

TANZANIA / JUDGMENT

national microfinance bank plc vs lameck matemba 2020 tzhcld 137 17 july 2020

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION NO. 950
OF 2018 BETWEEN NATIONAL MICROFINANCE BANK PLC..... APPLICANT VERSUS
LAMECK MATEMBA.....RESPONDENT

RULING

Date of Last Order: 12/06/2020 Date of Judgment: 17/07/2020 A. E. MWIPOPO, J The applicant herein NATIONAL MICROFINANCE BANK PLC has preferred this Revision application under the provisions of Sections 91(l)(a)(b), (2)(b) and 94(l)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004; and Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), (11)(c) and Rule 28(l)(c)(d)(e) of the Labour Court Rules, GN No. 106 of

2007. The applicant is praying for the Court to call for the records and proceedings of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/MOR/227/2015 by Hon. Hilary H. N., Arbitrator with a view of satisfying itself as to the legality, propriety, rationality and correctness thereof. The applicant also is praying for the Court to revise and set aside the CMA award in labour dispute no. CMA/MOR/227/2015 by Hon. Hilary H. N., Arbitrator. The background of the dispute in brief is that the respondent was employed by the applicant in 28/08/2001 in the position of Bank Supervisor "B". The respondent was terminated on 03/03/2015 while in the position of the Branch Manager with a monthly salary of 4,015,352/=. At the time of termination the respondent was NMB Kilosa Branch Manager. The respondent was terminated by the applicant for misconduct after disciplinary procedures were conducted by the employer. The respondent was not satisfied with the applicant's decision and he referred the labour dispute to the CMA. The Commission heard the dispute and find that the respondent was unfairly terminated and he awarded him a compensation of 12 months salary compensation plus salary arrears for 44 months. The applicant was aggrieved by the CMA award and he filed the present revision application. The respondent filed Notice of the Preliminary Objection (P.O.) containing the following points of law:

- i. That, on the gravity of geographical jurisdiction as prescribed in rule 5 of the Labour Court Rules, 2007, G.N. No. 106 of 2007 this matter is wrongly placed before this court sitting in Dar Es Salaam Zonal Centre for the reason that the dispute did arise at Kilosa District, Morogoro Region where this Court is alive and operative because the case originates at the said centre. CMA Ruling marked appended to the complainant originates from Morogoro. ii. That, the applicant's application is time barred. iii. That, the applicant's application is lack merits. On 20/04/2020 this Court ordered hearing of the P.O. to proceed by way of written submissions and both parties have complied with the Court order and filed their respective submission within the time. In his submission, the respondent, who was represented by Mr. Emmanuel Zongwe from TPAWU, abandoned the second and the third grounds of his preliminary objection and remained with the first ground of Preliminary Objection. With respect to the remaining ground of P.O. the respondent submitted that on the gravity of geographical jurisdiction as prescribed under Rule 5 of the Labour Court Rules, 2007 G.N. No. 106 of 2007 this matter is wrongly placed before your sitting in Dar-es-Salaam Zonal Center for reason that, the dispute did arise at Kilosa, Morogoro where this Court is alive and operative. He is of the view that the jurisdiction of any 3 Court is derived from a statute which establishes it. The High Court Labour Division (Labour Court) is established under Section 50 (1) of the Labour Institutions Act, No. 7 of 2004 read together with Rule 5 of the Labour Court Rules, 2007 G.N. No. 106 of 2007 which established its Zonal Centres including Morogoro Zonal Centre which possess jurisdictional power to entertain labour disputes arose within the Morogoro Region. He invited this Court to visit the provision of Rule 5 of the Labour Court Rules, G.N. No. 106 of 2007 which is to the effect that there might be Labour Court Zonal Centres established by the Chief Justice and each zonal center have given power to discharge functions of the Court. The respondent argued that it is rule of law and practice of this Honorable Court that when a part wish to institute a complaint against another part, the said complaint should be instituted where the subject matter situate or where the case originates. If the complaining party wishes to initiate his complainant in the place rather than where the case originates, he have to seek leave of the Court to do so by advancing sufficient reasons as to why he does not wish to lodge his complainant in the place where it originates. He referred to the Labour Dispute No. 1 of 2016 between Tanzania Union of Industry and Commercial Workers versus 4 Kilombero Sugar Company, Tanzania Plantation and Agricultural Workers Union and Trade Union Congress of Tanzania, (Unreported) where by Honourable Mipawa, J at page 2 and 3 held that; "The applicant did not seek leave from the Hon. Judge Incharge to open the complaint in Dar es Salaam Zonal Centre instead of Morogoro Zonal Centre where this matter originates. If the complainant had wished to open the present complaint here in Dar es Salaam than in Morogoro sufficient reasons and cause could have been advanced before the Honorable Judge Incharge or the Court as to why the applicant does not wish to file the complaint in its origin centre of Morogoro and why he wants to file it in Dar es Salaam He argued further that the Applicant did not apply for the leave to file this application in Dar Es Salaam Zonal Centre instead of Morogoro where it originates. This contravene with the law and the practice of this Court hence this current case does not deserve to be heard and determined to its finality before this Court here in Dar

