

TANZANIA / JUDGMENT

19850606 TZCA Dar es Salaam

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TZCADECIDED
6 June 1985

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" ; : . , I f r ~ i > ~ t t ' ~ ~ i i ~ { ! " / ~ ~ ~ ~ ~ . _ , .. ~ IN THI:: COURT OF { \ PPEAL -01-' TMIVJUA l / . ' t ' . 1 ~ ~ ·
· s . o . w , , . AT DAR ES SALAAM l j ' I / : ' : . ~ , , J , I ~ i ~ w · CIVIL APPEAL NO. 2 ' OF 1985 l i ' : : l t > > - ! : ~
L : ! . BE ' TWEEN j : . i f 1 . ! ' : ' T J 10MAS M. M ~ l , \ N J A . APPLICANT : : i ! . ~ ~ : , " - ! : . ! . ~ . ~ . AND ~ ~ 11 \
° ! : : . , . . ' . ~ . , ... , , 1 ... i ; , ~ ~ ~ ~ ~ ") 1 ! . : , t ~ .

1. ROBERT H ~ KIMAIUO. 1ST RESPONDENT
2. NATIONAL BANK OF COM ! ' ERCE, ~ ~ , ' 2ND RESPONDENT ~ I (Appeal from the Ruling and Decree of tAe High Court of Tanzania at Dar ea Salaam) (Mr, Justice o. P, Mapiqano) dated 18th August, 1984 j in ~ the High Court Misc~ Civil Cause No. 5 of . 1984 l ~ " ~ ~ ~ . ' , ----- , , V : ~ ~ ~ . JUDGMENT OF THE COURT f: l , ~ - e , , ~ . The app_licant was~ an ~mployee of the respondent bank, ... 1 ~ ~ - , ! tati.0nal Bank of Commerce. ~e applicant was interdicted from JerY,ice ~ . end; ~ubsequently . dismiss~d. . The disciplinary actj.on ~ , : ~ ~ ~ "ta] : en again:ist him was _by the Dar Pg Salaam MatropOl'titan ~ea . 1 : ~ ~ ~ ~ ~ . c ' - (, ~) ~ ~ a . rd , a committee set up by the. Board of Directors and to which . . ; l , ~ : . ~ , the ~o,ard delegated its powers Qver bank employees in the " 1 • " Dates~ Salaa~ area in terms of ~egulation 7(6) of Regulations • . ' made~ under the National Bank c,f Commerce (E.stablishment and ~1 Veatlng of Assets and Liablilit1ea) Act 1963, published in G,N. 326 ' On 6.9.68. The appellant was disciplined in that w~y by / the Area Board because, as a bank manager, he was served with ~ ~ 2 G~rnishee Orders arising,from a civil-acti~n between tw~ litigants • . The garnishee ~rd,ers relatei.to a sum in excess Of 6 million shillings. - i ! , ' ! . \ ' ! ' Instead of retaining t;ho money of the debt~r in the. bank : ~ ~ ~ ~ , _or of paying the said sum i~nto court, the applicant paid it : ~ff' ; : ~ ~ . ~ ¥ : ~ ~ t o the decree holde~. 01 When. tha relpndent Bank aame b ~ ; ~ E ; ~ - ; : . ~ J ~ , ~ ~ : Lthat actiC.n, it wrote to the 4ppl1ccU1t asking him for an ~ : / { ' ! ~ ~ i , ~ ~ : ~ ; ~ p1anation, ~ ~ / .. 1 • / (} ~ I ; t / ' ~ ~ , ~ ~ , 12 • .. i ~ ~ ~ t ~ r . : i t ~ : j t i : i : L ~ ; . . f) . f I / J ~ ~ ! ' , ... ! 2 appellant I was informed of th~ complaint and duly answered . , . I r~spondent Bank. The Area B~ard duly considered the matter, I and eventually dismissed the appellant, giving him the~roasnns 1 for the action. The appellant fi led an action in th~ \ High Court I f~r an order Of certiorari to bri,ng up and quash the decision 1 of the~ Area Board. The appellant submitted to the High Court~ I that the Area Bt1ard lacked jurisdiction to take the disciplinary steps .against him. He submitted :only ~the Board of Directors 1 could dO so. The judge rejected that submizsion. The judge also I held ~o.1: the~appellarit had ~erred in paying the sum direct to the . , . ~ : : . : I decree h~lder after he was served with the garnishee orders. ' ; t'ho j udgo refusod to disturb

the decision of the Area Board although he thought the punishment inflicted, i.e. the dismissal of the appellant from service, was severe. His application was refused with costs in the High Court. The appellant's counsel stated that the appellant has appealed from the High Court decision. Mr. Maira for the appellant again submitted before us, as he did before at the High Court, that the Area Board had no jurisdiction to act as it did. This submission is without substance. Regulation 7 (6) of G.N.326 of 6.9.68 states: "The Board may delegate any of their powers to any committees consisting of such members or members of their body or the Bank as they think fit; any committees so formed shall in the exercise of the powers so delegated comply with any regulations that may be imposed on it by the Board". Mr. Mkude for the Bank submitted that the powers of the Board were delegated to the Area Board by Resolution passed on 17.4.82. We are satisfied that the Area Board had authority and jurisdiction to have acted as it did. We are also satisfied that the Area Board did not breach, any regulations in its conduct and action; the appellant's counsel informed of the complaint against him and was given full opportunity to be heard. The appellant's counsel also complained of the disproportionate nature of the punishment. The trial judge did not interfere with the action of dismissal. We do not think that the action of dismissal in the circumstances, could be considered to be so unreasonable as to constitute unfairness. It was quite clear that the appellant disregarded the garnishee orders in that he acted beyond what he was instructed to do by the court awarding them. We do not think that in an application for an order of certiorari, we are strictly concerned with the substance and merits of the evidence adduced. But on the face of it we find nothing that offends reasonableness and fair play. The appeal has no merit and is dismissed with costs. I do hereby certify that the original of this judgment is in the custody of the Registrar of the High Court of Tanzania. DATED at DAR ES SALAM this 1st day of June, 1985. I, JUDGE OF APPEAL A. M.A. OMAR JUSTICE OF APPEAL I certify that the original of this judgment is in the custody of the Registrar of the High Court of Tanzania.

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