

**IN THE HIGH COURT OF ZANZIBAR**

**(INDUSTRIAL DIVISION)**

**AT TUNGUU**

**CIVIL CASE NO 24 OF 2009**

**MASAAD S. BREIK.....PLAINTIFF**

**VERSUS**

**COMMISSIONER GENERAL**

**TANZANIA REVENUE AUTHORITY ..... DEFENDANT**

**RULING**

16<sup>th</sup> October & 11<sup>th</sup> November 2024

**A. I. S. Suwedi, J**

The Plaintiff, **Masaad S. Breik**, filed this suit claiming to be reinstated to her employment and to be paid her dues and outstanding salaries, which TZS 13,000,000/- being salaried from October 2003 to May 2005 following the unfair termination of her employment by the defendant, **Commissioner General Tanzania Revenue Authority**. From what was averred in the plaint, Plaintiff was summarily dismissed from her employment contract for contravening schedule 3 (i) of the Code of Conduct and her appeals ended before the Board of Directors of Defendant, where the decision to dismiss her was affirmed on 10/01/2007, and her employment ceased. It was further stated that the

wrong disciplinary authority illegally disciplined the plaintiff with a wrong disciplinary offence. Besides, the plaintiff claimed to be paid TZS 29,098,000/- for increased rank salary for twenty months from June to January 2007 and TZS 20,000,000/- as damages for the unconstitutional and unlawful termination of her employment. Also, the plaintiff requested this Court to order the defendant to pay her salary under the new rate from January 2007 to the date of reinstatement, terminal benefits after properly terminating her, the general damages to be assessed by the Court and the costs.

The hearing of this case took 5 years, from 2009 to 2014. Records show the hearing ended in 2014, and it came to my attention in April 2024. After carefully reviewing the records, I saw that the assessors had given their opinion in writing, and there is no record that the summary of the case and the law was done to them per guidelines provided by the Court of Appeal of Tanzania. So, I took my time to carefully read the file to know where to start before composing the judgment; I realised there was a problem in the initial stages of opening this case. I have noted that the procedures under the public service were not completed before instituting this case. Therefore, I decided to open this discussion so the parties could address me.

On that day, the plaintiff was represented by the learned counsels Salim H. B. Mnkonje and Abdulkhaliq M. Aley, whereas the defendant was represented by Ms. Maryam Mrisho Ali, the defendant's Legal Counsel.

Counsel Mnkonje responded that the plaintiff followed the entire procedure from the beginning to the appellate stage, as provided by the TRA Staff Regulations and shown under paragraph 5 of the plaint. The Plaintiff came to this Court following the illegality of the decision of the Board of Directors of the TRA. He rested his submission by insisting that both TRA Staff Regulations and Code of Conduct were followed.

On his side, Ms Maryam responded by defending the procedures the defendant followed through his Board of Directors. She stated that all the required procedures were followed and that the defendant committed no infringement.

Initially, I started to examine the Tanzania Revenue Authority (the Authority) as established by Act of Parliament No. 11 of 1995 as amended by Act No. 6 of 2006 (the Act) as a central body for the assessment of collection of specified revenue and to administer and enforce the laws relating to such revenue. The Authority is a corporate body with perpetual succession capable of suing and being sued. According to section 4 (3) of the Act (supra), the Authority is an agency of the Government under the general supervision of the Minister responsible for finance. This means

that the Government of Tanzania has its hand, and its employees are the Public Servants. Section 30 of the Public Service Act, No. 8 of 2002, said:

Servants in the Executive Agencies and Government Institutions shall be governed by provisions of the Laws establishing the respective executive agency or institutions.

I stopped here shortly and went back to the Complaint where in paragraph 5, the plaintiff asserted that:

That on 5<sup>th</sup> of January, 2005 the, Plaintiff was summarily dismissed from her employment contract for contravening schedule 3 (i) of the Code of Conduct, and her appeals ended before the Board of Directors of the Defendant where the decision to dismiss her was affirmed on 10<sup>th</sup> of January, 2007 where the appeal procedure came to an end, and her employment ceased.....

The Act governs the Authority, so I have reviewed it to see how disciplinary proceedings are handled. Unfortunately, the Act is silent on this point, but it gives the Minister the power to make regulations to improve the implementation of its provisions. Hence, I glance at the TRA – Code of Conduct and Grievance Procedure, which provides, among other things, handling of disciplinary matters, penalties for violating the Code and how aggrieved employees can seek redress. The Code provided for Disciplinary Committees depending on the grade of an employee. Also, it offers grievance procedures from the immediate supervisor to the TRA Management Committee.

Descriptions Nos. 30 to 34 of the Code require a dissatisfied employee to discuss his grievance with his immediate Supervisor or manager within two days of the event giving rise to the grievance. Then, the employee may appeal to the next level of command within seven days of being notified of the decision of the immediate supervisor or Manager. Still aggrieved, an employee may appeal to the Head of the Department within seven days. The staff at the level of the Deputy Commissioner and above will have direct access to the Commissioner General. Any remaining grievance will be referred to the TRA Management Committee, whose decision will be final.

In the instant case, counsel Mnkonje stated that the Plaintiff came to this Court following the illegality of the decision of the Board of Directors of the TRA. It is not why the plaintiff has come before the Court, but the concern is whether she completed all the procedures available in the Code. In paragraph 5 of the Plaint, the plaintiff asserted that her appeals ended before the Board of Directors. I found nowhere in the Act and within the Code that the Board of Directors is the final appellate body within the Authority.

The fact that the governing law of the Authority laid down procedures for handling disciplinary matters and grievance procedures, then escaping them and rushing to Court is not a solution. The Plaintiff must finish the available grievance procedures before she instituted a suit,

and her pleading must support the assertion that the plaintiff has exhausted all the methods. Hence, this suit is premature before this Court and cannot be maintainable.

Therefore, I am striking out the suit without an order to cover the costs.

**DATED at TUNGUU ZANZIBAR this 11<sup>th</sup> November 2024**

A handwritten signature in blue ink, appearing to read 'A. I. S. Suwedi', written in a cursive style.

**A. I. S. Suwedi**

**JUDGE – INDUSTRIAL COURT**