

TANZANIA / JUDGMENT

mwanaisha juma others vs ubungo garments 2008 tzhc 60 18 december 2008

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TZHCDECIDED
18 December 2008

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IN THE HIGH COURT OF TANZANIA AT PAR ES SALAAM CORAM: ORIYO, J., SHANGWA, J. AND MIHAYO. 3. CIVIL APPEAL NO. 194 OF 2005 (Originating from Revision Application No. 40 (B) of 2004 delivered by Hon. Mipawa (Industrial Court) OTTU on behalf of MWANAISHA JUMA AND OTHERS.....APPELLANTS VERSUS UBUNGO GARMENTS

RESPONDENT Date of last order - 9/9/2008 Date of Judgment -18/12/2008 JUDGMENT OF THE COURT Shangwa, J. The Appellants In this case are appealing against part of the decision of the Industrial Court of Tanzania in Revision No. 40 B of 2004 which was delivered on 23/6/2005. The part of the decision with which they are aggrieved relates to nothing else but the holding of the full bench of the Industrial court that they are not entitled to payments of salary increments as per Scopo Directive No.

57. In their Memorandum of Appeal, they state that the Industrial Court in its revisionary powers erred both in law and fact in holding that the Appellants were not entitled to payment of salary increments as per SCOPO Directive No. 57. In their written submissions, the Appellant submitted that they are entitled to salary increments amounting to shs.419,943,723/= which the Respondent did not pay them when they were terminated from employment on 31/7/1994. They contended that although they were not being paid their salaries by the Respondent in accordance with Scopo Directive No. 57 prior to their retrenchment, that does not mean that they are not entitled to be paid their salary increments as per the said Scopo Directive vide Treasury Registrar Circular No. 3 of 1993. We wish to mention here that Treasury Registrar Circular No. 3 of 1993 referred to by the Appellants is not relevant to their case. The one which is relevant is Treasury Registrar Circular No. 4 of 1993. First of all, learned counsel for the Respondent Mr. Msemwa submitted in reply that there are no proper written submissions in law filed by the Appellants because they were made by Joseph Komba who is not the Appellant in this case. He said that the Appellant is OTTU. For this reason, he urged the court to dismiss this appeal for want of prosecution. He continued to submit that the Appellants cannot benefit from Scopo Directive No. 57 because it was inapplicable to them. In our view, as the question of the locus standi of the Appellants was not raised by the Respondent in the Industrial Court and as it was not raised in this court during the hearing of the preliminary objection against this appeal which was filed on 3/10/2006 and determined on 19/6/2008, we find it strange for

the Respondent to raise it at this stage. It must always be understood that all preliminary points of law in any case must be lodged at the earliest possible opportunity and be dealt with before final determination of the main issues that are involved. Preliminary points of law not raised and dealt with in the court of first instance cannot be raised on appeal. On the submissions, what we can simply say here is that as Joseph Komba who signed the written submissions for and on behalf of the rest of the Appellants is one of the Appellants in this case, the written submissions signed and filed by him on behalf of his fellow or co-Appellants are proper submissions and we are going to act on them. In its original decision, the Industrial Court vice- chairperson Mrs. William ruled that the Appellants were entitled to their salary increments as per Scopo Directive No. 57 and that they should be paid according to that Directive. However, in its revision of the decision of Mrs. William vice-chairperson, the Industrial Court E.L. Mwipopo, J. Chairman, I.S. Mipawa vice-chairman (as he then was) and K.M.M. Sambo vice-chairman (as he then was) ruled that the Appellants are not entitled to salary increments as claimed by them and set aside the original decision delivered by Mrs. William vice-chairperson. In doing so, the full bench of the Industrial Court stated that as the Appellants used to receive their salaries from the Respondent without question and as Scopo Directive No. 57 was not produced in court as evidence, there was no reasonable ground for them to burden up the Respondent with their claim of salary increments as per Scopo Directive No. 57. We have read the Treasury Registrar Circular No. 4 of 1993 dated 10/11/1993 with ref. No. JYC/P/10/3/01/33 signed by the then Treasury Registrar WJ.M. Mdundo addressed to Public Institutions and Corporations. In essence, this circular laid emphasis that Public Institutions and Corporations such as the Respondent should bear the burden of paying the workers their terminal benefits on retrenchment. We have also read Scopo circular No. 57 with Ref. No. KMU/S/525/52 dated 5/9/1989. This circular became operative on 1/7/1989. It is signed by A. Cheyo who was the Chairman of the Presidential Parastatal Reform Committee. Among other things, this circular laid down salary scales authorized by the Government in respect of workers in Parastatal Organisations holding different posts. These workers included casual labourers (vibarua) and rare professionals such as Pharmacists, Doctors, Accountants etc. As far as we know, during the period of their employment with the Respondent, the Appellants' salaries were being governed by Scopo Directive No. 57. Thus, we do not agree with Mr. Msemwa that Scopo Directive No. 57 was not applicable to the Applicants. The Respondent did not produce evidence of its inapplicability to the Appellants. Also, we do not agree with a full bench of the Industrial Court that requiring the Respondent to pay the Appellants their salary increments which they were supposed to be paid and were never paid during their employment is to impose a burden on the Respondent. For us, we are of considered opinion that each Appellant has a right to be paid salary increments as per Scopo Directive Number 57 and as required under the Treasury Registrar Circular No. 4 of 1993. For these reasons, we hereby allow this appeal with 8 Delivered this 18th day of December, 2008 in the presence of the Appellants and Mr. Joel Mwakajinga for Mr. Msemwa for the Respondent. K. \Cvn JUDGE 18/12/2008 ■y\ A. Shangwa i ' JUDGE 18/12/2008

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