

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT TANGA**

**LABOUR REVISION NO. 28 OF 2020**

*(ORIGINAL CMA/TAN/10/2020/16)*

**ROBERT R RAPHAEL..... APPLICANT**

**VERSUS**

**ASA MICROFINANCE (TANZANIA) LIMITED.....RESPONDENT**

29<sup>TH</sup> APRIL 2022

L. MANSOOR, J

**JUDGEMENT**

The Applicant in this application for Revision, Robert R Raphael filed a Notice of Application for Revision under Section 91 (1) (a) and (b) and Section 94 (1) (b) of the Employment and Labor Relations Act, 2004, Rule 24 (1), Rule 24 (2) (a-f), Rule 24 (3), and 28 of the Labor Court Rules, 2007 (GN No. 106 of 2007). The Applicant prays for Revision of the proceedings and Award of the Commission for Mediation and Arbitration "CMA" No. CMA/tang/19/2020/16.



The Applicant also filed the Chamber summons, which is supported by the affidavit of the Applicant; the reason for Revision is that there were irregularities in the proceedings and Award of the CMA, and that the matter before the CMA was filed within the prescribed time.

The application was opposed by the respondents, they filed the Notice of opposition and the affidavit, in which they pray for dismissal of the application as it is meritless. The application was argued by written submissions. While the Applicant enjoyed the services of Advocate Yona Lucas, the respondent was represented by Zephaniah Paul, the Representative of the respondent

Briefly, the facts of the case are that the Applicant herein was employed by the respondent as Loan Officer under one year fixed-term employment contract renewable upon expiration with effect from 13<sup>th</sup> December 2016 and his workstation was at Kange Area in Tanga. On 08<sup>th</sup> September 2017, the Applicant was promoted to a Branch Manager, stationed at Usagara Branch, in Tanga. On 5<sup>th</sup> November 2018, the

Applicant applied for 16 days leave, but the leave was not approved by his immediate supervisor, and he was advised to apply for the 16 days unpaid leave to the CEO. The Applicant decided to leave the office before his leave application was approved and never returned to work. Then, on 12<sup>th</sup> November 2018, the management of the respondent wrote to the applicant a letter and sent the letter through the applicant's email address requiring the applicant to appear for a disciplinary hearing, the applicant never acknowledged receipt of the letter, and so he never attended the disciplinary hearing. The respondent decided to proceed with the hearing in the absence of the applicant on 19<sup>th</sup> November 2018, and on 23<sup>rd</sup> November 2018, the respondent sent a letter to the Applicant via his email confirming that the Applicant's employment has been terminated. This letter of termination was re-sent to the Applicant, again by his email, on 21<sup>st</sup> March 2019 upon the Applicant's request saying that he had deleted the previous email sent to him on 23<sup>rd</sup> November 2018. On 19<sup>th</sup> November 2019, the applicant filed at once two Labor Complaints at the CMA, the first one was Labor Dispute No.

CMA/TANG/10/2020/16, this was for breach of contract, which is the subject of this Revision. The second one was Labor Dispute No. CMA/TAN/09/2020 complaining of unfairness of termination of employment. In both disputes the applicant's dispute were dismissed for he delayed filing the complaints contrary to Rule 10 (1) and (2) of the Labor Institutions (Mediation and Arbitration), GN. No. 64 of 2007.

In the complaints which is subject of this Revision, the Applicant claims for repatriation costs and subsistence allowances. The subsistence allowances he claims are from November and December 2019 till the date of payments. The Arbitrator refused to entertain the claims as she said the claims were filed at CMA way beyond the 60 days from the cause of action accrued. The Applicant's application for Revision is only on one point that the Arbitrator erred to rule that the claim before the CMA was time barred. The Applicant claims that since his application before the CMA were for the subsistence allowances from November and December 2019 and for January 2020 upwards, then the claims were within

time. The applicant claims that the Arbitrator was wrong to apply Rule 10 (1) and (2) of the Labor Institutions (Mediation and Arbitration) Rules, 2007 G.N. No. 64 of 2007 as the claims for repatriation costs and subsistence allowance can be claimed at any time from the date the employer failed to repatriate the employee to his home of recruitment. The Applicant referred to section 43 (1) (a), (b) and (2) of ELRA, Cap 366 R:E 2019, where it is clearly stated that the employer is duty bound to transport the employee and his personal effects to the place of recruitment, and also to pay the allowances for transportation to the place of recruitment, and daily subsistence expenses between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment. The Counsel for the Applicant referred to the cases of **Mantra Tanzania Limited vs Joaquim Bonaventura, HC, Labor Division, consolidated Revisions No. 137 and 151 of 2017**, and the case of **Paul Yusutus Nchia vs National Executive Secretary, Chama cha Mapinduzi and another, Civil Appeal No. 85 of 2015**, Court of Appeal of Tanzania, where

it was observed that claims for repatriation and subsistence allowance arise only on termination or end of employment contract or retirement.

The applicant argues that the claims of repatriation and subsistence allowance accrue daily, and so the cause of action is counted to accrue on each day until the payments are affected. That every day develops a separate claim, and every month develops a separate claim and the 60 days limit under Rule 10 (2) of G N No. 64 of 2007 applies to every month of claim, and since the Applicant claims for subsistence allowances for November and December 2019, then he is on time, and has not delayed filing the dispute at the CMA.

The respondent maintains that the cause of action accrued on the date of termination and the applicant was terminated on 21<sup>st</sup> March 2019, hence counting from 29<sup>th</sup> March 2019 to 29<sup>th</sup> January 2020, when the Applicant filed the Dispute at CMA, more than 10 months had passed, and so he filed the Dispute outside the 60 days prescribed under the law.

