

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: NDIKA, J.A., KENTE, J.A., And MAKUNGU, J.A.)**

**CIVIL APPEAL NO. 15 OF 2019**

**JAWADU JUMA KAMUZORA ..... APPELLANT**

**VERSUS**

**STANDARD CHARTERED BANK (T) LIMITED ..... RESPONDENT**

**(Appeal from the Ruling and Order of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam)**

**(Mushi, J.)**

**dated the 24<sup>th</sup> day of October, 2012**

**in**

**Civil Revision No. 8 of 2011**

**.....**

**JUDGMENT OF THE COURT**

9<sup>th</sup> & 18<sup>th</sup> May, 2022

**NDIKA, J.A.:**

On appeal by the appellant, Jawadu Juma Kamuzora, is the ruling of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam (Mushi, J.) dated 24<sup>th</sup> October, 2012 in Civil Revision No. 8 of 2011. By that ruling, the High Court dismissed the appellant's claim for payment of statutory compensation under section 36 of the now repealed Security of Employment Act, Cap. 387 R.E. 2002 (henceforth "the Act").

The essential facts of the case, as summarized by the High Court, are as follows: the appellant was employed by the respondent, Standard Chartered Bank (T) Limited, as a bank teller for a brief period from 26<sup>th</sup> June, 2000 to 19<sup>th</sup> July, 2001 when his services were terminated for what was referred to as his employer's "loss of confidence" in him that occurred during performance of his duties. The termination was predicated on the provisions of section 40 (2) (h) of the Act allowing termination of employment on the ground of:

*"occurrence of any circumstances which, having regard to the nature of the work or the character of the business, render the employee unsuitable to continue to perform the work he was engaged to do."*

The respondent agreed to pay the appellant one month's salary in lieu of notice and other statutory benefits due to him. Dissatisfied, the appellant vainly referred the dispute to the Conciliation Board of Ilala District (henceforth "the Board"), which confirmed the termination. Still discontented, he made further reference to the Minister for Labour and Youth Development (henceforth "the Minister"). By his decision dated 11<sup>th</sup> October, 2004, the Minister reversed the Board's decision primarily on the

ground that the allegation of fraud levelled against the appellant was not substantiated. Consequently, the Minister ordered, pursuant to section 42 (2) of the Act, that the appellant be reinstated to his employment and paid all his wages.

As it turned out, the respondent refused or failed to reinstate the appellant as ordered. Through its letter dated 17<sup>th</sup> January, 2005, it notified the appellant that it was not in the position to reinstate him and that it had opted to terminate him. Accordingly, it went ahead and paid him statutory compensation in the form of twelve months' wages in accordance with section 36 of the Act. Moreover, it also paid him special compensation equivalent to twelve months' remuneration in terms of section 42 (5) (a) (b) (ii) of the Act. While the gross amount to be paid was TZS. 4,017,396.00, the appellant acknowledged to have received the net sum of TZS. 3,011,586.06 after a tax deduction.

The appellant remained aggrieved. He approached the Resident Magistrate's Court of Dar es Salaam at Kisutu (henceforth "the RM's Court") vide Miscellaneous Civil Application No. 50 of 2006 made under, among others, section 43 of the Act seeking enforcement of the Minister's order. He moved the court for four orders, two of which are: **one**, an order

that he be reinstated to his employment and paid full wages from the date of the purported termination (that is, 19<sup>th</sup> July, 2001); and **two**, an order that he be paid subsistence allowance from the date of the purported termination to the date of satisfaction of the Minister's order or final payment.

It was the appellant's main contention before the RM's Court that since the respondent opted to terminate his services, he was entitled to following:

- (a) TZS. 1,155,000.00 as statutory compensation, it being 50% of the annual wages times the number of years of service from 26<sup>th</sup> June, 2000 to 25<sup>th</sup> January, 2005 when the respondent refused to reinstate him
- (b) TZS. 4,620,000.00 as special compensation, it being equivalent to twelve months' wages.
- (c) TZS. 385,000.00 as payment of one month's wages in lieu of notice.
- (d) TZS. 25,424,500.00 as arrears of wages and other fringe benefits due for the period during which the Minister's order was subsisting (from 20<sup>th</sup> July, 2001 to 25<sup>th</sup> January, 2005.

- (e) TZS. 385,000.00 as monthly wages for the period from 25<sup>th</sup> January, 2005 until full payment of the arrears of wages in Item (d) above.
- (f) TZS. 506,426.60 being the underpaid sum on special compensation owing to wrong tax computation.
- (g) Interest of 10% per month on the total sum claimed with effect from 25<sup>th</sup> January, 2005.

The RM's Court (Hon. S.S. Mwangesi, PRM, as he then was) was unimpressed. It found that the respondent acted within the law by paying the appellant all statutory benefits instead of a reinstatement. In particular, it dismissed the claim for salary arrears and other benefits for the period between 19<sup>th</sup> July, 2001 and 25<sup>th</sup> January, 2005 during which the appellant was absent from work. It based that conclusion upon section 42 (4) (a) of the Act allowing the employer to deduct wages for the period when the employee was absent from work for whatever reason.

