

**IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)
TRIBUNAL WINDHOEK, NAMIBIA**

CASE NO. SADC (T) 02/2009

IN THE MATTER BETWEEN

BOOKIE MONICA KETHUSEGILE-JURU

APPLICANT

AND

**THE SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY PARLIAMENTARY FORUM**

RESPONDENT

CORAM

H.E. JUSTICE A.G. PILLAY

President

H.E. JUSTICE I.J. MTAMBO, SC

Member

H.E. JUSTICE DR. R. KAMBOVO

Member

Applicant's Agents:

**Advocate D. Obbes
Assisted by Mrs. S. Nambinga**

Respondent's Agent:

Advocate G. Coleman

Hon. Justice M.C.C. Mkandawire

Registrar

Mr. D. Shivangulula

Court Clerk

RULING

Delivered by H.E. Justice I.J. Mtambo, SC.

The dispute between the parties is about the termination of the contract of employment. The allegation is that the contract was unlawfully and unprocedurally terminated by the Respondent.

There are three preliminary objections to the application. Firstly, that the same matter is pending before the District Labour Court (DLC) for the District of Windhoek, a municipal court of the Republic of Namibia with competent jurisdiction to adjudicate on employment matters. Secondly, that the application to this Tribunal is premature in that the Applicant has failed to lodge an appeal in accordance with her conditions of employment and has thus failed to exhaust her internal remedies. Thirdly, that the Tribunal does not have jurisdiction in that it only has power to interpret the Southern African Development Community Treaty (the SADC Treaty), Protocols, Subsidiary Instruments and acts of the Institutions of the Community and such other matters as may specifically be provided for in any other agreements that Member States may conclude among themselves or within the Community, and which confer jurisdiction on the Tribunal - *vide* Article 14 of the Protocol on Tribunal (the Protocol).

We will first consider the third objection. For easy comprehension of the case, we replicate Article 14 of the Protocol as follows:

“The Tribunal shall have jurisdiction over all disputes and all applications referred to it in accordance with the Treaty and this Protocol which relate to:

- (a) the interpretation and application of the Treaty;
- (b) the interpretation, application or validity of the Protocols, all subsidiary instruments adopted within the framework of the Community, and acts of the institutions of the Community;

(c) all matters specifically provided for in any other agreements that Member States may conclude among themselves or within the community and which confer jurisdiction on the Tribunal.”

Of relevance, for the present purpose, is paragraph (b) above which provides that the Tribunal shall have jurisdiction over all disputes which relate to “. . .acts of the institutions of the Community”. The crucial question then becomes whether the Respondent is an institution of the Community, and, if so, whether it has done an act which has given rise to the dispute now before the Tribunal.

Article 9 (1) of the SADC Treaty stipulates six institutions as having been established. Under paragraph (2) the Community may establish other institutions “. . . as necessary.” On or about September 8, 1997, the Summit, held in Blantyre in the Republic of Malawi, established the Respondent as follows:

“7.8. The Summit approved the establishment of the SADC Parliamentary Forum as an autonomous institution of SADC, in accordance with Article 9 (2) of the Treaty.”

The question whether the Respondent is an institution of the SADC must therefore be answered in the affirmative. There can be no doubt that it is such an institution.

Regarding the question whether the Respondent has done an act which has given rise to the dispute now before us, must also be resolved in the affirmative.

The allegation is that the Respondent has unlawfully and unprocedurally terminated the Applicant’s employment with it, and Article 19 of the Protocol confers on the Tribunal exclusive jurisdiction over all disputes between the

Community and its staff relating to their conditions of employment. The Article provides as follows:

“Subject to the provisions of Article 14 of this Protocol the Tribunal shall have exclusive jurisdiction over all disputes between the Community and its staff relating to their conditions of employment.”

Surely, contrary to what the Applicant’s Agent contended –

- (a) an allegation of unlawful or unprocedural termination of a contract of employment would, in our opinion, have to do with, or relate to, the conditions of employment;
- (b) in the Protocol the term “the Community” which is significantly not defined in the Protocol must, in our view, be given a broad and purposive meaning according to its context and accordingly include all the institutions of the Community such as the Respondent, under Article 19 of the Protocol. The context is, however, different in the SADC Treaty since the Community is expressly defined in Article 2 thereof as the Southern African Development Community or SADC.

We now refer to the first objection which is that the same matter is pending before the DLC for the District of Windhoek which is a court of competent jurisdiction on employment matters, as indicated already. We agree that persons should be prevented from abuse of remedies through concurrent proceedings, a generally recognized rule of international law. But we consider that this is a matter, in terms of the Protocol, over which the Tribunal is better placed to exercise jurisdiction than any other court or tribunal by reason that it has exclusive jurisdiction to do so – *vide* Art. 19 of the Protocol (*supra*).

Finally, with regard to the second objection, namely, that the Applicant has not exhausted internal remedies in that she has not lodged an appeal in accordance with her conditions of employment, and that this application is premature, we take the view that the objection is certainly not about the jurisdiction of the Tribunal. It is a matter which would be decided on the evidence and, therefore, it cannot be raised at this stage of the proceedings.

In the result, we dismiss all the preliminary objections. The Applicant is properly before us and we have jurisdiction to consider her application. It is so ordered.

Delivered in open court this 5th day of February 2010, at Windhoek in the Republic of Namibia.

.....
H.E. Justice Ariranga Govindasamy Pillay
PRESIDENT

.....
H. E. Justice Isaac Jamu Mtambo, SC
MEMBER

.....
H.E. Justice Dr Rigoberto Kambovo
MEMBER