

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

**LABOUR REVISION NO. 86 OF 2019**  
(Arising from CMA/MZA/ILEM/63-64 OF 2019)

**HAMZA SAID ..... APPLICANT**

**VERSUS**

**MARINE SERVICE COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

25.2.2020 & 16.4.2020

**U. E. Madeha, J**

The application is made under sections 91 (1) (b) (b) (c) and 94 (1), (b) (i) of the Employment and the Labour Relation Act, read together with rules 3 (a) (b) (c), (d), (e) and 24 (1) (2) (a), (b), (c) (d) (e) of the Labour Courts Rules, 2007 (G.N No. 106 of 2017). The applicant calls upon this court to examine and revise the proceedings and arbitration award made by the Commission for Mediation and Arbitration (herein CMA) at Mwanza in dispute No. CMA/MZ/ILEM/63-54/2019.

Briefly, the background of this dispute is that the applicant, Hamza Said, was the employee of the respondent and was employed at Marine Department. When the applicant reached retirement age, he was offered money for a luggage transfer. He claimed for subsistence allowance and

retirement benefits which he was not paid by his employer. The applicant claimed to be paid the total amount of Tsh 77,280, 000/= as the subsistence allowance and Tsh 11,666,760/= as a retirement benefit from 1/4/1978 to 31/12/1987. In short, the applicant is claiming a subsistence allowance of Tsh 77,280,000/= for the days he was waiting the payment of 11,666,760 as retirement benefit as he was not paid the transport allowance. While his employer (the respondent) gave him money to transport his luggage, the money which he was not paid was transportation allowance for shipping his family from Mwanza to Tarime.

This case was heard on one side as per Rule 28 (1) (b) of the Labour Institution Mediation and Arbitration Guideline, 2007 (GN No. 67 of 2007) as a result of failure to attend the arbitration.

*"When a part fails to attend an arbitration hearing an arbitrator may do the following:-*

*Where a part against whom relief is sought fail to attend, the arbitrator may proceed in the absence of party or postpone hearing. One side has got chance to present the opening statement."*

Issues for determination was as follows: -

1. Whether the employer gave the applicant transport allowance for himself and his family after his retirement.
2. If the applicant is entitled to a subsistence payment.
3. To what relief are the parties entitled to.

The CMA ordered him to be paid substance allowance while he was waiting for himself and his family to be transported, as follow:- 94 days X40,000= 3,760,000/= 5 children (94 days X 5X 20,000= Tsh 9,400,000/= total payment Tsh 13,160,000/= on 18/9/2019. The applicant was not satisfied with the award given to him by CMA and brought this revision.

At the time of the submission the applicant wanted to be given Tsh 77,280,000/= since he was not given a fare to send him and his family to be transported from Mwanza to Tarime. The applicant total claim was an amount of Tsh 77,280,000/= as subsistence allowance and Tsh 11,666,760 as the retirement benefits.

In evidence in the record shows as follow. The applicant was given a luggage allowance after 94 days, the employer did not provide money for transport, after 94 days passed the applicant was awarded luggage allowance by his

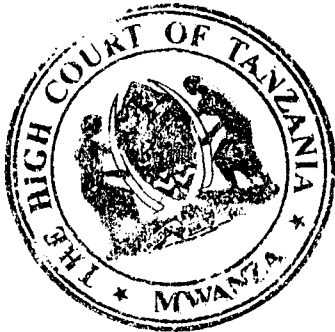
employer. The CMA decided to pay the applicant the subsistence allowance for the 94 days, while he was waiting for the repatriation allowance. After being given a luggage allowance, he stayed in Mwanza with his family for 380 days while waiting for the employer to transport them to Tarime in Musoma Region.

I am of the view that the appellant was in the circumstances bound to go to Tarime and continue to claim the transportation allowance while he was already at home. The CMA gave the award of Tshs 11,666,760 payments of retirement benefit. I think the CMA was in good position to give the award of the subsistence allowance as the applicant was ordered to be paid Tshs 11,666,760/= as a retirement benefit from 1/4/1978 to 31/12/1987. The applicant claims the subsistence allowance and retirement benefits in which he was not paid by his employer, which is Tsh 77,280, 000/=. I think that CMA correctly ordered payment of subsistence allowance for 94 days', which was the period the applicant was waiting for the payment of the transportation allowance and was given the luggage allowance. I am of the above view mindful of the fact that Mwanza to Tarime Musoma is not far. As a reasonable person, the applicant was expected to have made a decision to go to Tarime, as opposing to waiting to claim a total of Tshs 77,280,000/=.

According to my observation the appellant wouldn't stay in Mwanza for a long time after his retirement to wait for the transportation allowance for him and his family. Since he was already given the luggage transportation allowance, he should have filed his case early so as not to accumulate the debts he is claiming at the moment. He had the duty to which he failed to report the matter at the earliest stage possible and caused the maximization of unpaid debts.

Therefore, I uphold that the appellant is to be paid a subsistence allowance for 94 days as ordered by the CMA. I hereby uphold the decision of CMA award. Consequently, the application stands dismissed without costs. Order accordingly.

**DATED** and **DELIVERED** at **MWANZA** this 16<sup>th</sup> day of **April** 2020.



**U. E. MADEHA**

**Judge**

**16/4/2020**