

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL CAUSE NO. 29 OF 1995

GASPER SWAI AND 67 OTHERS APPLICANTS

VERSUS

**THE MINISTER FOR LABOUR & YOUTH
DEVELOPMENT AND OTHERS RESPONDENTS**

Date of last order – 31/10/2008

Date of Ruling – 15/12/2008

R U L I N G

Shangwa, J.

On 15/12/2006, the Applicants filed a chamber application for several orders against the 2nd Respondent SHIRIKA LA USAFIRI (UDA) and the 1st Necessary Party PRESIDENTIAL PARASTATAL SECTOR REFORM COMMISSION (PSRC). These orders include the order to put on record that the order of this court in Misc. Civil Application No. 29 of 1995 is yet to be recorded by the

court, and the order to issue Notice calling upon the Chief Executive Officer of UDA and the Executive Chairman of PSRC to appear and show cause why they should not be arrested and detained as civil prisoners until a total sum of shs.1,261,426,407/= as at 31/7/2006 is paid in full to them, and or until they are paid their full wages and fringe benefits plus interest on the decretal amount at 32% from the date of purported redundancy i.e. 10/7/1992 to the date of satisfying the order of this court.

On 30/1/2007, learned counsel for the 2nd Respondent Mr. Lymo filed a notice of preliminary objection against the application lodged by the Applicants on the following grounds:-

- 1. That, the ruling and order of the court that is sought to be executed was purely a declaratory order regarding the employment status*

of the Applicants and there was no order in respect of which the Applicants' rights were computed in monetary terms.

2. To the extent that the Applicants are seeking payment of money for what they allege was wrongful termination of employment (under the guise of application for execution) this court has no jurisdiction to entertain and adjudicate upon it.

3. The application is frivolous, vexatious and a total abuse of the court process.

On 25/3/2008, I ordered that the preliminary objection raised by the 2nd Respondent should be argued by way of

written submissions. Both parties did so in great details. In order to resolve this preliminary objection, it is important to go to the background of this matter which is as follows:-

On 7/8/1995, the Applicants filed an application for leave to file an application for orders of certiorari and mandamus to remove into this court the decision of the 1st Respondent the Minister for Labour and Youth Development made on 8/2/1995, and quash it and order the restoration of the Applicants to their jobs. Their application for leave to file an application for certiorari and mandamus was granted by Madame Bubeshi, J Rtd on 14/2/1996. During the same month on 29/2/1996, they filed an application for certiorari against the 1st Respondent's decision.

On 11/12/1997, the said application was granted by this court which held as follows and I quote:-

"The Applicants termination of employment was wrongful and that the

Applicants still continue to be employees of the Respondent notwithstanding their letters of termination and payment of termination benefits. They continue to be employees of the Respondent until such time that their employment is lawfully terminated following the FILO rule.”

On 22/11/2002, the Applicants filed an application for leave to institute execution proceedings against the 2nd Respondent and the 1st Necessary Party. On 2/4/2003, the 2nd Respondent filed a notice of preliminary objection against the application for leave to institute execution proceedings. The said preliminary objection was dismissed with costs. Consequently, the application for leave to institute execution proceedings was heard and it was granted on 20/5/2005. As already mentioned, the Applicants instituted execution

proceedings on 15/12/2006 which are now resisted by the 2nd Respondent.

Again as already mentioned, the Applicants want the order of this court given on 11/12/1997 to be executed by issuing a notice to the Chief Executive Officer of UDA and the Executive Chairman of PSRC to appear before this court and show cause as to why they should not be arrested and detained as civil prisoners until a total sum of shs.1,261,426,407/= is paid in full to them or until they are paid full wages and fringe benefits. The order of this court which the Applicants want to be executed is to the effect that as they were wrongfully terminated by the 2nd Respondent, they should continue to be employees of the 2nd Respondent until when their employment is lawfully terminated following the FILO RULE.

Learned counsel for the 2nd Respondent Mr. Lymo contends that the above mentioned order is merely a

declaration of their employment status and is not an order for paying them money. I fully agree with his contention which he made in respect of the first ground of objection. There is nothing in the order of this court dated 11/12/1997 which shows that the 2nd Respondent was ordered to pay the Applicants their wages or fringe benefits. The 2nd Respondent was merely ordered to continue employing them until when they are lawfully terminated.

Learned counsel for the 2nd Respondent submitted that the 2nd Respondent did comply with the said order by reinstating the Applicants on 28/8/2000 and that on 11/12/2001 they were again retrenched and were paid their full salary arrears, housing allowances and retrenchment benefits.

The applicants did refute the submission made by counsel for the 2nd Respondent. They said that up to the present day their employment is yet to be terminated by the

2nd Respondent, and that they are therefore entitled to full wages and fringe benefits from the date of purported termination on 10/7/1992 to the present day and the days to come until their employment is terminated as directed by this court.

Now, the question as to whether or not the Applicants were re-engaged after the order of this court made on 11/12/1997 and whether they were lawfully terminated thereafter following the principle of FILO and paid their terminal benefits is the question of evidence. Also, the question as to whether they are entitled to be paid their full wages and fringe benefits from the date when they were declared redundant to the present date is the question of evidence. Both questions are not before this court now, and as correctly submitted by Mr. Lymo for the 2nd Respondent on the second ground of preliminary objection, this court has no original jurisdiction to determine both

questions because they involve a trade dispute. Therefore, I advise the Applicants to refer both questions to the labour institutions with competent jurisdiction.

On the third ground of preliminary objection, Mr. Lymo for the 2nd Respondent submitted that the application lodged by the Applicants is frivolous, vexatious and a total abuse of the court's process. Personally, I would not like to go to the extent of saying that the application lodged by the Applicants is frivolous or vexatious or an abuse of the court's process. This is because since when the Applicants were unlawfully declared redundant by the 2nd Respondent on 10/7/1992 to the present date which is well over fifteen years or so ago, they have been tirelessly claiming for their full wages, fringe benefits and terminal benefits from UDA and PSRC who are the 2nd Respondent and 1st Necessary Party respectively, but in vain.

As I have already mentioned, whether the Applicants are entitled to full wages, fringe benefits or terminal benefits is a question of evidence to be determined by labour institutions which are competent to deal with such matters involving a trade dispute.

For the reasons I have given in this ruling, I hereby uphold the preliminary objection raised by the 2nd Respondent against the application and I dismiss the application. However, I order that each party should bear its own costs.




A. Shangwa

JUDGE

15/12/2008

Delivered in open court this 15th day of December, 2008 in the presence of Mr. Gasper Swai and 23 others (Applicants and in the presence of Mr. Lymo, Advocate for 2nd

Respondent and Mrs Stella Kachenche for the 1st
Respondents, and 2nd Necessary Party.



A. Shangwa
A. Shangwa

JUDGE

15/12/2008