

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 69 OF 1993

(From the decision of the District Court of
Dar es Salaam District at Kisutu in Emp. Civil
Case No. 21 of 1993).

MOHAMED ALIBHAI APPELLANT

versus

ANNA JOHN RESPONDENT

JUDGMENT

MAINA, J.

The appellant, Mohamed Alibhai, employed the respondent, Anna John, as a domestic servant, but the date she commenced employment was in dispute. In 1992 there apparently arose a misunderstanding between them. The appellant left, and later, through the Labour Officer, she claimed her terminal benefits. The appellant said, she was entitled to shs.75,662/05. The appellant paid her shs.20,000/= only. The matter was referred to the district court by the respondent who claimed a total of shs.75,662/05. Judgment was entered in her favour for the amount claimed, less shs.20,000/= which had been paid to her before the suit was filed. The employer was dissatisfied, and he is appealing.

Mr. Jadeja, learned counsel, appeared for the appellant. The respondent did not appear and she was not represented. She had informed the court in writing that she would not be able to appear because she was residing outside the Region. In arguing the appeal, Mr. Jadeja said that the trial Court considered one issue only, and that was on the terms of employment when it was held that the respondent was on monthly terms, and not a casual labourer. There was evidence upon which the trial court reached that decision. Even in the records kept by the appellant headed "petty cash" the respondent signed for monthly salary. The appellant even paid terminal benefits in the sum of shs.20,000/= being payment for one month's salary in lieu of notice, severance

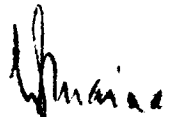
allowance, and transport allowance. That was sufficient evidence that the respondent was employed on monthly terms, and not a casual labourer.

As regards the actual date of commencement of employment, the respondent's allegation that she was employed on 1 January 1990 was disputed by the appellant who said the employment commenced on 12 September 1991. According to him, the respondent worked up to 2 June 1992. She resumed work on 1 March 1992 and continued working until 12 May 1992 when she left the employment, after a misunderstanding. It was alleged that the respondent had committed a theft. The oral evidence given by the Respondent is supported by documentary evidence. The petty cash vouchers speak for themselves.

Like the trial court, I am satisfied that the Respondent was entitled to terminal benefits amounting to shs.75,662.05. The appellant made payment of shs.20,000/= as found by the trial court, leaving a balance of shs.55,662.05 which the Respondent is entitled to. However, the Respondent admitted to the Senior Deputy Registrar on 27 October 1994 that she has been paid the amount she now claims when the matter was before the then Minister for Home Affairs, after the decision of the District Court. In these circumstances, the Respondent is not entitled to the amount claimed, for she has already been paid. If she has any other claims, she can file a fresh suit.

It is ordered that the sum of shs.55,000/= deposited by the Appellant in this Court on 24 November 1993 be refunded to him.

The appeal is dismissed.


W. J. MAINA
JUDGE

Dar es Salaam

1st September, 1995

Mr. Jadeja for the Appellant

Respondent absent.