

TANZANIA / JUDGMENT

# shafii ismail chilumba vs mmi steel mills ltd 2018 tzhc 35 19 february 2018

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TZHCDECIDED  
19 February 2018

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IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY AT DAR ES SALAAM  
CIVIL APPEAL NO. 100 OF 2017 (Arising from the Decision of the Resident Magistrate's Court of  
Dar es Salaam at Kisutu in Civil Case No. 33 of 2012) SHAFII ISMAIL  
CHILUMBA..... APPELLANT VERSUS MMI STEEL MILLS  
LTD..... RESPONDENT

## JUDGMENT

MKASIMONGWA, J. In the Resident Magistrate's Court of Dar es Salaam Region at Kisutu SHAFII ISMAIL CHILUMBA sued the MMI STEEL MILLS LIMITED claiming for a sum of Tshs. 50,000,000/= being fair and prompt compensation for injuries he sustained while in the course of employment in the Defendant company. It was alleged that the plaintiff (the Appellant in this matter) was employed by the Defendant (the Respondent in this appeal). On the 31/1/2010 while the plaintiff was working for the Defendant and from the Defendant's negligence, his right hand was crushed inside a moving machine used to manufacture corrugated sheets a result of which it was amputated when he was taken to Muhimbili Orthopedic Institute (MOI). Under the Workers Compensation Ordinance [Cap. 263] the plaintiff was compensated a sum of Tshs. 1 344,000/= which according to him the sum was not proportional to the injuries he sustained. The claim was disputed by the Defendant. The later filed a Written Statement of Defence and has successfully raised a Preliminary Objection to the effect that the court had no jurisdiction of entertain and determine the suit. In determining the matter the trial Court had the following to say: "Basing on the nature of the dispute, it is of employer and employee relationship on which their relationship is regulated by the new Employment and Labour Relations Act Cap. 366 of 2004 and Workmen Compensation Act No. 20 of 2008. It is provided in the Workers Compensation Act under Section 80, that any person aggrieved by the decision of the Director General may appeal to the Minister and again if aggrieved may do the same to the Labour Court" The plaintiff/appellant is aggrieved by the decision of the trial court hence this appeal. In the Memorandum of Appeal the Appellant has listed three grounds of appeal. Among them is that: - "... the Learned Trial Magistrate grossly misdirected himself by holding that the trial court has no jurisdiction to entertain the matter". 2 In my view determination of this appeal depends in the determination by the court of a question whether the trial court had jurisdiction to entertain and determine the suit. It was ordered that

the appeal be disposed of by way of Written Submissions and parties did dully comply with the order. In the Written Submission in support of the Memorandum of Appeal the Appellant contended that in her ruling the trial Magistrate found the court being deceased with powers to entertain and determine the suit. She said, the claim ought to have been filed before the Director General of the Workers Compensation Fund by virtue of the Workers Compensation Act No. 20 of 2008. The Appellant referred the court to Section 1 (1) and (2) of the Act and submitted that the said law or part of the applicable for Worker's Compensation Fund was not operational at the time when order of the Trial Magistrate was issued. He added that the Workers Compensation (Payment of Tariffs) Regulations were promulgated and published on 27/6/2017. It is the Government Notice No. 229A. Regulation (1) of the Regulation provides for the date when payment of compensation benefits for employees in the public and private sectors in line with the requirements of the provisions of the Workers Compensation Act. It is 1/7/2016. Regulation 8 (3) of the Regulations is to the effect that the Fund may pay compensation benefits as a result of occupational accidents occurred or occupational diseased which are diagnosed from 1/7/2016 towards. 3 The Appellant submitted further that under Regulation 7 of the Compensation (Payment of Tariffs) Regulations, 2017 obliges employers to pay tariffs to the Fund. It is such payments which at the end of the day employee who are victims of the occupational disease or accident are paid from. There was no such obligation to the employers before 1/7/2016. It follows therefore that there were no funds in 2012 when the applicant filed the case. Since the injuries to the Appellant occurred before commencement of the Workers Compensation Act No. 20 of 2008 under Section 98 (3) of the Act which saves the Workers Compensation Act [Cap. 263 R.E 2002] on matters occurred before commencement of the Workers Compensation Act No. 20 of 2008, the course the Appellant could take is to bring the suit in the Resident Magistrate's Court as he did and not the Director of the Fund as it was ruled by the Trial Court/Magistrate. With those submissions the Appellant humbly prayed the Court that it finds merit in the appeal and that it quashes the appealed decision and order for hearing of the suit on merits. On the other hand, the Respondent submitted to the effect that the trial court did correctly dismiss the suit for the court has no jurisdiction to entertain it. The Respondent contended that at the time of filing and hearing the suit the law applicable was the Workers Compensation Act No. 20 of 2008. The Act is well equipped with dispute settlement machinery. Section 79 (1) of the Act provides for procedure one has to adopt when he or she is aggrieved 4 by the amount of compensation. Such a person is directed by the law to refer the claim or grievances to the Director General who shall determine the same. The decision of the Director General is appealable to the Minister as it is provided for under section 80 (1) and (2) of the Act. As such it was not proper for the Appellant to re- institute a suit at Kisumu Resident Magistrate's Court. The trial court was therefore correct when it ruled against the suit on ground that the court had no jurisdiction over the matter. The Respondent submitted further that the Appellant and the Respondent did sign the Agreement as to compensation in terms of Section 5 (1) of the Workers Compensation Act (Cap. 263). In that premise the appellant could not re-institute a case challenging the amount of Tshs. 344,000/= agreed by the parties. The Respondent therefore prays the court that it dismisses this appeal for it lacks legal merits. That is all submission in this matter. Going by the record, I find it is not disputed that, the Appellant was an employee of the Respondent Company. On 31/1/2010, the

