

IN THE HIGH COURT OF TANZANIA

AT DARES SALAAM

HC CIVIL APPEAL NO. 109 OF 2002

PRIMUS MLAY KIZAAPPLICANT

VERSUS

DIRECTOR TANZANIA ROAD HAULAGE

& ANOTHER.....RESPONDENTS

RULING

A. Shangwa,J.

This is an application for leave to appeal to the Court of Appeal of Tanzania against the decision of this Court delivered by Ihema, J (Rtd) on 11/12/2003 in which he dismissed the applicant's appeal against the decision of the Court of the Resident Magistrate at Kisutu delivered by Kama, PRM in employment Cause No.211 of 2001.

By his letter dated 13/6/2005 with Ref. HAM/GEN/05/040, learned counsel for the respondents Mr. Mngoya informed this Court that he does not intend to contest this application. He left it upon the Court to decide.

I have gone through the judgment of my learned brother Ihema, J (Rtd) and found that he was of the opinion that the grounds of appeal which were raised by the applicant against the decision of the Court of the Resident Magistrate at Kisumu have no merit as the learned Principal Resident Magistrate reached his conclusion on the evidence on record.

The grounds of appeal which Ihema, J considered to have no merit are as follows:

- 1. An error in law and in fact by the Honourable Magistrate for failure to consider the fact that the termination of his employment by the second respondent was illegal while he was an employee of the first respondent*
- 2. Misdirection on the part of the Honourable trial Magistrate for failure to understand that the appellant was to be paid his terminal benefits from 1992 to 1994 by the first respondent.*

3. *Error in law and in fact by the Honourable*

Magistrate for failure to consider that the appellants termination of employment by second respondent is a breach of the terms of contract and outright abuse of the law.

After holding that the appeal has no merit, Ihema,J (Rtd) proceeded to dismiss it. In dismissing it, he held as follows and I quote.

" Granted that the appellant was initially employed by the first respondent but consented to the transfer to the second respondent in 1994 and dutifully worked under the control, direction and was paid his salary and other benefits until his employment came to an end. The testimony of the two defence witness D. W. 1 and D. W.2 vitiates the appellant's claims".

In this matter, I think that there are two points of law which are worthy of consideration by the Court of Appeal of

Tanzania. These are as follows :

1. *Whether the applicant was an employee of the 1st respondent and if so whether he was supposed to be paid terminal benefits by the 1st respondent from 1992 to 1994.*
2. *Whether the applicants termination from employment by the 2nd respondent amounted to a breach of contract and if so whether he is entitled to damages or compensation and or any other relief.*

Upon the above mentioned points of law, I hereby grant leave to the applicant to appeal to the Court of Appeal of Tanzania against this Court's decision delivered by Ihema,J (Rtd) on 11/12/2003 in Civil Appeal No 109 of 2002.

A.Shangwa, J
24/5/2006.

Delivered in open Court this 24th day of May, 2006.

A. Shangwa,

JUDGE

24/5/2006.