

TANZANIA / JUDGMENT

lukololo kilosa another vs attorney general

another 2016 tzhc 2165 27 september 2016

COURT
TZHCDECIDED
27 September 2016

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IN THE HIGH COURT OF TANZANIA AT DODOMA Civil Case No. 14 of 2015 1.LUKOLOLO KILOSA
1st PLAINTIFF

2. JOSEPH PAZA 2nd PLAINTIFF VERSUS

1. THE ATTORNEY GENERAL 1st DEFENDANT

2. THE INSPECTOR GENERAL OF POLICE ... 2nd DEFENDANT

RULING

13/09/2016 & 27/09/2016 SEHEL, J. The Plaintiffs sued the Defendants claiming that the Defendants breached the contract of employment thus causing specific and general damages to the Plaintiffs. After all pleadings were complete, this Court invited the learned advocate for the Plaintiff and the learned State Attorney to address this Court as to whether this Court has jurisdiction to entertain the suit. Mr. Matimbwi, learned advocate for the Plaintiff submitted that Section 2 (1) (ii) of the Employment and Labour-Relations Act, Cap. 1 excludes the member of Police Force. For the members of the Police Force, he said, the applicable law is the Police Force and Auxiliary Services Act, Cap. 322. He argued the suit was filed before this Court after the Plaintiffs have exhausted all the procedures laid down under the Act and that in terms of Regulation C.3 (1) of the Police Force Service Regulations of 1995 the final disciplinary authority for the case of the Plaintiffs is the Inspector General of Police. It was the counsel's opinion that this Court has jurisdiction to entertain the suit. Ms. Mwakyusa, learned State Attorney had a different view. It was her submission that though it is true that the Employment and Labour Relations Act, Cap. 1 excludes the members of the Police Force but the Plaintiffs have not yet exhausted all the remedies available in the Police Force and Auxiliary Services Act, Cap. 322. She said since the Plaintiffs were member of police Force of below the rank of inspector and disciplinary action was taken against them in accordance with Section 50 (1) (y) of the Police Force and Auxiliary Services Act, Cap. 322 then the Plaintiffs ought to lodge their appeal to the Minister before filing the present suit pursuant to Section 54 of the Police Force and Auxiliary Services Act, Cap. 322. I think the best place to start with is the root

cause, of the present suit. The Plaintiffs were both members of the Police Force. They were taken before the appellate Tribunal charged with three disciplinary offences. They were found guilty and on 7th November, 2011 the Commanding Officer for Singida dismissed the Plaintiffs from their employment pursuant to Regulation C.S (5) of the Police Force and Prisons Service Commission Regulations' G.N 161 of 1998. Being not satisfied with the decision they appealed. On 1st October, 2014 the Inspector General of Police confirmed their dismissal and dismissed their appeal pursuant to Regulation C.18 (3) of the Police Force and Prisons Service Commission Regulations G.N 161 of 1998 through its letter with Reference Number PHQ/PF/E.93117A. This letter also notified the Plaintiffs that the decision of the Inspector General is final. From that sequence, the Plaintiffs filed the present suit claiming that they were not heard by the Inspector General of Police. Further, under Paragraph 14 of the Complaint they allege 'that the defendants' acts and conduct have caused breach of the contract of employment. It is from these pleadings that I invited parties to address this Court as to whether it has jurisdiction to determine the suit. Of course, I concur with the Mr. Matimbwi, learned counsel for the Plaintiffs and Ms. Mwakyusa, learned State Attorney that Section 2

- (1) (ii) of the Employment and Labour Relations Act, No.6 of 2004 excludes them members of the police force in its application. However, there is another scheme which both Mr. Matimbwi and Ms. Mwakyusa did not address this Court, this is none other than the exclusive jurisdiction of a Labour Division of the High Court as created under Section 50 of the Labour Institutions Act, No. 7 of 2004, Section 51 of the Labour Institutions Act No.7 of 2004, provides: "Subject to the Constitution and the labour laws, the Labour Court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws." The term "Labour laws" has been defined under Section 2 of the Labour Institutions Act, No.7 of 2004 to include the Labour Institutions Act, 2004 and any other written laws in respect of which the Minister for labour matters is responsible, it follows then that the exclusive jurisdiction over labour matters is vested to the Labour Division of the High Court. As instigated earlier, the complaint by the Plaintiffs is that they were not heard in their appeal by the Inspector General of Police, in other words, they are complaining about the unfairness of their dismissal by the Inspector General of Police and not about the administrative action taken against them was unfair. Since the complaint is about unfairness of their dismissal then this complaint falls within the purview of labour matters that is within the mandate of the Minister responsible for labour matters. Therefore in terms of Section 51 of the Labour Institutions Act, [No 7 of 2004 the Labour Division of the High Court has exclusive jurisdiction to 4 Labour Division of the High Court has exclusive jurisdiction to determine this dispute and not this Court. The suit ought to have been filed before the Labour Division of the High Court. Since this Court has no exclusive jurisdiction to determine this suit then it is hereby struck out. I make no order for costs as the issue was raised by the Court. It is so ordered. DATED at Dodoma this 27th day of September, 2016. u: B.MtA'Sehe! JUDGE | Ruling delivered in open court at Dodoma under my hand and seal of the court, Inis 27th day of September, 2016 in the presence of /Ur. Matimbwi, learned advocate for plaintiffs and Ms. Mago

m a , iearned t State ■Attorney representing the defendants. B.M.A Sehel JUDGE 2 7ih
September; 2016.

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