Maina, J.: This is an application by Jumuiya ya Wafanyakazi Tanzania (JUWATA) on H behalf of its ninety-four members for order of certiorari and mandamus, to bring to this court and quash the decision of the Permanent Labour Tribunal and to direct the Permanent Labour Tribunal to hear and determine the trade dispute between JUWATA and the employer, Kiwanda cha Uchapishaji cha Taifa (KIUTA).The facts are briefly as I follows:

The ninety-four employees of KIUTA were declared redundant on 1 April 1985. They A complained to JUWATA. On 25 June 1985 the JUWATA Regional Secretary requested the Secretary General to declare a trade dispute between the Union and the Respondents. The dispute was then referred to the Labour Commissioner, and on 2nd B May 1986 the Minister for Labour referred the dispute to the Permanent Labour Tribunal. In its decision dated 3rd September 1986, the Permanent Labour Tribunal refused to hear the application on the ground that the matter had not been referred to the Conciliation Board under section 40A of the Security of Employment Act, Cap 574. The Tribunal held that it was bound by the decision of the Court of Appeal in Civil C Appeal No. 9 of 1982, Zambia Tanzania Road Services Limited v J.K. Pallangyo.

It was Prof. Shivji's submission on behalf of the applicants, that the Tribunal erred in refusing to hear the dispute because, Prof. Shivji said, the relevant decision in the Pallangyo case was given per incuriam. In the Pallangyo case, the Court of Appeal D held, inter alia, that because the employee had not referred the dispute to the Conciliation Board within fourteen days, as required by the Security o f Employment Act, the ruling of the Tribunal that the employee's dismissal was wrongful, "was invalid E and hence ineffectual in as much as it proceeded upon the Tribunal's wrong assumption of jurisdiction." Professor Shivji submitted that the Court of Appeal's decision on the matter in the Pallangyo case was delivered per incuriam. He said that the decision was given in ignorance or forgetfulness of inconsistent statutory provisions and it was F demonstrably wrong, and therefore not binding on the Tribunal.

He cited the English case of Morelle Ltd v Wakeling [1955] 1 All E.R 708 in which the Court said as follows: G

> As a general rule, the only case in which decisions should be held to have been given per incuriam are those decisions given in ignorance or forgetfulness or some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases H some part of the decision or some step in the reasoning on which it is based is found on that basis to be demonstrably wrong ...

The decision in the Morelle case was followed in Kiriri Cotton Co. v D.R Dewani I [1985] EA 239. Mr Rutagatina and Mrs Ndosi who appeared on behalf of the Respondents submitted, on the other

hand, that the Court of Appeal considered the Pallangyo case properly and the A decision was not, in their opinion, given per incuriam.

The inconsistency which Professor Shivji referred to is in sections 4(1) of the Permanent Labour Tribunal Act and 40A of the Security of Employment Act. He said these two B provisions are inconsistent and the Court of Appeal did not consider that. Section 4(1) of the Permanent Labour Tribunal Act provides as under:

4(1) any trade dispute whether existing or apprehended, if not otherwise determined may be reported to the Labour Commissioner by notice in writing given either by or on behalf of the C employer, or on behalf of the employees by the general secretary of a registered trade union of which the employees are members.

Section 40A of the Securty of Employment Act Cap. 574 as amended by Act No. 1 of D 1975 provides as follows:

4(1) Notwithstanding any other provision of this Act, or of any written law, where an employer terminates the employment of any employee or summarily dismisses any employee, and the E employee is aggrieved by such termination or dismissal, the employee may at any time before the expiration of fourteen days from the date on which such termination or dismissal F takes effect refer such termination or dismissal to the Board....

