**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

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**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.*

**JUDGMENT**

**RAMADHANI, MROSO AND NSEKELA JJA:** This is an appeal against a ruling of the High Court

commercial division, following preliminary objections to a suit which the appellant had filed in the Court. It will be necessary to give a brief background to the suit which the appellant had filed in the High Court. The appellant, Seleman Mohamed, and another (who had also appealed but has withdrawn from the appeal) had worked for the fourth respondent, the Tanzania Telecommunications Company Limited. According to the plaint, the services of the appellant were terminated on 30 June 1986, when he was declared redundant. The appellant and other employees who were also declared redundant complained to their trade union, JUWATA. Its Secretary General reported to the Labour Commissioner under section 9A(1) of the Permanent Labour Tribunal Act, number 41 of 1967, as amended by section 4 of the Permanent Labour Tribunal (Amendment) Act number 18 of 1977. The Labour Commissioner inquired into the causes and circumstances of the dispute and, with the approval of the Minister responsible for labour matters, referred it to the Industrial Court, the first respondent in this appeal. The first respondent was to inquire into the dispute and thereafter report to the Minister, who is the second respondent in the appeal. The decision of the Minister, based on the report by the first respondent, would constitute an award when pronounced and registered by the first respondent. Apparently, the first respondent has not carried out the inquiry to date. Whilst the inquiry by the first respondent was being awaited the appellants’ trade union and the employer reached a voluntary agreement in which the appellant and others were to be reinstated in their employment. That agreement was irregularly submitted to the first respondent for registration as an award. That was in June 1992. Because of the irregularity, the appellant considered the award null and void, and complained to the Minister responsible for labour matters. 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, who is the third respondent in this appeal. The appellant considered that advisory opinion also to be null and void because it proceeded from a breach of the principles of natural justice, that is to say, the failure to hear the stakeholders before submitting the opinion. To the extent that the advice of the first respondent to the third respondent appeared to confirm the award which had proceeded from the voluntary agreement and which the appellant had considered to be null and void, the advice was also considered illegal. The appellant believed he had suffered injustice and prejudice because of alleged failure by the respondents to comply with the statutory requirements of the Industrial Court of Tanzania Act. He listed some of the injustices he suffered as including non-reinstatement in his employment, loss of repatriation pay, loss of substance allowance, loss of long service award, loss of promotion and loss of unpaid wages and fringe benefits. He sought reliefs in court by filing his claim on 12 September 1997. The main reliefs were: 1. A declaration that: ( *a*) t he decisions and awards of the Industrial Court are null and void and of no effect in law. ( *b*) T he appellant (then plaintiff) was still in the employment of the Tanzania Telecommunications Company Limited and was entitled to be paid wages and fringe benefits. 2. A n order that a report by the Industrial Court of Tanzania be made to the Minister responsible for labour matters as requited by section 9A(1) of the Permanent Labour Tribunal Act, number 421 of 1967 as amended by section 4 of the Permanent Labour Tribunal (Amendment) Act number 18 of 1977 and the Minister makes a decision arising from the report, as per s*e*ction 9B of the Act. After the pleadings had been filed and the case was ready for hearing the first, second, third and fifth respondents jointly raised two points of preliminary objection. These were (in the order they were recorded by the High Court). (1) That no cause of action had been disclosed, and (2) That if a cause of action had been disclosed, then the claim was time barred. In answering the first point of objection the High Court, Kalegeya J said: “Clearly the war by the plaintiffs is waged against the actions or non-actions (*sic*) by the Industrial Court of Tanzania. They are complaining against that Court’s failure to decide on the trade dispute referred to it, (against) an award of a voluntary agreement which did not pass through the legally prescribed procedure, and subsequent advice confirming this award by the same court to the labour commissioner”. Although the quoted passage appears to suggest that the High Court had found that a cause of action had been disclosed from the plaint, the Court proceeded to say that the appellant should not have field a suit but should have petitioned for prerogative orders. The Court said: “a proper way by which the inactions and actions of the Industrial Court can be challenged is by way of applying for prerogative orders and not by way of a suit as the plaintiffs have done”. As regards the second point of objection, the High Court held that the action was based on contract which has a limitation period of six years. Since according to the High Court, the cause of action arose in 1986 by 1997 (over ten years later) when the action was filed in court the limitation period of six years had long passed. The Judge said: “if it was to be held that the plaintiff could come to this Court by way of a suit as they did, clearly they would be barred by limitation of time. This is so because, the cause of action should be taken to have arose (*sic*) in 1986 when they were declared redundant. Again this would be based on contract of employment between them and the fourth defendant. A suit founded on such contract can only be instituted within six years of the accrual of the cause of action”. The Court concluded: “The two preliminary objections raised by the first, second and fifth defendants are accordingly sustained”. It followed that the Court dismissed the action on the basis of the preliminary points of objection and found it unnecessary to deal with the preliminary objections which were raised by the fourth respondent. In this appeal six substantial grounds have been raised. These are that:

