

TANZANIA / JUDGMENT

thadeus j medukenya vs urambo district council 2021 tzhc 2631 26 march 2021

COURT
TZHCDECIDED
26 March 2021

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION LABOUR
REVISION No. 3 OF 2020 (Arising from the ruling of the Commission for Mediation and
Arbitration at Tabora in CMA/TAB/URB/No.96/2019) THADEUS J
MEDUKENYA-----APPLICANT VERSUS URAMBO DISTRICT
COUNCIL----- RESPONDENT

RULING

19/03 & 26/03/2021 BAHATIJ.: The applicant Thadeus J. Medukenya was an employee of the respondent Urambo District Council. The applicant filed a Labour Dispute at the Commission for Arbitration at Tabora and it was given a number CMA/TAB/URB/No. 96/2019. The applicant's claim at the CMA was based on unfair dismissal from employment by the respondent. Before going into the grounds leveled by the applicant, I find it pertinent to give a brief history leading to this application. According to the record found in the case file, the applicant was employed by the respondent since 1st March, 2007 as a Teacher Grade IIB and his working station was Matwiga Secondary School, Urambo District. i 'S't On 1 October 2015, he was suspended from employment for being out of work for 19 days, he was charged and was given time to respond to the charge then the disciplinary committee suspended him from work. He appealed to the Teachers Service Commission which later confirmed his termination. Later on, he preferred an appeal against the Commission to the President, and on 25th July 2018, he received a reply from the President stating that he was rightly terminated and he went on to confirm his termination. After the President had confirmed his termination, the applicant referred an application to CMA seeking justice for what he termed as unfair termination by the respondent. Having received the application, the Commission on its own motion raised a point of jurisdiction and as a result, it ended up striking out the application for the reason of absence of jurisdiction to adjudicate on the matter. Aggrieved, the applicant brought this application for revision of the decision of the Commission for Mediation and Arbitration which th was procured on the 15 October, 2019. The application is supported by an affidavit deposed on by the applicant, Thadeus J. Medukenya; the facts as deposed in the affidavit materially run thus: -

1. That, on 07/09/208 the applicant instituted a labour dispute against the respondent in the Commission for Mediation and Arbitration at Tabora which was registered as CMA/TAB/96/19 2
2. That, on 15/04/2019 the Commission for Mediation and Arbitration (CMA) delivered a first ruling having raised preliminary Objection suo motto on the jurisdiction to entertain the instituted matter.
3. That, in the said ruling, it was declared that the Commission had jurisdiction to entertain the matter before since it was proper for the applicant to refer the matter before the Commission after being aggrieved by the administrative decision.
4. That, by surprise on 15/10/2019 the Commission for Mediation and Arbitration (CMA) delivered another ruling basing on the same issue of jurisdiction ruled out earlier on 15/04/2019 but this time the Commission declared that had no jurisdiction.
5. That, the applicant is aggrieved and has filed this application for Revision on the ground set as follows: -
 - a) The commission arbitrator erred in law to deliver a ruling on the matter which was not before her.
 - b) Having delivered the first ruling the Commission was barred to deliver another ruling (it becomes a functus official)
 - c) The Commission did not accord the right to be heard to the Applicant.
 - d) The legality and correctness of the Commission's finding that had no jurisdiction. 3
6. That, it was a serious misdirection on the part of the Arbitrator to deliver another ruling on its own and arrive at the conclusion without considering the applicant's argument. The applicant prayed this Court to revise, quash and set aside the award in CMA Dispute No. 96/2019 at Tabora dated 15/10/2019 and any other or further orders as the Court may deem necessary and just to grant. Upon setting an eagle eye on the affidavit, counter-affidavit and the whole record, the points for consideration are:-
 - (a) Whether the Commission for Mediation and Arbitration (CMA) had Jurisdiction to entertain the matter brought to it by the applicant.
 - (b) Whether the decision reached by the Commission was correct. There have been conflicting positions on the circumstance at hand as to whether the decision of the President on Labour matters is final to the exclusion of CMA to entertain the same matter. Section 32A of the Public Service Act, Cap. 298 [R.E2019] states that, "A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies provided for under this Act." This section requires all public servants to exhaust all remedies available in their employment before going to the Commission for Mediation and Arbitration to adopt the procedure provided for by the Employment and Labour Relations Act,Cap.366 [R.E 2019]. 4 I am

inclined to borrow the wisdom of Mkasimongwa J, in Asseli Shewally vs Muheza District Council Labour Revision No. 6 of 2018 HC Tanga (Unreported) where he observed that I quote; "Indeed it is the law that after exhausting all remedies as provided under the Public Service Act, a party shall have a right to seek remedies provided for under the labour laws. The law is however extraneous and it subjects the parties to inconveniences. As the exhaustion of the remedies under the Public Service Act results in the final decision, the CMA is not entitled to admit and determine the matter previously determined by the President of the United Republic of Tanzania." I join hand with my brother, Judge Mkasimongwa in the decision cited above that, the procedure brought by section 32A of the Public Service Act, Cap.298 subjects the parties to inconveniences that will cost them time and resources. It is clearly stated that the decision of the President is final, since the appellant is a public servant he has to apply for prerogative orders before the High Court; the court which has Jurisdiction to harmonize the conflicts that appear between the laws. That being the case, a proper channel available for the applicant is to seek judicial review before the High Court. 5 Having said that, I uphold the decision of the Commission for Mediation and Arbitration, and consequently, the application is found unmeritorious hence dismissed. It is so ordered. Right of appeal fully explained. A.A. BAHATI JUDGE 26/03/2021 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlil.org/media/judgment/236629/source_file/thadeus-j-medukenya-vs-urambo-district-council-2021-tzhc-2631-26-march-2021.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/thadeus-j-medukenya-v-urambo-district-council-Unfairdismissal-tzhc-2021--6a3ea52b3b1caa9129823eed

Prepared on 14 October 2026 · Esheria