

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA**

AT BUKOBA

(PC) CIVIL APPEAL NO. 42 OF 2022

*(Arising from Civil Appeal No. 14 of 2021 District Court of Bukoba Originating from Civil Case No. 17 of
2021 Nsungu Primary Court)*

GEORGE MSIKULA..... APPELLANT

VERSUS

FRAVIUS FOTIDAS..... RESPONDENT

JUDGMENT

7th and 17th March, 2023

BANZI, J.:

This is a second appeal emanating from Nsungu Primary Court (“the trial court”) where the Respondent successfully sued the Appellant for payment of five bulls valued at Tshs.5,000,000/= being his wage after working for the Appellant for five years as cowherd. Aggrieved with such decision, the Appellant unsuccessfully appealed before the District Court of Bukoba (“the first appellate court”). Still aggrieved, he lodged this appeal armed with two grounds, thus:

- 1. That, the Honourable District Magistrate grossly misdirected herself in law for failure to nullify the proceedings and resultant judgment of the trial Primary Court which acted without jurisdiction to try labour dispute*

which is exclusive domain of Commissioner (sic) for Mediation and Arbitration (CMA).

2. That, the Honourable District Court Magistrate erred in law and on facts to uphold the decision of the trial Primary Court which misapprehended the evidence on record which was in favour of the Appellant and thus reaching at erroneous decision.

In order to appreciate the nature of this matter, I find it prudent to give background facts albeit briefly. In 2015, the Respondent began to work for the Appellant as cowherd on the agreement that upon reaching 1st February, 2021, the Appellant should pay him five bulls as his wage. However, on the agreed date, the Appellant refused to pay him his wage. The Respondent quit his job and decided to claim his wage by passing through various offices including the District Commissioner ("the DC") of Missenyi District who directed the Village Executive Officer (VEO) to supervise the exercise of handing over of those bulls to the Respondent but the same did not go well as a result, the Respondent filed the suit before Nsunga Primary Court.

On the other hand, the Appellant admitted to have employed the Respondent in December, 2020, for a salary of Tshs.50,000/=per month. The Respondent began to work on 4th December, 2020 and he worked for first two months and received his salary for those two months. On the third

month, the Respondent began to misbehave by beating his co-workers. Upon being asked by the Appellant, the Respondent ran to the DC with a claim of 20 cows against the Appellant. When the Respondent went to the Appellant with VEO, he refused to give him 20 cows because he had already paid him his salary.

When the appeal was called for hearing, the Appellant was represented by Mr. Frank John, learned counsel while the Respondent appeared in person unrepresented. The appeal was argued orally.

Mr. John began his submission with a prayer to abandon the second ground. Arguing in support of the first ground, he submitted that, it is undisputed that the suit filed before the trial court concerns employment matter as indicated in the evidence of both parties. Under these circumstances, the trial court and the first appellate court had no jurisdiction to entertain the labour matter. This matter ought to be adjudicated by the Commission for Mediation and Arbitration ("the CMA") pursuant to sections 13 (1) and 14 (1) of the Labour Institutions Act [Cap. 300.R.E. 2019] ("the Labour Institutions Act"). Since the dispute at hand is purely labour matter, he prayed for appeal to allowed with costs by nullifying and quashing the proceedings and judgments of both courts for want of jurisdiction.

In his reply, the Respondent claimed that, he used to be the employee of the Appellant and the latter owed him five bulls as his salary. Being a layman, he maintained that, the two courts below had jurisdiction to entertain this matter because he was directed by the labour officer to channel his complaint to the primary court. He concluded his submission by stating that, it is not right for him to be condemned to pay costs. Mr. John, had no rejoinder.

Having carefully examined the record of two courts below and considered the submissions of both parties, the main issue for determination is whether the Nsungu Primary Court and Bukoba District Court had jurisdiction to adjudicate labour dispute.

It is important to underscore that, in Tanzania besides the courts system, there are various bodies established by Acts of Parliament vested with jurisdiction to resolve disputes among the parties. In respect of labour disputes, apart from Public Service Commission and Judicial Service Commission which among other things adjudicate labour matters for employees in public service and the judiciary respectively, the CMA and Labour Division of the High Court are institutions established under section 12 and 50 (1) respectively of the Labour Institutions Act. The two institutions are vested with exclusive jurisdiction to adjudicate labour matter. Section 4

of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] defines labour matter to mean any matter relating to employment or labour relations. So far as the District Court and Resident Magistrate's Court are concerned, they are vested with jurisdiction to impose penalty for offences created under the Labour Institutions Act and Employment and Labour Relations Act. This is provided under section 64 (1) of Labour Institutions Act and 102 (1) of the Employment and Labour Relations Act. In other words, the District Court and Resident Magistrate's Court have jurisdiction on labour issues of criminal nature arising from offences created under these two Acts. In that regard, neither the Primary Court, District Court nor Resident Magistrate's Court has jurisdiction to entertain dispute arising from labour matter.

Reverting to the matter at hand, looking closely at the evidence on record before the trial court and the submissions of both parties before this Court, it is undisputed that, the relationship between the Appellant and the Respondent is that of employer employee. Although they differ on when the Respondent began to work and on what type of salary, but it is undoubted that, the Respondent was employed by the Appellant. In that regard and since their relationship was of the employer employee, any dispute arose from such relationship falls under labour matter which neither Nsunga

Primary Court nor Bukoba District Court had jurisdiction to entertain or adjudicate the said dispute. That is to say, the Respondent was bound to adhere to dispute resolution system as provided under the Labour Institutions Act and the Employment and Labour Relations Act. To be precise, the Respondent was supposed to forward his complaint to CMA Bukoba and not to Nsunga Primary Court.

Since both Nsunga Primary Court and Bukoba District Court had no jurisdiction to adjudicate labour dispute, I find the appeal with merit and I hereby allow it. Consequently, I invoke revisional powers under the Magistrates Courts Act [Cap. 11 R.E. 2019] to nullify, quash and set aside the entire proceedings, judgments, orders and decree of Nsunga Primary Court and Bukoba District Court. Owing to the nature of the appeal, each party shall bear its own costs.

It is accordingly ordered.



I. K. BANZI
JUDGE
17/03/2023

Delivered this 17th day of March, 2021 in the presence of Mr. Frank John, learned counsel for the Appellant who is also present and the Respondent in person.



A handwritten signature in blue ink, appearing to read "I. K. Banzi". The signature is stylized and fluid.

I. K. BANZI
JUDGE
17/03/2023