1. The Learned trial Judge erred in law in not holding that the Court has jurisdiction to entertain a suit in which a declaratory judgment or order is sought.

2. The Learned trial Judge erred in law in holding that a suit for a declaratory judgment is barred by limitation of time.

3. That the Learned Judge erred in law in holding that the only way to challenge non-actions and actions of the Industrial Court is by way of applying for prerogative orders. 4. I n computing time within which to file a suit, the Learned trial Judge erred in law and fact in not taking into consideration that: ( *a*) T he voluntary agreement complained of was registered by the Industrial Court on 16 June 1992. ( *b*) T he labour commissioner’s letter reference number KZ/U.10/mg/385/23 dated 2 March 1999 issued under the then section 10 of the Industrial Court Act. ( *c*) T he advice made by the Industrial Court to the labour commissioner on or about 3 August 1995 under the then section 10 of the Industrial Court of Tanzania Act of 1967. 5. S ince the Industrial Court has not enquired into the dispute and made a report thereon to the Minister, the trial Judge erred in law and fact in not holding that there was and there is still a continuing cause of action and therefore, that the suit was filed in time. 6. I n the circumstances the High Court ought to have made an order striking out or amending any matter which was unnecessary or scandalous or which tended to prejudice, embarrass or delay the fair trial of the suit. Among the prayers which were made to this Court are that the appellant be allowed to amend the plaint and that the suit be heard by the High Court on merits. At the hearing of the appeal the first appellant appeared in person and the first, second and fifth respondents were represented by Mr *Chidowu*, Learned State Attorney, and the fourth respondent was represented by Mr *Swai*, learned advocate. The appellant had lodged in Court, under rule 99 of the Court rules, a written statement of his arguments in support of his appeal and, therefore, could not address the Court except, with the leave of the Court, replied briefly to submissions by Mr *Chidowu*. In this appeal we have to confine our decision to what the High Court said in relation to the points which were raised in the preliminary objection. Those were whether the plaint as filed by the appellant disclosed a cause of action against the respondents and whether, if the first point is answered in the affirmative, whether the suit was in any case time barred. Although the appellant sued the five respondents, his main grievance was against the first respondent, the Industrial Court. This view is supported by the nature of the reliefs which were sought from the High Court. The High Court held the same view. But the High Court did not really go into and decide whether the appellant had a cause of action against any of the respondents. It merely decided that the appellant had used the wrong avenue; that he should have applied for the issue of relevant prerogative orders and not to file a suit. In his written arguments to this Court the appellant has argued that the High Court was wrong to say that the only way to challenge the action and in actions of the Industrial Court was by seeking the prerogative orders of the High Court. He submits that one can sue for a declaratory decree. He said that under section 7(2) of the Civil Procedure Code of 1966 an aggrieved party may sue for a declaratory judgment or order. It is true, of course, as submitted by the appellant, that a party may sue for a declaratory judgment or order. But the High Court did not say that one could not do so. What the High Court said was that if a person wanted to challenge the “inactions and actions of the Industrial Court” one could do so by petitioning for the prerogative orders of the High Court. In other words, one could not sue the Industrial Court in the High Court or in any other court for that matter. Was the High Court right in saying so? The appellant referred to a book titled “*Sheria na haki zako na 2 – Utaratibu wa Sheria wa Kutatua Migogoro ya Kazi*” by James L Mwalusanya J as he then was. The passage which the appellant