

TANZANIA / JUDGMENT

# michael mwinuka others vs tanzania zambia railway authority tazara another 2022 tzhcld 1125 22 december 2022

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22 December 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LABOUR DIVISION) AT PAR ES  
SALAAM REVISION NO. 347 OF 2022 MICHAEL MWINUKA & RIDHIWANI AHMED & 45  
OTHERS ..... APPLICANTS VERSUS TANZANIA ZAMBIA RAILWAY  
AUTHORITY (TAZARA)..... 1st RESPONDENT HON.  
ATTORNEY GENERAL..... 2nd RESPONDENT (Arising from the decision  
of the Commission for Mediation and Arbitration at Temeke in Labour Dispute No. CMA/D5M/  
TEM/68/2022)

## JUDGEMENT

S.M. MAGHIMBI, J; The applicant filed the present application challenging the decision of the Commission for Mediation and Arbitration for Temeke ("CMA") in a labour dispute No. CMA/DSM/TEM/68/2022 ("the Dispute"). The applicants prayed for the following reliefs:-

- i. That this Honourable court be pleased to invoke its revisionary powers to call upon the records of the Commission for Mediation and Arbitration, in labour Reference No. CMA/DSM/TEM/68/2022 dated 22nd August 2022 delivered by Honourable Ngalika, Arbitrator between the parties herein. 1 ii. That this Honourable Court may be pleased to inspect the said records set aside the award thereof and/or give such directions as it may consider necessary in the interest of justice. iii. Costs of this application. iv. Any other relief(s) this Honourable court may deem just and fit to grant. The applicant further urged the court to revise and set aside the CMA's decision on the following grounds:-
- i. That the Arbitrator erred in law and fact when reached into decision that TAZARA was public organization without taking into account required laid down by the relevant legislation establishing company and how these two countries i.e Tanzania and Zambia would run the company on equal shares. ii. That the trial Arbitrator erred in law and fact by misdirect himself and wrongly interpret the decision in of court of appeal in a ruling on Civil Appeal No. 12/2022 in the case of Tanzania Posts Corporation and Dominic A. Kalangi and rule out that TAZARA is public organization and consider applicant as a public servant while the facts of the case does not support finding. iii. That the trial Arbitrator erred in law

and fact when he didn't take into account/consideration by ignoring provisions of the law by 2 saying TAZARA is public organization while the law made clear that those employees who are known as Public Service employees are those who working in organization whose government having more shares as stated in the Government Proceedings Act, [CAP 5 RE 2019]. iv. That the trial Arbitrator erred in law and fact when he didn't take into account/consideration that the applicants were terminated compulsory before reaching the retiring age in 2005 to 2009 where all employees were governed by the Employment and Labour Relations Acts without any discrimination.

- v. That the Arbitrator did not properly consider the evidence and testimony before her when arriving at the impugned award. The application was disposed by way of written submissions. Before the court the applicants were represented by Godwin Ernest Ndonde, Personal Representative whereas Ms. Mercy Chimtawi, Learned State Attorney appeared for the respondents. I appreciate the comprehensive submissions of the parties which shall be taken on board in due course of constructing this judgement. After considering the rival submissions of the parties, CMA and court records as well as relevant laws I find all grounds of revision can be determined 3 in one issue that is; whether the CMA had jurisdiction to determine the application. My determination on the issue will solely base on the date upon which the cause of action arose. The records show that the dispute arose between 2005 to 2009 following retirement of the applicants, the claim is terminal benefits. The question is what law was applicable then. It is obvious that the amendment of the Public Service Act, Cap. 298 R.E 2019 ("PSA") which ousted the jurisdiction of the CMA over civil servant came into force on the 18th November, 2016. Hence what is gathered IS that the cause of action arose before the amendments of the PSA which mandatorily requires public servants to exhaust internal remedies before referring their disputes to court. In the decision of the Court of Appeal in the case of Joseph Khenani vs Nkasi District Council (Civil Appeal 126 of 2019)

[2022] TZCA 82 (23 February 2022), while faced with the same situation the Court held: "We are minded to take the same standpoint in this appeal. That is, we do find in the interest of justice to subject the appellant to the dictates of section 32A of the Public Service Act which was inexistent the time he filed his complaint. We therefore find merit in Mr. Sahwi's contention that the provision 4 was not applicable to the appellant and hence the authorities cited by the respondent are not applicable as well. We thus hold that the CHA had jurisdiction to entertain and hear the matter filed by the appellant before it." The situation in our case is the same. The dispute having arose before the amendments, it means the CMA had jurisdiction to entertain the matter thus, the ruling of the CMA is hereby quashed and set aside. The case file is remitted back to proceed with mediation and in case mediation fails, the dispute shall be determined in arbitration as per the procedures set by the Employment and Labour Relations Act, Cap. 366 R.E. 2019. 5

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