I have read and carefully considered all the detailed submissions made by the parties in deciding this matter.

Section 43 (1) (a) (b) and (c) puts an obligation to the employer to pay transport allowances to employees to place of recruitment, this section provides:

Transport to place of recruitment

Section 43 (1) (a) transport of the employee and his personal effects to the place of recruitment,

(b) Pay for the transportation of the employee to the place of recruitment, or

(c) Pay the employee an allowance for transportation to the place of recruitment in accordance with subsection (2) and daily subsistence expenses during the period, if any, between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment.

(2) An allowance prescribed under subsection (1) (c) shall be equal to at least a bus fare to the bus station nearest to the place of recruitment.

(3) For the purposes of this section, "recruit" means the solicitation of any employee for employment by the employer or the employer's agent.

Payment of transport allowance for the employees' family and personal effects is part of the Terminal Benefits and these are final entitlements of an employee upon termination of an employment contract. Section 44 of the Employment and Labor Relations Act, provides the following benefits to an employee upon termination of the employment contract.

- Any remuneration for work done before termination
- Any annual leave pays due to an employee for leave that employee has not taken
- Any annual leave pay accrued during any incomplete leave cycle



- Any notice pays due
- Any severance pays due if an employee qualifies for this
- Any transport allowance that may be due
- Certificate of Service

It is obvious that the Applicant was terminated at Tanga, a place other than the place he was recruited thus he is entitled to transportation to the place of recruitment for himself and his families and personal effects.

Section 43 of the Act gives the employers not the employees some options. The employer will choose whether to:

- Pay transport allowance or transport the employee and personal effects or
- Pay for the transportation of the employee to the place of recruitment or
- Pay the employee an allowance for transportation to the place of recruitment and daily subsistence between the

date of termination of the contract and the date of transporting the employee and her/his family to the place of recruitment.

It is the employer, who was given an option, and in this case the employee was not reachable or even traceable after he left the office with the pretext of going on leave and as per the evidence the payment could not be made to the employee on the date of the termination of the employees since he absconded. The employers are mandatorily required to pay the employees the daily subsistence between the date of termination and the date of transporting the employees and their families to the place of recruitment. It is evident that the payments for transport allowances were never paid, and the employee is entitled under the laws to be paid daily subsistence allowance on the days he keeps waiting to be repatriated to his place of recruitment, but as said earlier herein, the applicant could not be found, he did not respond to the employer's email, and he even failed to attend the

disciplinary hearing set for hearing by the notice sent to him. The applicant did not demand or request to be repatriated to his place of recruitment and filed the claim straight to CMA. The applicant complains of the irregularities in the Award issued by the CMA.

Under Section 91 (1) of the ELRA, a party to the Arbitration Award who alleges defects in any arbitration proceedings by the CMA may apply to the Labor Court for a decision to set aside the arbitration award. The order of dismissing the Dispute for reasons of it being barred by limitations is an arbitration award delivered in an arbitration proceeding by the CMA, and the remedy under Section 91 (1) of the Act is to apply for Revision to set aside the Award. The Award or decision for dismissal of the dispute for failure to observe Rule 10 (2) of the GN No. 64 of 2007 falls under the complains in section 88 (1) (b) (ii), of the Act as it involves the contravention of the Act and other Labor Laws. Indeed, the applicant violated not only section 86 (1) and (2) of the Employment and Labuor a Relations Act and Rule 10 (2) of

the Labor Institutions (Mediation and Arbitration ) Rules, GN No. No. 64 of 2007, in that he did not file at the CMA the dispute within 60 days from the date the dispute arose, but again, he violated Rule 6 of GN No. 64 of 2007 in that he did not apply for condonation and was never granted condonation to file the dispute out of the prescribed time, As held in the case of **Ally Mzee Moto vs TANESCO, Labor Revision No. 255 of 2008,** the CMA was seized of the matter when it arbitrated the dispute filed out of time without condonation.. The main claim could not be entertained outside the prescribed period, without the condonation.

The contention of the applicant that the cause of action started to accrue on daily or monthly basis since the date of termination did not make sense at all. The issue is whether he is entitled to repatriation costs and subsistence allowance, and at what time he was entitled to be repatriated, and this cannot be determined unless the issue of termination of the employment is determined. He will only be entitled to subsistence allowance owing to his being the

employee and that his employment was fairly or unfairly terminated.

Evidently, the applicant did not dispute the termination from the employment in these proceedings. The learned counsel appearing for the Applicant contended that going by section 43 of EALR that deals with the repatriation and subsistence allowances payable to an employee when terminated, clearly, these benefits have been accrued from the date of termination.


True that the applicant is entitled to subsistence allowance and repatriation costs and that the very purpose of granting subsistence allowance is to enable an employee to subsistence while awaiting to be repatriated to his place of recruitment. It is thus evident that the question of whether the applicant is entitled to subsistence allowances, his entitlement or otherwise to receive subsistence allowance under the labor laws could only be determined if the claim was presented to CMA during the period prescribed under Rule 10 of LIA to have the appropriate proceedings in the

Labor Court. The claim for subsistence allowance is unsustainable for it is time barred.

Consequently, the Application for Revising of the CMA Award passed by the Arbitrator on 17th July 2020, in Labor Dispute No. CMA/TAN/10/2020/16 is hereby dismissed for want of merits

**DATED AND DELIVERED AT TANGA THIS 29<sup>TH</sup> DAY OF APRIL  
2022**



  
**LATIFA MANSOOR**  
**JUDGE**  
**29<sup>TH</sup> APRIL 2022**