

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**(PC) CIVIL APPEAL NO. 09 OF 2017**

**(Originating from Civil Case No.80/2015 in the Karatu Primary  
Court of Karatu at Karatu, C/F Civil Revision No.6/2016 in the  
District Court of Karatu, at Karatu)**

**Between**

**SHANGRILLA ESTATE LTD.....APPELLANT**

**AND**

**JONAS BAKURU TINGISHA .....RESPONDENT**

**JUDGMENT**

**DR. OPIYO,J.**

The appellant herein being aggrieved by the decision of the District Court of Karatu at Karatu, (Hon Mbonamasabo RM) in Civil Revision No 6/2016 desired this appeal on the following grounds:

1. That the Hon. Magistrate erred in law and fact by relying on the decision of Primary Court and dismissing the Revision while the case was a labour in nature and thus has no jurisdiction to determine the matter originated from Labour Court.
2. That the Hon. Magistrate erred in law and fact by grossly misdirecting himself in considering costs incurred during the labour

case for transport at Commission for Mediation and Arbitration without regarding the fact that the matter ended on Mediation and labour cases have no such costs, further that the Primary Court has no Jurisdiction to entertain the costs originating from labour cases, if any.

3. That the Magistrate erred in law and fact when he failed to observe that the Primary Court has no Pecuniary Jurisdiction as to the matter involved the amount of 3,076,000/= thus it was above the legal required pecuniary jurisdiction to be determined by the Primary Court.

The appellant in this appeal case was represented by Shedrack Mofulu while the respondent appeared in person. The appeal was argued by way of written submission. The appellant's counsel had prayed to argue the appeal *ex parte* after the respondent failed to appear on 27<sup>th</sup> November, 2017, which the court granted. However when the matter was fixed for mention with view to fix date for judgment after the appellant filed his written submission, on 19/03/2018, the respondent shown appearance and prayed for an order to vacate the court's *ex parte* order on the reason that he failed to enter appearance because he could not locate the Judge's chamber in time. The court was convinced and vacated its *ex parte* order allowing the respondent to file reply submission by 5/4/2018 and rejoinder, if any, by 12/04/2018. Until 12/04/2018 the respondent had not filed reply submission and he did not appear in court. For that reason the court fixed the date of judgment considering the submission by the appellant only.

In support of the 1<sup>st</sup> ground of appeal that, the trial magistrate erred in law in relying on the decision of the primary court in dismissing the revision application while the case was of labour nature as it originated from labour court and thus the primary court had no jurisdiction to determine it, Mr. Mofulu submitted that all of the labor matters except for Tanzania Defence Forces, Police Force, Prisons Services and National Service as provided under section 2 (1) of the Employment and Labour Relations Act No 6 of 2004 are governed by the Act and the Labour Institutions Act no 6 **.Act no. 6 of 2004** and its Rules being the Employment and Labour Relations (Code of Good Practice) G.N No. 42 of 2007), the Labour Institutions (Mediation and Arbitration) Rules, G.N No. 64 of 2007, The Employment and Labour Relations (Forms) Rules, 2007 G.N No. 65, The Labour Institutions and Code of Conduct for Mediators and Arbitration) Rules, 2007 G.N No. 66 and The Labour institutions (Mediation and Arbitration Guidelines) Rules, 2007 G.N No. 67; and whenever there is a revision at the High Court Labour Division then the Labour Courts Rules G.N. No. 106 of 2007 is Applicable.

He therefore argued that, as the dispute between the respondent and appellant was a labour matter, the respondent being the former employee of the appellant it is the above laws which were applicable in regulating settling of dispute between them. That, the respondent was employed by the appellant on permanent basis from 16/06/2006 as a security guard until 05/06/2015 when he was terminated for the reasons of gross misconduct.

It was the learned counsel submission that, respondent being dissatisfied by his termination, He filed his claims at the Commission for Mediation and Arbitration of Arusha at Arusha (CMA) through CMA Form No. 1 and requested the outcome of Mediation to be re-instated. The Respondent's claims at CMA was dealt under the Employment and Labour Relations Act No. 6 of 2004 and went through both stages of Mediation and Arbitration as provided for under the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 G.N. No. 67 published on 23/03/2007. During the Mediation stage, the Mediation failed and parties were issue with **CMA** Form No. 5 (Mediator's Certificate of Settlement/non settlement) the certificate.

