

TANZANIA / JUDGMENT

GODFREY SIMON SHILLA VS

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI SUB - REGISTRY AT
MOSHI APPLICATION FOR REVISION NO. 19042 OF 2024 (Arising from award of the Commission
for Mediation and Arbitration at Moshi in the Labour Dispute No. CMA/KIL/MOSH/ M/112/2023)
GODFREY SIMON SHILLA.....APPLICANT VERSUS DISTRICT EXECUTIVE
DIRECTOR OF MOSHIRESPONDENT

RULING

7th Oct. & 11th Oct. 2024 A.P.KILIMI, J.: The applicant, Godfrey Simon Shilla has preferred this court for revision under section 91 (1) (a), 91 (2) (a) (b), (c) and 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 (Cap. 366 R.E

2019) (the ELRA) and Rule 24 (1), (2) (a) (b) (c) (d) (f) and (3) (a) (b) (c) (d) and Rule 28 (1) (a) (c) (d) and (f) of the Labour Court Rules, GN No. 106 of 2007. The applicant is praying for this Court to revise and set aside an award by Commission for Mediation and Arbitration (CMA) at Moshi in 1 Labour Dispute No. CMA/KIL/MOSH/M/112/2023 and make any other relevant and appropriate orders as shall deem fit and just to grant in the interest of justice. The above prayer is canvassed by way chamber summons supported with an affidavit sworn by the applicant. The respondent did not contest the application rather through his learned solicitor Mr. Lucas appeared in this court admitted and supported the same and prayed for it to be granted. Before I venture to the conclusion, I find apposite to narrate the brief background of this matter; in June, 2015 the applicant was employed by the respondent as a Secondary teacher at Serengeti District in Mara region and later in September, 2017 he was transferred to Kilimanjaro region at Moshi District as a secondary teacher at Munushi. In September, 2020 his employment was terminated owing to what was described as absenteeism. Following his termination, he appealed to the Teacher's Service Commission of Dodoma wherein again lost his case. Undaunted with the decision of the Teachers Service Commission Dodoma, he father appealed to the President of the United Republic of Tanzania whereby his appeal was 2 again lost his appeal as his termination was confirmed as the final decision on 26th June 2023. Following that decision, the applicant accepted his fate regarding termination of his employment and went on claiming from the employer to be paid transport allowance to the place of his recruitment, subsistence allowance and salary areas. The respondent only paid him the transport allowance but denied him the

subsistence allowance claimed. Upon realizing that there was no further remedy on his claim in the Teachers Services Act and the Public Service Act, the applicant lodged his complaint with the CMA to be mediated and arbitrated under the labour laws. At the CMA before the dispute was heard the respondent raised a preliminary objection to the effect that the CMA lacked jurisdiction to entertain the matter. Both parties were heard through oral submission and thereafter the CMA decided that the application lacked merit and dismissed it on the ground that it lacked jurisdiction to determine the dispute since the applicant was a public servant. Aggrieved the applicant preferred the present application before this court seeking to have the CMA ruling dated 3 29th November, 2023 revised on the ground that the same was improperly procured, illegal, irrational, irregular and tainted with errors. In his affidavit the applicant has raised a number of legal issues as depicted under paragraph 13 (i) - (vii). I have gone through all the issues and noted that the same requires me to address one issue that is whether the CMA had jurisdiction to entertain the dispute. When he was addressing the above issue the honorable arbitrator at page 4 and 5 of the ruling made reference to the Court of Appeal decision in the case of Tanzania Posts Corporation vs. Dominic A. Kalangi, Civil Appeal No. 12 OF 2022 and held that based on the cited authority the application lacked merit and dismissed it. I have as well read the authority cited above by the Arbitrator, in my opinion the cited case is distinguishable to the circumstance of the present case. In the cited case during appeal before the court of appeal it was contended by the counsel of the appellant that being a public servant and pursuant to section 25 of the Public Service Act (Cap 298 R.E. 2019) as amended by the Written Laws Miscellaneous Amendment Act (Act No. 13 of 2016), the respondent ought to have referred his grievances to the Public Service Commission by way of an appeal. She added that, pursuant to section 32A which was introduced by the said amendments in the year 2016, which requires a public servant to exhaust the avenue available under the Public Service Act, the respondent should have referred his complaints to the Public Service Commission before resorting to the CMA. When determining the matter, the court of appeal observed at page 8 of the judgment that; "From the foregoing analysis and conclusions, we entertain no doubt whatsoever that, the respondent in the present case was a public servant and therefore, upon termination of his contract of service and, on being aggrieved by the said termination, the provisions of section 25 (1) (a) and (b) of the Public Service Act would have come into play." [Emphasis added] Based on the above observation section 25(1) (a) and (b) of the Act, briefly requires for a public servant who is aggrieved by the decision of the disciplinary authority to appeal to the Commission and if still aggrieved by the decision of the commission to appeal to the President of the United Republic of Tanzania whose decision shall be final. While in the cited case the applicant did not observe the procedure under this provision, in the present case the applicant did go through all the procedures as provided by this provision and that is what distinguishes the present case from the cited case of Tanzania Posts Corporation (supra). Owing to the circumstance of the present case since the applicant had already exhausted all the remedies as provided by the provision of Section 32A, it is my considered opinion that this provision must be read together with the earlier provision of section 32 of the same act

which provides and I quote:

32. Public servants in the Operational Service shall, apart from being governed by this Act, continue to be governed by the Employment and Labour Relations Act. [Emphasis added] The applicant in the present case having complied with the law on exhaustion of local remedies and still having other claims which are covered under the labour laws this provision allows him to seek redress as he did and consequently the CMA was in that respect clothed with jurisdiction to entertain his claim. For the foregoing reasons I find this application for revision meritorious and proceed to allow it. The CMA decision and orders are hereby quashed and set aside. It is so ordered. DATED at MOSHI this 11th October, 2024. X JUDGE Signed by: A. P. KILIMI Court: Judgment delivered today on 11th day of October, 2024 in the presence Mr. Lucas Mnyua for the respondent and Amedeus Rugemalila Personal Representative for applicant. Sgd; A. P. KILIMI JUDGE 11/10/2024 7

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