on 30th April 2019 when the appellant filed his latest application for execution, the District Court lacked jurisdiction due to reason that further extension by the Minister was prohibited. Even if there was no further extension that was done in April 2019 for the ordinary courts to entertain labour disputes or execution as the case here emanating from the repealed labour laws yet it is considerably clear from the record that, this matter was initially filed by the appellant in 7 the year 2010 when it was undisputedly that the District Court had the requisite jurisdiction to hear applications for execution as per section 42 of the Act No. 2 of 2010 (supra). It must also be known that the appellant used the same case number (Application No. 8 of 2010) in enforcing his decree which he alleges to have been partly satisfied. Therefore, in my best well-thought, the latest application nothing but a continuation of enforcement of the Minister's decision by the Court. I am further of the firm view that, if the respondent feels to have fully complied with the Minister's decision, that stand ought to have been raised as was the case before the District Court (PO on re-judicata) and the same ought to have been dealt accordingly by the learned Resident Magistrate sitting at the District Court. That said and done, this appeal is allowed. The matter shall be expeditiously remitted to the District Court of Arusha at Arusha for a continuation of the hearing of the appellant's application for execution on merit or on the issue of re-judicata as previously raised if the respondent will still find it to be worthy. No order as to costs is made. Order accordingly. M. R.GWAE, JUDGE 25/01/2022 8

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