

**IN THE HIGH COURT OF ZANZIBAR**

**(INDUSTRIAL DIVISION)**

**HELD AT VUGA**

**CIVIL APPEAL No. 03 OF 2022**

**(Appeal from the decision of the decision of the Public Service Commission given on  
23/06/2020)**

**MOHAMMED KHAMIS JUMA.....APPELLANT**

**VERSUS**

**ZANZIBAR ELECTRICITY  
CORPORATION (ZECO).....RESPONDENT**

**JUDGMENT**

10<sup>th</sup> November, 2023

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

This appeal originated from the decision of the Public Service Commission (the Commission). The facts, in a nutshell, were that the appellant, **Moh'd Khamis Juma**, was an employee of the respondent, **Zanzibar Electricity Corporation (ZECO)**, who was terminated after being found guilty of the offence of desertion (away from work for more than five days) on 28/12/2019. The appellant, aggrieved with that decision, intended to appeal before the Commission, but the time was not in his favour. He applied for an extension of time by a letter dated 16/04/2020.

However, the same was unsuccessful, and hence, this appeal was lodged with one ground of grievance:

The Public Service Commission erred in law by failing to accord sufficient weight to the appellant's right to be heard.

Before this Court, the learned Counsel Benny Mlingi represented the appellant, and the respondent appeared via learned counsel Moh'd Idrissa.

Counsel Mlingi submitted the ground of appeal that after being terminated by the Board of the respondent on 28/12/2019, the appellant intended to challenge the decision. Because the time had lapsed, he wrote to the Commission on 16/04/2020 to extend the time to file an appeal. On 23/06/2020, he received a letter from the Commission notifying him that the Commission could not extend the 14 days given due to the lack of power. The appellant argued that the decision was reached without considering his right to be heard. Henceforth, the Commission offended section 12 (6) (a) of the Constitution of Zanzibar, 1984. So the decision is nullity as said in **Agro Industry Ltd v. AG** (1994) TLR 43.

Counsel Mlingi submitted further that there are two things: one power to extend the time and the second power to summon and hear the party. The two are very different. Section 25 (j) of the Public Service Act, 2011 gives power to the Commission to receive appeals. Hence, the

Commission is duty-bound to call and hear the parties. It is immaterial whether the same decision the Commission reached. He cited a case of **General Medical Council v. Sparkman** (1943) AC 627 quoted in **Desouza v. Tanga Town Council** (1961) EA 388.

The Commission did not call the appellant, so it violated the appellant's right to be heard, which is very fundamental. The Court has to guide the right to be heard, as said in **Mbeya Rukwa Auto Parts & Transport Limited v. Jestina Mwakyoma** (2003) TLR 251. Finally, he prayed for the appeal to be allowed and the decision of the Commission to be nullified.

The learned counsel Moh'd conceded the submission and requested that the Court order the Commission to hear the parties.

The appeal was heard in the presence of the two assessors, and they successfully gave their opinion. Both believed that the Commission erred and the decision was null and void, subject to be quashed.

Before passing to the records, I will first and foremost observe the law to see what it says concerning the right to be heard. In **Mbeya - Rukwa Autoparts**, the case cited by counsel Mlingi, the Court of Appeal observed that:

It is a cardinal principle of natural justice that a person should not be condemned unheard but fair procedure demands that both sides should be heard: audi alteram partem..... In this country, natural justice is not merely a principle of the common law; it has become a fundamental constitutional right .....

The Court referred to the Constitution of Tanzania. However, the same is enshrined under the Constitution of Zanzibar as submitted by Counsel Mlingi. Section 12 (6) (a) says that:

12 (6) Kwa madhumuni ya kuhakikisha usawa mbele ya sheria Serikali itaweka taratibu zinazifaa na zitakazozingatia misingi kwamba:

(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahkama au chombo kinginecho kinachohusika basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa na pia haki ya kukata rufaa au ya kupata kitulizo kingenecho cha sheria kutokana na maamuzi ya Mahkama au chombo hicho kingenecho kinachohusika;

On the other hand, the Commission under section 25 (j) is entrusted with a function to receive and act on appeals. It says:

25. The functions of the Commission shall be:-

.....

(j) To receive and act on appeals from relevant disciplinary authorities

.....

I am now observing the records to see what exactly happened. Records show that the appellant, after being terminated on 28/12/2019 by the respondent did not file the appeal in 14 days set by the law. Instead, he requested an extension of time to the Commission on 16/04/2020 explaining his reasons for the delay. There is no record signifying that the appellant was called and heard. I have only noted the letter from the secretary of the Commission dated 23/06/2020 to the appellant with reference number **OR/UT/KUU/16/02/C/VOL.I/2019-2020/48** that informed him that the Commission has no power to extend time to appeal.

Because the Commission is given a function under section 25 (j) (supra) of receiving and acting with appeals from disciplinary authorities, it has the power to decide on the particular appeal; this indicates that the Commission is handling peoples' rights, so I believe it must follow the requirement under section 12 (6) (a) of the Constitution of Zanzibar. In the instant appeal, the Commission did not hear the appellant before reaching the decision; it is immaterial whether the same decision would have been reached.

In the case of **Luckson Rutafubibwa Kiiza (the Administrator of the estate of the late Angelina Bagenyi) v. Erasmus Ruhungu**

**(the Administrator of the estate of the late Gaudensia Rwakailima)**, Civil Appeal No. 375 of 2021, the Court of Appeal blamed the High Court Judge by deciding without hearing the parties and in that respect, the Court said that the learned High Court Judge committed a fatal error which renders the decision void. Therefore, I have no other option save to say that the decision given on 23/06/2020 by the Commission is null; hence, I agree with the opinion of the two respected assessors.

Consequently, I am quashing the said decision and ordering that the application for extension of time be heard and determined by the Commission in accordance with the law.

**DATED at TUNGUU ZANZIBAR this 10<sup>th</sup> November, 2023**



**A. I. S. Suwedi**

**JUDGE - INDUSTRIAL COURT**