

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**HC. CIV. REVISION NO. 07 OF 2007**

*(Arising from the Ruling of District Court of Mwanza at Mwanza Emp.  
Cause No. 33/1998)*

**MSAKU CHIBUGA.....APPELLANT**

**Versus**

**CARE TANZANIA..... RESPONDENT**

***24.11.2009 – 26.11.2009***

**JUDGMENT**

**G. K. RWAKIBARILA, J**

Appellant **Msaku Chibuga** was a complainant and a successful party in Mwanza District Court Employment Cause No. 33 of 1998 where he was not awarded costs. In Mwanza High Court Registry Civil Appeal No. 4 of 1999 which was preferred from that employment cause he was also a successful party and was awarded costs for only that appeal. Then he initiated a Reference No. 01 of 2006 at this Mwanza High Court registry, praying for intervention of this court for award of costs for that Miscellaneous cause where Madame Rweyemamu, J dismissed it with costs. In this High Court Registry Revision No. 07 of 2007, this appellant's main ground therefore pivot on paragraph 4 of his affidavit where he averred that:

*"The Employment Cause was heard and decided in my favour on 10.09.2001 by Hon. R. L. David, Resident Magistrate who however refrained from awarding costs to me for reason that costs had been waived under Section 143 of **The Employment Ordinance, Cap. 366.**"*

In fact appellant swore an affidavit in support of this revision on 12.12.2007, when **The Employment Ordinance, Cap. 366** was no longer in force. The relevant legislation on matters akin to this revision which appellant should have referred to is **The Employment Act, Cap. 366** which was in force up to 05.01.2006 when it was replaced by **The Employment and Labour Relations Act, No. 6 of 2009**.

Under **The Employment Act, Cap. 366** the proper provision which appellant should have cited to justify his claim for costs is Section 153 (instead of Section 143) which provided that:

*"No fees or costs shall be payable in respect of any proceedings under the provisions of this Act before any court or magistrate."*

The plain interpretation of this Section 153 of the repealed law connotes that the trial Resident Magistrate in that Miscellaneous Cause was correct, when he did not award costs to appellant who was a successful party. The next thing to look into is the proviso to that section 155 of the repealed law which used to state that:

*"Provided that:-*

- (a) If a conviction shall be had or judgment given against any employer the court **may in its discretion** order the general costs of the proceedings to be paid by the employer.*
- (b) If the proceedings shall appear to the court to be frivolous or vexatious the court **may in its discretion** order the party initiating such proceedings to refrain the general costs and in default of payment the said party shall be liable to imprisonment for such period not exceeding one month as may be ordered by the court.*

*Provided further that such general costs may be imposed upon the occasion of the trial and without any action or proceedings ....."*

It is a considered view of this court that portions in sub-parts (a) and (b) of the said proviso to Section 153 of the repealed law suffice to illustrate how it was discretionary for the trial Resident Magistrate in that Miscellaneous Cause to award costs. That magistrate was therefore entitled to decide in the way he did after making an assessment of evidence which was adduced in that case. This appeal therefore has no merit and it is hereby dismissed.

In the case of costs for this appeal, this court has taken into account how respondent a non-governmental organ namely Tanzania Care was not attending in court throughout, when this appeal was pending. A respondent with such conduct doesn't deserve an award

for costs. It follows that each party in this appeal shall shoulder his, her or its own costs.



**G. K. Rwakibarila**  
**JUDGE**  
**25.11.2009**

**Date:** 26.11.2009

**Coram:** G. K. Rwakibarila, J

**Applicant:** Present in person

**Respondent:** Absent

**B/C:** Leonard

**Court:**

Judgment delivered at Mwanza this 26<sup>th</sup> day of November, 2009 and right to appeal in time has been explained thoroughly.



**G. K. Rwakibarila**  
**JUDGE**

**At Mwanza**  
**26.11.2009**