es Salaam Zonal Centre. He prayed that this Honorable Court finds that this Application is baseless, frivolous and vexatious otherwise intends to abuse the process of this Honorable Court in dispensing justice and in the interest of justice the Applicants' application be dismissed with costs. In reply, the applicant, who was represented by Advocate Antipas Lakam, opposed to the respondent submissions. The applicant submitted that Rule 5 of the Labour Court Rules GN No. 106 of 2007 gives power to the Chief Justice to establish the zonal centers and the function of the said centers. That on 30th April, 2018 the Chief Justice issued directives with Ref No. CAB.50/101/10 made under Section 50(2) (e) of the Labour Institutions Act Cap 300. Paragraph 3 of the directives Chief Justice designated the Labour Division of the High Court at Dar es Salaam to serve all Sub Registries of the Labour Division within the locality of Dar es Salaam zone. Paragraph 3 of the directives states as follows: "(3) The Labour Division of the High Court at Dar es Salaam shall serve all sub-registries of Labour Division within the locality of Dar es Salaam Zone". Labour Division of the High Court at Dar es Salaam has jurisdiction to hear all cases of labour nature arising from Dar es Salaam Zone as per the new directives of the Chief Justice dated 30th April, 2018 as quoted above. The applicant submitted further that the High Court Registries (Amendment) Rules, 2019 G.N 111 of 2019 which amend the High Court Registries Rules, 1971 under Rule 5 designate the High Court Dar es Salaam Zone to serve Dar es Salaam Region, Coast Region and Morogoro Region. Hence by the virtue of directives of Chief Justice dated on 30th April, 2018 under paragraph 3 labour cases arising from Morogoro Region are determined by the Labour Division of High Court at Dar Es Salaam. He was of the view that the respondent has greatly relied on the existence of Morogoro Zonal Centre and proceeded to argue that the Morogoro Zonal center is vested with jurisdiction to entertain the labour dispute arose within the Morogoro Region. The argument of the respondent has no merit since on 30th April, 2018 the Chief Justice issued directives with Ref No. CAB.50/101/10 establish the zonal centers of Labour Division of the High Court to be the respective existing High Court Zone and judges in charge of the High Court Zone to be in charge of the High Court Labour Division Zonal centre under paragraph 2 of the directives. Morogoro Zonal centre is not among them. That is the reason that labour cases are not instituted at the High Court of Tanzania, Main Registry because of presence of this Labour Court in Dar es Salaam. In respect of the cited case of Tanzania Union of industry and commercial workers versus Kilombero Sugar Company Tanzania Plantation and Agricultural Workers Union and Trade Union Congress of Tanzania, (supra), where by Honorable Mipawa, J. stated that it does not apply in our circumstance since it was decided before the directives of Chief Justice dated on 30th April, 2018 which designated Labour Division of the High Court at Dar Es Salaam to serve the whole Dar Es Salaam Zone. He argued that the preliminary objection of the Respondent lacks merit and the same be dismissed with costs. In rejoinder the respondent submitted that the applicant contention that the new directives of the Chief Justice under paragraph 3 was to mean that the Labour Division of the High Court at Dar es Salaam has jurisdiction to hear all cases of labour nature arising from Dar es Salaam Zone including those arising from Morogoro Region is misconceived and ill-founded with an intention to abuse the Court's process. This is because the said Chief Justice's directives issued on 30th

April, 2018 with Ref No. CAB.50/101/10 was made under Section 50 (2) (a) of the Labour Institutions Act, Cap. 300 which gives power to Chief Justice to designate such number of Judges as he may consider necessary. That is to say, contrary to what has been contended by the Applicant under paragraph 6 of his reply submissions, we are of view that Section 50 (2) (a) of the Labour Institutions Act, Cap. 300 does not vested in the Chief Justice, the power to designate jurisdiction of the Labour Division of the High Court at Dar es Salaam. The Chief Justice's directives under paragraph 3 was meant to direct all Judges and Deputy Registrars of the High Court (Labour Division) at Dar es Salaam to serve all sub-registers of the Labour Division within the locality of Dar es Salaam Zone. That is why some of the Judges and Deputy Registrars of the High Court (Labour Division) at Dar es Salaam has been used to be appointed by the Judge In-charge to conduct hearing and determine ail cases of labour nature originated in the Morogoro Region at the Morogoro sub-registry and not at the Dar es Salaam as addressed by the Applicant under paragraph 8 of his reply submissions. This has been 9 practiced by this Honorable Court mostly for the purpose of expediting the disposal of labour matters filed in the Labour Division of the High Court. The respondent was of the opinion that the Applicant's arguments under paragraph 10 of his reply submission that the Case we cited does not apply in our circumstances since it was decided before the directives of Chief Justice has no merit since the Chief Justice's directives cannot overrule the decision of the Court. The Respondent retaliated his prayer in submission in chief. The issue for determination in the present preliminary objection is whether this Court have jurisdiction to entertain revision application which originates from Commission for Mediation and Arbitration at Morogoro. The High Court of the United Republic of Tanzania derives its jurisdiction from the Constitution itself. It enjoys not only unlimited pecuniary jurisdiction but also territorial jurisdiction in determining disputes arising from Mainland Tanzania where there is no other law expressly conferring the same jurisdiction to other courts or institutions [See the Jubilee Insurance Company of Tanzania Ltd. v DHL Tanzania Limited, Commercial Case No. 16 of 2003, High Court of Tanzania, Commercial Division at Dar Es Salaam, (Unreported)]. The High Court, Labour Division is established under section 10 50 of the Labour Institutions Act, 2004 and under section 51 it is vested with exclusive jurisdiction over labour matters. According to section 52 the Court in performance of its functions have all powers of the High Court. Under rule 5 of the Labour Court Rules, G. N. No. 106 of 2007, the Chief Justice have power to established zonal centres and appoint a Zonal Judge in-charge of any such zonal centre as he may determine. The Chief Justice issued directives with Ref No. CAB.50/101/10 dated 30th April, 2018 under Section 50(2) (e) of the Labour Institution Act Cap 300 which under Paragraph 3 designated the Labour Division of the High Court at Dar es Salaam to serve all Sub Registries of the Labour Division within the locality of High Court Dar es Salaam zone. In the present application, the respondent have submitted that it is rule of law and practice of this Court that the complaint should be instituted where the subject matter situate or where the case originates. The complaint originates from Morogoro Region where it was determined on merits by the Commission for Mediation and Arbitration at Morogoro. The Applicant did not apply for the leave to file this application in High Court Labour Division Dar Es Salaam Zonal Centre instead of Morogoro