Still believing that justice was not served, the appellant unsuccessfully moved the High Court for revision of the decision of RM's Court. Mushi, J. upheld the finding by RM's Court that the respondent acted within the law by opting out of reinstating the appellant and, instead,

paid him all statutory terminal benefits. Also upheld was the conclusion premised upon section 42 (4) (a) of the Act that the appellant was not entitled to any arrears of wages covering the period he was absent from work.

The appellant raised four grounds of appeal against the High Court's ruling as follows:

- 1. That the Honourable Judge erred in law by failing to hold that the appellant was entitled to payment of all his salary arrears as ordered by the Minister for Labour in his unchallenged decision dated 11/10/2004.*
- 2. That the Honourable Judge erred in law by failing to hold that the payments made to the appellant by the respondent as a substitute of reinstatement had miscalculations and omissions that lead (sic) to low payment of the appellant's total accrual rights upon termination.*
- 3. That in alternative to ground 2 above, the Honourable Judge erred in law by failing to hold that the appellant on top of what was paid as statutory compensation was entitled to the payment of:*
  - a. All unpaid salaries from the date of unlawful termination to the date of the Minister's decision.*
  - b. Salary (sic) from the Minister's decision to the date of payment [of] statutory compensation.*

*c. All annual leaves for the whole period the appellant remained unlawfully terminated.*

*d. 10% NSSF monthly contributions for the whole period the appellant remained unlawfully terminated.*

*4. That the Honourable Court erred in law by failing to hold that the amount taxed on the paid statutory compensation was based on wrong calculation, to wit, basing it on monthly income instead of annual income.*

In his written and oral submissions in support of the appeal, the appellant canvassed the first two grounds of appeal but did not deal with the last two grounds. In the premises, we are constrained to take the view that the said unattended grounds were abandoned.

We begin with the first ground. Addressing us on this ground, the appellant, who was self-represented, stated, at the outset, that he did not contest the respondent's refusal to reinstate him to his employment and, instead, opting to pay him statutory compensation according to the law. The controversy, he added, concerned the quantum of the terminal benefits he was paid.

At the forefront, we wish to uphold the concurrent finding by the courts below, based on our decision in **Pius Sangali & Others v. Tanzania Portland Cement Co. Limited**, Civil Appeal No. 100 of 2001

(unreported), that the respondent's acted within the ambit of section 42 (5) of the Act by opting to pay the appellant statutory benefits instead of reinstating him to his employment. The said provision stated that:

*(5) Where a reinstatement or re-engagement has been ordered under this section and the employer refuses or fails to comply with the order –*

*(a) [Not applicable]*

*(b) in the case of an order made by the Minister on further reference to him, within fourteen days of the order being made by the Minister,*

*the employer shall be liable to pay the employee compensation of an amount equal to the aggregate of –*

*(i) the statutory compensation computed in accordance with section 36; and*

*(ii) a sum equal to twelve months' wages at the rate of wages to which the employee was entitled immediately before the termination of his employment, or as the case may be, his dismissal."*



The above provision is straightforward. It imposed on the employer who refuses or fails to comply with the order of reinstatement or engagement, instead, to pay compensation to the employee in the form of an aggregate of, **one**, the statutory compensation computed in accordance with section 36 of the Act; and **two**, a sum equal to twelve months' wages at the rate of wages to which the employee was entitled immediately before the termination of his employment or dismissal – see **Pius Sangali** (*supra*). So far as the statutory compensation referred to above is concerned, section 36 of the Act provided thus:

*"The statutory compensation shall be -  
(a) such sum of money as shall be equal to the severance allowance due and payable to the employee on the termination of his employment;  
or  
(b) the sum of five hundred shillings, whichever is greater:"*

As it was before the courts below, the issue for determination in this Court is whether the compensation paid complied with the law.

It was the appellant's contention that he was entitled to be paid salary arrears as ordered by the Minister, besides the order for reinstatement. He posited that the courts below misconstrued section 42

(5) of the Act such that the intention of the legislature to restrict the powers of employers and enhance protection of employees was defeated. He also urged us to depart from our decision in **Pius Sangali** (*supra*).

For the respondent, Mr. Cornelius K. Kariwa, learned counsel, supported the High Court's decision that the appellant was not entitled to any salary arrears for the period he was absent from work as decided by this Court in **Pius Sangali** (*supra*). He submitted also that there was justification for departure from the said decision.

At first, we wish to state that this Court, being the final appellate court of the sovereign United Republic of Tanzania, is bound by its previous decisions on questions of law. However, recognizing that too rigid adherence to the Doctrine of Precedent may lead to injustice in a particular case and unduly restrict proper development and transformation of the law, the Court is free to depart from a previous decision when it is right to do so – see, for instance, **Abualy Alibhai Azizi v. Bhatia Brothers Ltd.** [2000] T.L.R. 288.