It is true, in my view, that the Permanent Labour Tribunal Act deals with collective disputes. The Security of Employment Act deals mainly with individual disputes. Section G 4(1) of the Permanent Labour Tribunal Act does not specifically provide the period within which disputes may be referred to the Labour Commissioner, while section 40A of the Security of Employment Act specifically provides that an aggrieved employee H must refer the matter to a Board within fourteen days. But, in my opinion, that aspect of the matter, that is, the period within which a dispute may be referred to the Board was decided by the Court of Appeal in the Pallangyo case. The Court said:

Admittedly there are no provisions under the Permanent Labour Tribunal Act relating to I limitation of actions. But the

view that claims brought under that Act are not subject to limitation seems untenable. If that A view were to be upheld the implication of it, is that where an employee thinks that the termination of his services is wrongful, he may delay lodging his grievances for ten or twenty years or even for an indefinite period. We think that is undesirable and would be objectionable B on policy grounds. Such employee must act promptly in seeking to vindicate his rights.

Their Lordships went on to hold that section 40A of the Security of Employment Act applies. So, in the Pallangyo case the Court of Appeal specifically addressed its mind C on the issue of limitation and decided that the aggrieved employee should have referred the matter to a Conciliation Board within fourteen days.

I do not agree with Professor Shivji that the Court of Appeal in the Pallangyo case was D legislating on limitation. The Court of Appeal made an interpretation of the relevant provisions of the law and came to a conclusion that disputes under the Permanent Labour Tribunal Act must be referred to a Board within the period specified before they can be heard by the Tribunal. It is therefore not correct that the Court of Appeal made E the relevant decision in ignorance or forgetfulness of the relevant statutory provisions.

It was also Professor Shivji's submission that the Court of Appeal ignored section 27 of the Security of Employment Act. It provides, inter alia, that the decision of a Board shall be final and conclusive. In his submission, that provision makes section 4(1) of the F Permanent Labour Tribunal Act defunct. With respect, I do not agree with the learned counsel. Section 27 of the Security of Employment deals with a situation where an employee has been dismissed, which was not the case in the Pallangyo case. Section 27 (1) (a) reads in part as follows: G

The decision of the Minister on a reference to him under Section 26, and subject to any decision on a reference to the Minister therefrom, the decision of a Board on a reference to it under this Part....

(a) Shall be final and conclusive; and H

(b) ....

(c) ....

Section 26 of the Security of Employment Act, as I mentioned earlier, is on summary I dismissal, whereby the aggrieved employee

whose dismissal has been confirmed by a Board may refer the matter to the Minister A after giving fourteen days' notice. In my view, the Court of Appeal did not have to consider section 27 of the Security of Employment Act in the Pallangyo case because that was irrelevant. The Court of Appeal did not therefore ignore section 27 as submitted by Professor Shivji. B

I have already said that I agree that the Permanent Labour Tribunal Act deals with collective disputes while the Security of Employment Act deals with individual disputes arising out of decisions made. However, I do not agree that the Court of Appeal in the Pallangyo case in forgetfulness failed to comply with the notion of collectiveness. In the C Pallangyo case the Court of Appeal considered both the

Acts mentioned above and clearly held that an aggrieved employee even under the Permanent Labour Tribunal Act must refer the dispute to a Conciliation Board within fourteen days as provided in Section 40A of the Security of Employment Act. That is condition precedent. Where an D aggrieved employee does not refer the dispute to the Conciliation Board within the period specified, then the Permanent Labour Tribunal shall not have jurisdiction to hear the dispute. That applies whether it is an individual dispute under the Security of E Employment Act or a collective dispute under the Labour Tribunal Act. That was what the Court of Appeal said in the Pallangyo case. The Tribunal was bound to follow that decision.

The Court of Appeal considered the relevant provisions of the two Acts and came to F that decision. Section 40A of the Security of Employment Act applies in so far as limitation of actions is concerned in disputes under the Permanent Labour Tribunal Act. The relevant decision of the Court of Appeal in the Pallangyo case was not given in ignorance or forgetfulness of inconsistent statutory provisions of the law as submitted. G The Tribunal was therefore bound by that decision and quite properly, in my view, refused to hear the dispute by the applicants.

H Application dismissed.

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