

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPEAL NO. 136 OF 2002.

CHUO CHA UONGOZI WA MAENDELEO

(IDM)APPLICANT

VERSUS

JONATHAN N.K. KAINI.....RESPONDENT

Date of last Order: 16/07/2007

Date of Judgment: 09/10/2007

JUDGMENT.

MLAY, J.

This is an appeal from the judgment and decree of the District Court of Morogoro, (V. Saduka RM) in Labour Civil Case No 2/2002. The proceedings were instituted by way of a report of the Labour Officer to the Magistrate, pursuant to section 132 of the Employment Ordinance, Cap 366, as the result of a complaint made to the Labour Officer by the respondent under section 130 of the Employment Ordinance.

According to the "**PLAINT**", the respondent whose employment with the Appellant was terminated by a three months notice, was claiming from the appellant, employment benefits amounting to shs. 10,257,196 the particulars of which were set out in Annexure "A" to the plaint and also shs.364,770, as monthly allowances from 1/8/97, and costs of the "**suit**".

At the hearing of the suit, the trial Resident Magistrate framed the following issues:

- i) Whether the Plaintiff terminal benefits (sic) were properly computed
- ii) Whether the Plaintiff is entitled to substance (sic) allowance the period his terminal benefits remained unpaid .

On the first issue the trial Resident Magistrate found:

"The employer was supposed to send to PPF office in time. He failed to do so. The Plaintiff was terminated on 31/7/1997. He was paid on 17th February, 1998. This is answered in favour of the Plaintiff."

The Appellant/ Defendant being aggrieved, has appealed to this court, on that following grounds:

1. The trial Magistrate erred in fact in holding that the Respondents benefits were not properly computed and at the same time holding that the Respondent was entitled to have his benefits computed at the old rate, and that he was properly paid.
2. Having held that the Respondent was properly paid of his repatriation expenses such as transport of himself and his family to his place of domicile by using reasonable means in February 1998 and having found that all his other claims were properly paid at the old rates, the trial court erred in fact and in law in holding that the Respondent was forced to wait to collect his benefits up to 5th November 1999. The trial court should have found that the Respondent entitled to was subsistence allowance only up to February 1998.
3. The trial court failed to take into account and appreciate the intent

and purpose of the payment of Shs 1,114 446/= on 5/11 /99 paid. and acknowledged by the Respondent compensation for the delay in settlement of his claims for 6 months and 17 days (i.e from 31st July 1997 to 17/2/98 the period that the Respondent could lawfully claim to have been waiting for his dues. The trial court should therefore have held that the Respondent was estopped from making any further claims against the Appellant.

4. The trial court did not properly direct its mind on the law relating to mitigation of damages, and wrongly held that even after receiving his properly computed repatriation expenses, the respondent could still cross his legs and wait for his imagined properly computed benefits to come.

5. The trial court erred in law in condemning the Appellant to costs when the Respondent succeeded only in part of his claims.

The appeal was heard by way of written submissions which were duly filed by the Professional Centre Advocate, and Ngalo and Co. Advocates, counsels for the Appellant and Respondent, respectively. I propose to dispose of each ground of appeal as argued.

On the first ground of appeal the Appellant counsel submitted that it ***“eminates from the contradictions in the trial courts findings regarding the issue whether the Respondents terminal benefits were properly computed which was also the ground in issue at the trial”***. The counsel contended that ***“from the Respondents own evidence at trial his claim was that his benefits were to be computed according to the Government Circular dated 3/8/98 in which his salary would have been Tsh.297,770/= (exhibit p.6)”***. He submitted that ***“in answering this issue, the trial court completely overlooked the issue as framed and wondered into delay in the PPF'S of dwelling on the order of claims”***. He further argued that terminal benefits did not include PPF contributions, which are payable by the Fund and not by the employer. The Appellants counsel contended that during trial it was proved that all contributions payable by the

appellant were paid in good time and the delay in paying the Respondent his PPF entitlements was not attributable to the Appellant. Finally, the Appellants counsel argued that a finding that the Respondent was paid on 17/2/98 was not sufficiently disposed of. If I understand the learned counsel's argument correctly, his argument is that the trial court finding that the respondents transport allowance, luggage allowance and salary allowance was already paid per promised rate and that the transportation of the Respondent by bus was reasonable transport, was irreconcilable with the court's finding that the Respondent was not paid on 17/2/98.