We have carefully read **Pius Sangali** (*supra*). In that case, we held that an employer who, in terms of section 42 (5) of the Act, refuses to comply with a reinstatement order cannot be required to pay the wages

for the period the employee was absent from work. In arriving at that conclusion, we took into account the provisions of section 42 (4) (a) of the Act vesting discretion in the employer who complies with an order of reinstatement of an employee not to pay arrears of wages for the period the employee did not work. For clarity, we extract the said provisions thus:

*(4) Where in the exercise of its powers under this section a Board or the Minister orders—*

*(a) re-instatement of an employee, the employer shall re-instate the employee in his former employment, and such reinstatement shall have effect for the purpose of the payment of wages, entitlement to severance allowance and other retiring benefits, and otherwise in relation to any benefits of the employment, from the date of the termination of the employee's employment or his summary dismissal, as the case may be, **but the employer may deduct from any wages due on or after re-instatement, the wages in respect of the number of days during which the employee remained absent from work during (and including) the day on which the termination or the dismissal took effect and the day on which the reinstatement is ordered by***

*the Board or, in the case of a further reference to the Minister, **the day on which re-instatement is confirmed or ordered by the Minister.***

[Emphasis added].

By dint of logic, we think as we did in **Pius Sangali** (*supra*), it would be irrational to compel an employer who refuses to comply with a reinstatement order to pay the wages for the period the employee was absent from work while giving discretion to an employer who complies with an order of reinstatement not to pay arrears of wages for the period the employee did not work. We, therefore, feel bound to follow **Pius Sangali** (*supra*) and reiterate that the consequences of an employer's refusal or failure to comply with the Minister's order of reinstatement are as stipulated by section 42 (5) of the Act. Such an employer has no obligation to pay the wages for the period the employee was absent from work.

So far as the instant appeal is concerned, we uphold without demur the lower courts' concurrent finding that the appellant was not entitled to the claimed arrears of wages. The first ground of appeal falls by the wayside.

We turn to the second ground of appeal alleging wrong computation of the terminal benefits the appellant was paid. On this ground, the appellant cited the following miscalculations: one, that the deductions made by the respondent did not take into account that as an employee he was legally entitled to payment for weekends and public holidays. Two, that upon termination was entitled to one month's remuneration in lieu of notice, but it was not paid. Three, that the tax deductions were made without his consent and that they were based upon monthly income instead of annual income thus resulting in overtaxation. Four, that he was entitled to subsistence allowance at TZS. 45,000.00 per day from 19<sup>th</sup> July, 2001 up to the date the respondent paid him (covering a period of 41 months and 25 days he remained without any monthly pay while he was deemed to be in continuous employment of the respondent).

Conversely, Mr. Kariwa disagreed with the appellant. He essentially argued that the respondent fully complied with the dictates of section 42 (5) of the Act by paying off the appellant the correct amount of money due as terminal benefits.

We need not travel a long distance in dealing with the ground under consideration. Starting with the claim for payment of one month's

remuneration in lieu of notice, we agree with Mr. Kariwa that, as shown at page 11 of the record of appeal, the appellant was paid the claimed sum in lieu of notice following his termination on 19<sup>th</sup> July, 2001. The respondent bank had no obligation to pay any other amount in lieu of notice in January, 2005 when it opted to pay off the appellant instead of reinstating him to his employment.

The rest of the claims are equally baseless. As stated earlier, what the respondent was required to do having elected to pay off the appellant was complying with section 42 (5) of the Act by paying statutory compensation computed in accordance with section 36 of the Act as well as paying special compensation in the form of twelve months wages. We have gone through the breakdown of the quantum of compensation paid to the appellant, as reflected at page 13 of the record of appeal. It is evident that the appellant received the net sum of TZS. 3,011,586.06 after a tax deduction was made to the gross amount to be paid (TZS. 4,017,396.000). The claim that the gross amount was overtaxed is clearly unsubstantiated. Moreover, the respondent had an obligation under the law to deduct pay-as-you-earn tax from the gross amount without any prior consent from the appellant. Finally, the claim for subsistence

allowance was equally unwarranted as it was not contemplated by the above cited statutory provisions. The second ground of appeal is bereft of merit and we dismiss it.

In conclusion, we find no merit in the appeal, which we hereby dismiss. We make no order on costs as this matter, being a labour dispute, is not amenable to any award of costs.

**DATED at DAR ES SALAAM** this 17<sup>th</sup> day of May, 2022.

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

P. M. KENTE  
**JUSTICE OF APPEAL**

O. O. MAKUNGU  
**JUSTICE OF APPEAL**

The judgment delivered this 18<sup>th</sup> day of May, 2022 in the presence of the Mr. William Changoma representing the appellant and Mr. Michael Kariwa, learned counsel for the respondent, is hereby certified as a true copy of the original



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**