

TANZANIA / JUDGMENT

19981216 TZCA Dar es Salaam1

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16 December 1998

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- 0 0 IZflOMf1HDfl'VHSIVI 66 do H7 4 0M IVddV 'hAlO IDNDIVDfl'hPUV ' :) wa or not there could be a suit for wrongful termination of employment based on a discharge by the court because of riolle prosequi. Parties were again asked to make submissions on that and at the end of the day the learned Judge ruled that a discharge under Section 91 (1) of the Criminal Procedure Act, 19 85, cannot be a basis for going for damages for breach of contract. So, the suit was dismissed and hence this I appeal. When we came to hear the appeal, the learned advocate for the Pespondent,. Mr. Mnzava, raised a preliminary objection. He said that the appeal is incompetent and should be struck out. He argued that the High Court did not have jurisdiction to hear the suit in the first place, I '4 So, the learned counsel submitted, the procedi.ngs before the High Court were a nullity. Mr. Mnzava went on to show why the High Court lacked jurisdiction. We do not think that we need to go into those arguments because they are not necessary for our decision. Mr. Mnzava contended that since both parties made submissions on the issue of jurisdiction, then this Court could useS ection 4 (2) of the Appellate Jurisdiction Act, 1 979, to step into the shoes of the High Court and give a ruling on the matter. Mr. Iweyongeza, learned advocate, appeared for the Appellant and he conceded that the issue of jurisdiction should have been dealt with first before anything else. However, the learned advocate did not agree that the appeal was incompetent and that it ought to be struck out. He submitted that there is a ruling and a decree of the High Court

which is complained against. Mr. Rweyongeza argued that suppose the High Court did not have jurisdiction to entertain the suit it has dismissed, and suppose this appeal is struck out, then the result would be that an illegal decision would be left to stand intact. He prayed that the final Court of the land should do that. We agree with the learned advocates that the issue of jurisdiction of a court is sacrosanct and that that issue takes precedence over every other issue in the proceedings when it is raised. However, we do not see eye to eye with Mr. Mnzava that the appeal is incompetent and that it should be struck out. The appeal has complied with all the rules of this Court. An appeal can only be said to be incompetent if a rule of this Court has been contravened. An appeal cannot be incompetent simply because a Judge has erred and has not determined a crucial issue. In fact all appeals come to this Court precisely because there is an allegation that a Judge has erred. If on error of a Judge makes an appeal incompetent, then we are afraid there will never be appeals to this Court. Apart from that we have said above and, with all due respect to Mr. Mnzava, he has asked us to take two steps and not in the alternative, which are mutually exclusive. He has asked us to strike out the appeal and in the same breath he has invited us to step into the shoes of the High Court and give a ruling on the issue of jurisdiction. If we are to take up the invitation and step into the shoes of the High Court, then the ruling of the High Court has to be left intact. If we are to strike out the appeal, that is the end of the matter. Now that we have held that the appeal is competent do we take up the invitation of Mr. Mnzava or do we decline and if so, why? Mr. Mnzava has relied on subsection (2) of Section 16 of the Appellate Jurisdiction Act, 1979. We better quote the first two sub-sections;

- (1) The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court and from subordinate courts with extended jurisdiction.
- (2) For all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in the court from which the appeal is brought. Admittedly, on the strength of the above quoted provision, we can step into the shoes of the High Court. However, we think that that is not desirable especially where the High Court has not made any decision on the matter at all. We shall deny the parties an opportunity of an appeal. So, we think that what we should do is to send back the matter to the High Court for the determination of the issue of jurisdiction. We, therefore, quash all the proceedings of the High Court after 14th August, 1997. We are of the opinion that the matter be placed before the same learned Judge. Costs to follow the event. DATED AT DAR ES SALAAM this 16th day of December, 1998.6 A.S.L. RAMADI NI JUSTICE OF APPEAL B.A. SANATTA JUSTICE OF APPEAL K.S.K. LUGAKINGIRI JUSTICE OF APPEAL I certify that this is a true copy of the original. B.140LuDA) --- REGISTRAR

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