Appellant was at his work place and in the course of work he sustained injuries when his hand was crushed inside a moving machine which is used to manufacture corrugated Iron Sheets. It is also not disputed that when was taken to MOI for treatment, the Appellant's hand was amputated. From the injuries sustained the Appellant was paid Tshs. 344,000/= under the Worker's Compensation Ordinance, Cap. 263. It is alleged that the plaintiff's injury was caused by the Defendant's negligence, and therefore a part from the paid sum, the appellant claims for Tshs. 50,000,000/= as compensation for permanent injuries he sustained in the course of employment with the Defendant. As it has been amply shown above, the Defendant had successfully raised a preliminary point of law that the trial court had no jurisdiction to entertain the matter. The issue to be decided therefore is whether the court below was correct when it ruled that it had no jurisdiction to entertain and determine the suit. The Respondent raised the Preliminary Objection from his understanding that the plaintiff's claim had its root in the Workers Compensation Act No. 20 of 2008. The Act has its objectives which among others, is to provide adequate and equitable compensation for employees who suffer occupational injuries or contract occupational diseases arising out of and in the course of employment. The Act also provided for a framework for effective, prompt and emphatic consideration, settlement and payment of compensation benefits to the employees and their dependants. The Act again establishes a Workmen's Compensation Fund for administration and regulation of the Workers Compensation. I have considered submissions made by the parties. It is clear from the Respondent's submissions that it is his position that since the Appellant got the injuries in the course of his employment and since following the enactment of the Workers Compensation Act 2008, there has been in place the Workmen Compensation Fund to which the Respondent makes fund contribution the Appellant had no any 6 claim against the Respondent. The Appellant had instead, to lodge his claims with the Director General of the Fund. As such, the plaintiff had wrongly brought the matter to the court and that the court has no jurisdiction to entertain it. That understanding by the Respondent though seems to have been not contested by the Appellant, the later shows that at the time of the alleged accident the implementation of the Workers Compensation Act, 2008 and in particular, the actual establishment of the Workmen's Compensation Fund was yet to commence. As such the law could not be applicable in the circumstances of this case. Whether the Act was in force or not at the time of the accident it seems to me is immaterial. It is so from my understanding that the Workers Compensation Act, 2008 does not limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease. This is provided under Section 30 (1) of the Workers Compensation Act, 2008 which is couched in the following words: "Notwithstanding in this Act shall limit or in any way affect any civil liability of an employer or any other person in respect of an occupational injury or disease resulting in the disablement or death of an employee if the injury or disease was caused by negligence, breach of statutory duty or any other wrongful act or omission of the employer, or any person in whose act or omission the employer is responsible or any other person" 7 Going by the plaint, under paragraph 5 of it, the plaintiff alleges negligence and provides for the particulars of the negligence under paragraph 6 of the same. Evidently the plaintiff did not claim for compensation in terms of the Workers Compensation Act, 2008. As such it is my considered opinion that the court below went astray when it applied the provisions of the Act in the matter. It

is such application of the Act, it came to the conclusion that it had no powers to entertain and determine the suit which decision in my view was not correct. Based on what I have endeavored to discuss, I quash the decision of the lower court and set aside all orders subsequent to it. It is ordered that proceedings should be restored and trial of the suit should continue. Circumstances of the case demand that the suit be tried by another magistrate. This Appeal is allowed with costs. E. J. JUDGE 19/2/2018 8

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