**Mohamed and another v Industrial Court of Tanzania and others**

**Division:** Court of Appeal of Tanzania at Dar-es-Salaam

**Date of Judgment:** 19 December 2003

**Case Number:** 35/99

**Before:** Ramadhani, Mroso and Nsekela JJA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Civil procedure – Appeal – Right of appeal to High Court in matter where Industrial Court has*

*been sued.*

*[2] Labour law – Industrial Court – Immunity from court process – Whether Industrial Court was*

*immune from being sued – Whether a party had recourse to High Court where a matter was still pending*

*in the Industrial Court – Section 9A – Permanent Labour Tribunal Act – Section 4 – Permanent Labour*

*Tribunal (Amendment) Act.*

**Editor’s Summary**

The appellants had been employed by the Tanzania Telecommunications Co Ltd (fourth respondent). The services of the appellant were terminated when he was declared redundant. The appellants complained to their trade union JUWATA. Its Secretary General reported the matter to the labour commissioner as required by law. The labour commissioner in turn inquired into the causes and circumstances of the dispute and with the approval of the Labour Minister referred it to the Industrial Court (first respondent). The first respondent was to inquire into the dispute and thereafter report to the Minister (second respondent). The decision by the Minister, based on the report by the first respondent, was to constitute an award when pronounced and registered by the first respondent. However, as at the time of the suit, the first respondent had not yet carried out the inquiry. While the inquiry by the Industrial Court was being awaited, the appellants’ trade union (JUWATA) reached a voluntary agreement with the employer in which the appellants and others were to be reinstated in their employment. That agreement was irregularly submitted in June 1992 to the first respondent for registration as an award. Because of the irregularity, the appellants considered the award null and void and complained to the Labour Minister. In 1995, the first respondent carried out an inquiry in the absence of the parties in dispute and sent an advisory opinion to the labour commissioner. The appellants considered the advisory opinion also to be null and void because it had been conducted in breach of the rules of natural justice. He filed a suit in the High Court in September 1997, seeking declarations that the decision and award of the Industrial Court was null and void, a declaration that the appellants were still in employment of the Tanzania’s Telecommunications Co Ltd and an order compelling the Industrial Court to make a report to the Labour Minister as by law required. The respondents raised two points of preliminary objection; that no cause of action had been disclosed and that if a cause of action had been disclosed, then the claim was time barred. The High Court Judge held that the proper way for the appellants to challenge the Industrial Court’s actions was by applying for prerogative orders. It also held that the plaintiffs’ claim was time barred since the cause of action had arisen in 1986 and filed in after six years had lapsed. The appellant appealed to the Court of Appeal.

**Held** – The appellants’ suit against the Industrial Court was incompetent because the Court cannot be sued. As relates to the other respondents, the appellants’ suit was premature because the reference to the Industrial Court was still pending and the appellants would not take another avenue by filing suit when the previous recourse was still unexhausted.

Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Barnard v NDLB* [1953] 2 QB 18 – **C**

*Esso Standard Tanzania Ltd v DR Kaijage* civil appeal number 6 of 1989 *–* **C**