It was his further submission that, upon the Mediation failing, the matter went for Arbitration stage and during that stage, the parties under Rule 30.-(1) of the Labour Institutions Mediations (Mediation and Arbitration Guidelines) G.N No. 67 did consent to refer their matter into Mediation and agreed to resolve the dispute through mediation whereby on 11/09/2015 the Respondent was paid Tanzanian Shillings Two Million (Tshs. 2,000,000/=) being his final dues and both parties agreed that there shall be no further payments and signed CMA form No. 21.

Mr. Mofulu further submitted that, on 11/09/2015 the Respondent was paid by the Appellant Tshs. 2,000,000/= at Karatu as agreed through CMA Form No. 21, but later on the Appellant was surprised by being issued with a summons to appear before Karatu Primary Court and when he appeared, he found that the Respondent filed a Bill of Costs of Tshs. 3,076,000/=

being the costs that he incurred in pursuing his Labour matter at the Commission for Mediation and Arbitration Arusha. That the Appellant was aggrieved with the respondents act as both parties had already agreed at CMA that there shall not be any further payments regarding the Labour Dispute and decided to file revision Application under **S. 22.-(1) of the Magistrates' Court Act, Cap 11 R.E 2002** before Karatu District Court, requesting the Honorable Court (District Court) to call for records and satisfy itself as to the correctness and legality of the Karatu Primary Court to deal with the issues that originated from Labour matters. That, while the Application was in the process, apart from the Primary Court being informed it proceeded ex-parte and issued the Responded with the costs he incurred while pursuing his Labour Claims at CMA Arusha as claimed in his bill of Costs.

The Karatu District Court in its ruling delivered by Hon. E.E. Mbonamasabo (RM) dismissed the Appellant's revision application on grounds that CMA F.21 has ambiguous words and that all the claims claimed were not the principal sum, hence the Karatu Primary Court had Jurisdiction to deal with the matter which the claims exceeded Tshs. 3,000,000/=. He thus prayed for the appeal to be allowed

I have considered the appellant counsel's submission, CMA award and the proceedings and the record of the lower courts as a whole, and the cited laws and I have the following observations.

1. It is clear that the respondent was terminated on 05/06/2015 for the reasons of gross misconduct and being dissatisfied he instituted the claims at the CMA Arusha and his claim was dealt under Employment and labor Relations Act where the matter was resolved through mediation and 11/09/2015, consequently the respondent was paid Tshs. 2,000,000/=
2. The record shows that no costs was awarded by CMA to the respondent apart from the awarded Tshs. 2,000,000/=
3. The record is also clear that the civil case( bill of costs) instituted by the respondent in Karatu primary court originated from the labour matters in which the respondent agreed to be paid Tshs 2,000,000/= with no claim for any further payment and he did sign form No 21.

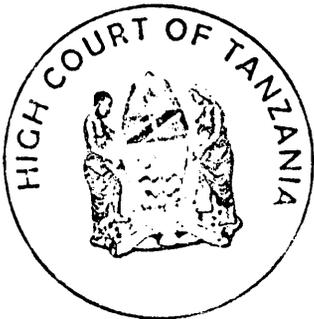
From the above observation, it is my view that the Primary court had no jurisdiction to deal with the matter which originated from labor dispute and which the same was dealt with and finalized by the labour court. Even if it is assumed that it had jurisdiction, but still vivid that CMA never awarded the costs to the respondent so it was strange for him to file a bill of costs claiming the costs which he was never awarded by any court of law. Bill of cost is filed to claim for the costs awarded in determination of the matter before the court of law. In the matter at hand no court awarded any cost to the respondent to justify him filing bill of costs before any court. The respondent purported to have filed a fresh case, but whose basis is costs used in pursuing labour matter before the court for which costs is not and was not awarded. This was wrong and in essence Karatu Primary Court

heard and determined the matter to which it had no jurisdiction to determine, making the proceedings before it irregular. Thus, the Karatu District Court indeed erred by not mending this irregularity as requested by the appellant in Civil revision no 6/2015.

In the result, I allow appeal on the first ground. Consequently, the proceedings of both Karatu Primary court and the District Court are hereby nullified, ruling and Orders are quashed and set aside. Since the first ground suffices to dispose of the appeal, I will not entertain other grounds of appeal. I make No order as to costs.

**(SGD)**  
**DR. M OPIYO**  
**JUDGE**  
**22/05/2018**

I hereby certify this to be a true copy of the original.



  
*D.J. MSOFFE*

**A.g. DEPUTY REGISTRAR**  
**ARUSHA**