relied on reads as follows: *“Njia ya pili ambayo mahakama Kuu hutumia kutengua maamuzi ya vyombo vya dola au vyombo vya nidhamu, ni kutoa tamko (declaratory judgment) chini ya kifungu cha 7(2) cha Kanuni za Mashauri ya Madai (Civil Procedure Code) Sheria Na* 49 of 1966. *Uamuzi Ukitenguliwa basi mfanyakazi anarudishwa kazini – tazama kesi ya* Esso Standard Tanzania Ltd v DR Kaijage *civil appeal number 6 of 1989: niliyoitaja hapo juu). Utaratibu huu wa kuomba tamko (declaration) ni bora zaidi ya ule wa amri za mamlaka (prerogative orders). Kwanza kesi za aina hii zinaweza kufunguliwa wakati wowote, yaani hakuna kikomo cha muda uliopangwa kuwa ufungue kesi katika muda fulani. Pili huna haja ya kuomba kibali cha Mahakama Kuu kabla ya kufungua kesi ya kuomba tamko. Tatu unaruhusiwa kuunganisha madai ya fidia kwa hasara uliyopata ulipoachishwa kazi bila halali na madai ya kuomba tamko (declaration) – tazama kesi ya* Barnard v NDLB [1953] 2 QB 18.” We have not been able to see and read the said book but we do not read in the passage any clear statement that a person can sue the Industrial Court. Mr *Chidowu*, Learned State Attorney, did not allude to this point in his submissions. We are of the view, however, that although the Industrial Court of Tanzania still retains some characteristics of an administrative tribunal (like the erstwhile Permanent Labour Tribunal), yet it is a court which appears to be of similar stature as a division of the High Court, so that it cannot at least be said to be an inferior tribunal to the High Court. So, it is doubtful if the High Court can call to itself decisions of the Industrial Court and quash them. But it is unnecessary to decide in this appeal whether a person can petition the High Court to exercise its review powers over the Industrial Court. No decision of the Industrial Court was sought to be reviewed by the High Court. The appellant had sought to sue the Industrial Court and we are of the view that the appellant could not do so. It follows that if one could not sue the Industrial Court, as the appellant purported to do, the question of whether the appellant had a cause of action against the Industrial Court did not arise. Similarly, the question whether the suit would or would not be time barred would not arise. But all this is as far as the Industrial Court only was concerned. How about the other respondents? As mentioned earlier, the High Court did not relate to the preliminary objection of the other respondents. But we are of the considered opinion that even if the High Court were to discuss the points of preliminary objection in relation to the other respondents it would have found that the appellant’s suit was premature. Therefore, there was no cause of action up to the time the suit was filed. According to the appellant, the Industrial Court was supposed to inquire into the circumstances that led to this being declared redundant and report to the Minister. If the report disclosed that the appellant was wrongfully terminated through redundancy, it would possibly recommend in its report to the Minister that he be reinstated and to get all the necessary consequential benefits. Unfortunately, according to the appellant, the Industrial Court has not fulfilled that task to date. So, unless the reference to the Industrial Court was withdrawn or formally abandoned, the appellant could not just decide to take another avenue by filing a suit in court when the previous recourse was still unexhausted. It would appear, therefore, that even the question of whether the suit was time barred did not really arise because the suit, as it related to the other respondents, was premature. The High Court upheld the preliminary objections, but we think it was unnecessary for the reasons we have given. We hold that the suit was incompetent as far as the Industrial Court was concerned and premature in relation to the other respondents. Considering the approach we have taken, it is unnecessary to consider the remaining grounds of appeal. We dismiss the appeal but for different reasons from those which were urged by Mr *Chidowu*.

We make no order for costs.

For the applicant:

*Chidowu*

For the fourth respondent:

*Swai*