

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 96 OF 1994

DISTRICT EXECUTIVE DIRECTOR FOR
KILOSA DISTRICT APPELLANT

versus

CLAVERY MAHEMBULA RESPONDENT

J U D G M E N T

KAJERI, PRM (EXT. JUR.):

In this appeal, the appellant the DISTRICT EXECUTIVE DIRECTOR for Kilosa whose official position is commonly known by its acronym of D.E.D. which usually chills its pronouncer's mind to be related to death, has through its solicitor for local government, Mr. Edward K. Kingi presented before this court an appeal against the decision of Kilosa District Court granting judgment in favour of the respondent CLAVERY ZENOBI MAHEMBULA a sum of Shs. 1,690,000/= being claims for subsistence allowances for himself, his wife and four children for 298 days and fare to and from Ulaya to Kilosa plus costs. CLAVERY was represented both in the trial court as well as before this court by Mr. Kaganda, a Senior Labour Officer in Kilosa. Needless to point out here that Mr. Edward K. Kingi was also the one who represented the D.E.D. before the trial Court. Mr. Edward K. Kingi has filed a total of 17 grounds of appeal to which I will return in due course.

The facts from evidence that were adduced before the trial court were as follows. Just before the hearing of this case it was agreed that there was no dispute that the plaintiff (now respondent) was employed by the defendant (now appellant) as a Ward Executive Officer till the 30/4/1993 when he was dismissed. Secondly it was not disputed that it was an obligation of an employer to transport an employee whom he dismissed him (sic) to his home. And thirdly there was no dispute that the plaintiff was coming to Kilosa to follow payment for transport. With those agreed matters there were the following matters held in dispute.

1. Whether the plaintiff's place of domicile is Vidunda village.
2. Whether the plaintiff deserved the payment of shs. 41,160/= and
3. Whether the plaintiff's former employer -- the defendant -- knew the exact place of domicile of the plaintiff.

CLAUERY ZENOBI HATHIBILA was employed as a Ward Secretary since July 1980. His home place was Vidunda village in Kidodi Ward. He at first was stationed in Kilumi Ward before he got transferred to Ulaya Ward in July 1985. In January 1993 in a country - wide change of duty for all ward secretaries as that post of ward secretaries was abolished and in its place but under the District Councils was created a new office of Ward Executive Officers for which the former Ward Secretaries like the respondent were advised to apply for. The respondent is believed to have applied for that new post for he was amongst the lucky ones when he received a letter of appointment Ref. No.D.30/37/99 dated the 8/2/1993 - Exhibit P.1 Unfortunately the respondent did not last long in that employment for on the 28/4/1993 he was served with a dismissal letter from that post and that letter Ref.No.KDC/FF 2429/20 of the 28/4/1993 is marked Exhibit P.2. It was not until the Regional Development Director, MOROGORO in a letter Ref. No.S.20/40 dated 17th June 1993 that directed the appellant to pay all ward executive secretaries that had been dismissed from service, that the respondent was on the 11th August 1993 paid Shs.17030/= being payment in lieu of notice. The letter dated 17/6/1993 is marked Exhibit PD6 while the payment voucher dated 11/8/1993 is marked Exhibit PD3. In another payment voucher marked Exhibit PD4 on the 16th November 1993 the respondent was paid shs.6,160/= being expenses for paying people who would be hired to carry his luggage from Ulaya to Vidunda village in Kidodi ward. Besides this the respondent was promised transport with which the appellant would transport the respondent to Vidunda village. The respondent claimed to have followed up this transport by travelling to and from Ulaya to Kilosa during the months of November, December 1993 and January, February 1994. It was not until the 22nd February 1994 that the appellant confessing to the respondent to have failed to secure transport with which to transport the respondent from Ulaya to Vidunda that they paid him shs.35,000/= vide payment voucher Exhibit PD5. The respondent

therefore argued that because his place of domicile is Vidunda and he was made by the appellant to wait for transport between his dismissal from employment to the 22/2/1994 which brings a total of 298 days he is therefore entitled to the claims for subsistence allowance for himself, his wife and children as well as his transport expenses to and from Ulaya to Kilosa in sum total of shs.1,690,000/=. He elaborated that for the 298 days his wife and himself were claiming for a per diem of shs.1,400/= for each while for his 4 children he was claiming for shs.700/= for each. In respect of transport he was claiming for shs. 22,000/= being fare for 22 trips at a rate of shs. 500/=.

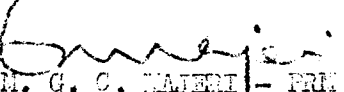
The appellant on his part called 4 witnesses who included an officer supervisor with Kilosa District Council DW1 two village executive officers DW2 and DW3 and a Ulaya ward Executive officer DW4. The DW1 agreed with most of the evidence given above by the respondent. He also said that records have it that the respondent lives at Vidunda village. As from the rest of the witnesses DW2, DW3 and DW4 they said that the respondent had applied for and been given two pieces of shamba, one of 50 acres at Ulaya Kibacni and the other of three acres at Ulaya Mbuyuni. They concluded their evidence by saying that by the respondent being in possession of those pieces of land his place of domicile was Vidunda village.

As I indicated hereinabove the issue were resolved in favour of the respondent. The place of domicile of the respondent was settled to be at Vidunda. And the trial court ruled out that the respondent was entitled to the claims for subsistence allowance and refund of transport cost to and from Vidunda to Kilosa.

Were this appeal only centred on the issue of domicile of the respondent alone, I would not have bothered with the many words in which it was wastefully clothed. I am satisfied as was the trial court that the place of domicile which could not have been changed by the mere acquisition of shambas remained to be at Vidunda. Now with that resolved the only question that I feel is in issue is whether the respondent was entitled to the claims for subsistence and transport. I would answer that issue in the negative. It is very well known that subsistence allowance is a right which is

jealously enjoyed by an employee but not by a person who has already been dismissed from employment. Maybe the situation would have been different if the dismissed employee had successfully challenged the dismissal but we have no authority for that. I could not find any case law or any law on which I could support the finding of the trial court that the respondent could after he had been dismissed from employment be entitled to subsistence allowance for himself and his family members. It also follows that transport cost cannot by the same reasoning be ordered refunded to a ex-employee who has been dismissed from employment. In respect of this limb even if he were entitled to this refund of transport costs, the respondent failed to produce any receipts to prove that he had for twenty-two trips travelled to and from Ulaya to Kilosa. For these reasons the judgment of the trial court cannot be upheld and the appeal is accordingly allowed.

Appeal allowed with costs.


H. G. C. KAJERI - PRM
(MR. JUR.)

5/1/1995

AT DAR ES SALAAM.

DATE: 5TH JANUARY, 1995

5/1/96:


Coram: Kajeri, PRM MR. JUR.

Mr. E.K. Kingi: For the Appellant

Mr. L.P. Kaganda: For the Respondent

CC: Muya.

Court: Judgment of the court read over to parties/advocates.


H. G. C. KAJERI - PRM
(MR. JUR.)

5/1/1996