where it originates. This contravene with the law and the practice of this Court hence this current li case does not deserve to be heard and determined to its finality before this Court here in Dar Es Salaam Zonal Centre. In reply, the Applicant submitted that on 30th April, 2018 the Chief Justice issue directives with Ref No. CAB.50/101/10 under Section 50(2) (e) of the Labour Institution Act Cap 300, which designated the Labour Division of the High Court at Dar Es Salaam to serve all Sub Registries of the Labour Division within the locality of Dar Es Salaam zone. The applicant submitted further that the High Court Registries (Amendment) Rules, 2019 G.N 111 of 2019 which amend the High Court Registries Rules, 1971 under Rule 5 designate the High Court Dar Es Salaam Zone to serve Dar Es Salaam Region, Coast Region and Morogoro Region. Hence by the virtual of directives of Chief Justice date on 30th April, 2018 labour cases arising from Morogoro Region are determine by the Labour Division of High Court at Dar Es Salaam. I agree with the applicant that the Labour Division of the High Court at Dar Es Salaam serve all Sub Registries of the Labour Division within the locality of Dar Es Salaam zone following the Chief Justice directives dated 30th April, 2018 with Ref No. CAB.50/101/10. By the virtual of directives of Chief Justice labour cases arising from Morogoro and Coast Region are determine by the Labour Division of High Court at Dar Es Salaam. In practice 12 the Labour Division of the High Court at Dar Es Salaam have Sub Registries of the Labour Division in Morogoro region under supervision of Resident Magistrate Incharge of Morogoro RM's Court who keeps the record of the Sub - registry. As submitted by the respondent, usually the aggrieved party institute application concerning labour dispute in the region where the disputes originates. In the present case the dispute originates in Morogoro region and was heard by the CMA at Morogoro. Therefore the applicant have discretion to institute the revision either in the Morogoro Sub registry of the Labour Division of the High Court or Dar Es Salaam registry as the Labour Division of the High Court have jurisdiction to hear and determine all labour disputes within the Dar Es Salaam Zone Center. Since the applicant decided to institute the revision application in Dar Es Salaam Registry of the Labour Division of the High Court, I'm of the opinion that this Court have Jurisdiction to entertain the matter despite the fact that administratively he was supposed to institute the revision in Morogoro Region Sub registry of the Labour Division of the High Court. What is important is to see if the act of the applicant to institute the matter in Dar Es Salaam Registry of the Labour Division of the High Court instead of the Morogoro Sub - Registry have 13 prejudiced the respondent. In case the filing of the application in Dar Es Salaam registry prejudiced the party to the application the possible remedy would be to strike out the application with the leave to file it in the proper Sub Registry at Morogoro. However, in this file there is no evidence whatsoever to show that the respondent was prejudiced. The case of Tanzania Union of Industry and Commercial Workers versus Kilombero Sugar Company Tanzania Plantation and Agricultural Workers Union and Trade Union Congress of Tanzania, (supra), which was cited by the respondent does not apply in our circumstance since it was decided before the directives of Chief Justice dated on 30th April, 2018. The Chief Justice legally designated Labour Division of the High Court at Dar Es Salaam to serve the whole Dar Es Salaam Zone. For that reason, I find that circumstances of this case allow the Court to entertain the present Revision Application.

Therefore, I hereby dismiss the Preliminary Objection for want of merits. The hearing of the application to proceed on merits. 4 A. £. MWIP00) JUDGE 17/07/2020 14

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