

TANZANIA / JUDGMENT

20120510 TZHC Dar es Salaam

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TZHCDECIDED
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' . 1.«~ J~~ , ~ IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL APPEAL NO. 130 OF 2010 [Originating from Employment Cause No. 4/2010 at Temeke District Court Delivered on 12/8/2010] DUSTAN SEMZINGWA & OTHERS ... APPELLANTS · VERSUS THE DIRECTOR DAIKIN TANZANIA LTD .. RESPONDE:tiT.

JUDGEMENT

Mushi, J. On 28th December, 2009, the Labour Officer-in- charge of Temeke District reported a labour dispute . between the parties herein, in terms of Section 141 of the Employment Act (Cap. 366 RE2000 (now since then repealed.) The brief facts of the ,c;lispute were that, 1 \,' \-;\ ~-:-,_ __ . ~ ' - sometime between 1996 and 2006, the ten (10) Plaintiffs (Appellants) were employed (at different times) by· the Respondent Company in the capacity of Security Guards, with the salary rates of Tshs. 53,000/=, per month. Sometime in August, 2006, their employment services were terminated by the respondent Company. The nature of the dispute was a claim for areas of salaries and other terminal benefits allegedly not paid to the appellants after their allegedly unlawful termination. Having received the dispute, accordingly, the District Court caused the Employment Cause No. 4/2010 to be filed, on 8/1/2010. Before the hearing of the dispute, the Respondent Company, through their advocate, M/S Safari and Advocates, raised a Preliminary Objection on two points of law to the effect that:

1. The District Court had no jurisdiction to entertain the dispute, and 2
2. That, the dispute was filed out of time. It was argued by Mr. Safari, Advocate for the Respondent Company that, the District Court had no jurisdiction to entertain the dispute since the new Labour Laws enacted in 2004 had removed the jurisdiction for Labour disputes form District Courts and vested the same into the Commission for Mediation and Arbitration (CMA) and the Labour Court, a division of the High Court of Tanzania. And quite properly, the District Court upheld· the preliminary objection. Accordingly, the court dismissed the suit and instructed the Plaintiffs/ Appellants to file the same in the proper forum. The Plaintiffs/ Appellants, however did not pay heed to the free legal advice given to them by the District Court, instead, they· decided to appeal against the decision of the District Court, hence this appeal. In their Memorandum of Appeal, two grounds were raised, that:

1. The trial court erred in law and in fact by holding that it had no jurisdiction to entertain the matter, while in fact it had.
2. The trial court erred in law and in fact by holding that the appellants filed the suit after the lapse of three (3) years, i. e the suit was time barred. During the hearing of this appeal, the Appellants were represented by one ATHUMANI ALLY ISMAIL!, holding powers of attorney on behalf, while the Respondent company was represented by NYANGUS, on attorney from M/S PRIME ATTORNEYS. In their verbal submissions, the Appellants insisted that the District Court had jurisdiction to entertain the matter, since it was filed in time, since the matter was filed in the District Court, on 4 / 1/20 10. On the other hand, the Respondent's counsel still contended that, the District Court was correct in holding that it had no jurisdiction to entertain the said labour 4 dispute on the ground that, The Employment and Labour Relations Act, No. 6 of 2004, which came into force in December, 2006, h.ad vested the jurisdiction for such labour matters into the Commission for Mediation and Arbitration (CMA). It is a fact that, 1n 2004, new labour laws were enacted, including the Employment and Labour Relations Act, 2004; and Labour Institutions Act, No. 7 of 2004, which also came into force on 20 th December,
2006. The provisions of sect 103 of the Employment and Labour Relations Act repealed the old labour laws, including the Employment Ordinance (Cap 366) and the Security of Employment Act (Cap. 574) and the Industrial Court of Tanzania Act, 1967. According to the new labour laws, all labour disputes are now required to be resolved by the Commission of Mediation and Arbitration (CMA), established by sect 12 of the Labour 5 - Institutions Act, and the Labour Court, created by the provisions of Sect. 50 (1) of the save Act, upon the commencement of the Acts (December, 2006). Disputes filed under the repealed laws were given a period of three
- (3) years for their finalization, by virtue of Sect. 13 of the 3 rd Schedule to the Employment and Labour Relations Act. The provisions provide that: " ... Dispute not finalized 1n terms of the repealed _ laws within 3years of the commencement of this Act shall automatically fall within the jurisdiction of the commission In determining the dispute under ~he provisions of this paragraph the sustentative law and the time the dispute arose shall apply .. " There's no dispute that the matter at hand falls into category of a "Labour dispute" as defined by the law. The 6 Appellants' attorney informed this court the dispute arose between September 2002 and culminated after July 2006. Since they could not compromise with the Respondent, they referred the dispute to the Labour officer of Temeke in August 2006, who purported to solve the dispute through the old laws. The Labour Officer had to file the matter in Temeke District Court, on 4/1/2010. By that time, the new Labour Laws had come into operation (since Dec. 2006). At that time, District Courts had lost jurisdiction to entertain Labour disputes, and quite properly, the District Court dismissed the suit and advised the Appellants to file the dispute at the proper forum, under the new Labour Laws. The decision of the District Court was proper. The Appellants were required to refer the dispute to the Commission of Mediation and Arbitration, by virtue of Sect. 86 of the

Employment and Labour Relations Act, No. 6 of 2004, which came into effect on 20 th December, 2006. 7 The Appellants were not properly advised (as they allege) by Legal and Human Rights Centre, by filing a suit at the District Court under the old Labour Laws. Accordingly, this appeal is dismissed, with costs to be so ordered. \ i--" JUDGE 19/4/2012 Judgment delivered this 10 th . ay of May, 2012, in the presence of the parties. JUDGE 10/5/2012 8 ~ ~ ,.

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