

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

**REVISION NO. 700 OF 2019**

**BETWEEN**

**ROSEMARY GEORGE MWAIKAMBO..... APPLICANT**

**AND**

**BOLLORE AFRICA LOGISTICS..... RESPONDENT**

**JUDGMENT**

Date of Last Order: 21/09/2020

Date of Judgment: 13/11/2020

**A. E. MWIPOPO, J.**

**ROSEMARY GEORGE MWAIKAMBO**, the applicant herein, has preferred this Revision application against the decision of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/ILA/R.136/15/674 delivered on 2<sup>nd</sup> August, 2019 by Hon. Mbena, Arbitrator. The applicant is praying for the Court to make the following orders:-

1. That this Court be pleased to call for the records of proceedings and the Award from the Commission for Mediation and Arbitration at Dar Es Salaam in Labour Complaint No.

CMA/DSM/ILA/R.136/15/674, (Rosemary George Mwaikambo vs. Bollore Africa Logistics) delivered on 2<sup>nd</sup> August, 2019 by Hon. Mbeni, Arbitrator, revise and set aside the same;

2. That, this Court be pleased to rule that the Applicant is entitled to payment of the subsistence allowance from the date of termination of employment i.e. 29<sup>th</sup> April, 2015 to the date of payment of transportation allowance.
3. That the Court be pleased to make any other order as may deem fit.

The Applicant was employed by the Respondent namely Bollore Africa Logistics Tanzania Ltd on 2<sup>nd</sup> July, 1985 as a data entry clerk. She was terminated from employment for misconduct on 29<sup>th</sup> April, 2015. Aggrieved by Respondent decision, she referred the dispute to the CMA who decided in her favour and ordered the Respondent to pay 12 months' salary compensation and severance pay to the Applicant. The Commission rejected Applicant's request to be paid repatriation allowance and handshake payment. The Applicant was not satisfied with the Commission decision and filed revision application No. 248 of 2016 seeking repatriation right. The Court delivered its judgment on 4<sup>th</sup> July, 2018 in her favour and ordered for the Applicant to be paid repatriation cost.

On 31<sup>st</sup> October, 2018 the Applicant filed Execution Application No. 664 of 2018 which was withdrawn on 11<sup>th</sup> March, 2019 in order for the Applicant to file application to the Commission for computation of the repatriation cost. The Applicant filed the application for computation of repatriation cost in the Commission on 12<sup>th</sup> April, 2019 where the Commission ordered the Respondent to pay the Applicant a total of Tshs. 1,385,400/= being bus fare from Dar Es Salaam to Mbinga and transport cost for personal effect. The Applicant was not satisfied with the Commission ruling and she filed the present application for revision.

The Application is accompanied with Chamber Summons supported by the Affidavit of the Applicant. The Respondent failed to file Counter Affidavit despite being granted opportunity several times to file the Counter Affidavit. On 30<sup>th</sup> March, 2020 the Court denied the Respondent prayer for another extension of time to file Counter Affidavit.

The Applicant's Affidavit contains three grounds of revision in paragraph 13. The grounds are as follows:-

- i. That the Arbitrator erred in not considering the law that allows payment of subsistence allowance from the date of termination to the date of payment of repatriation allowance.

- ii. That the Arbitrator erred in law in not deciding all of the computation issues raised by the Applicant in her application for computation.
- iii. That the Arbitrator erred in law in not providing reasons and grounds for its decision in not granting the claimed subsistence allowance from the date of termination to the date of repatriation allowance as claimed and provided for in the law.

At the hearing of the application both parties were represented. Mr. Makaki Masatu, Advocate, appeared for the applicant, whereas Mr. Emmanuel Msengezi, Advocate, appeared for the respondent. The hearing proceeded orally.

Mr. Makaki Masatu submitted in support of the application that the Court decided in Revision No. 284 of 2016 that the Applicant is entitled to payment of repatriation cost. It is undisputed that up to the date of the ruling of the CMA the Respondent have not paid the transportation cost to the Applicant. The Applicant argued on the first ground of revision that the Arbitrator erred not to order payment of subsistence allowance to the Applicant from the date of awarding the transporting cost to the date of paying the same. The Arbitrator ordered payment of bus fair and payment of transportation of the luggage to the tune of Tshs. 1,385, 400/= . This is

contrary to section 43 of the Employment and Labour Relations Act, 2007, which provides that an employee has to be paid repatriation allowance from the date of termination to the date he was paid transportation cost. To support the position the Applicant cited the case of **Gasper Peter vs. Mtwara Urban Water Supply Authority**, Civil Appeal No. 35 of 2017, Court of Appeal of Tanzania, at Mtwara, (Unreported).

The Applicant further submitted that the amount payable as subsistence allowance is monthly basic wage as it was endorsed by the Court of Appeal in the case of **Juma Akida Seuchango vs. SBC (T) Ltd**, Civil Appeal No. 7 of 2019, Court of Appeal of Tanzania, at Mbeya, (Unreported). The Applicant was terminated on April, 2015 and the cheques covering the transportation cost was given to the Applicant on 19<sup>th</sup> August, 2019. Thus, the Respondent has to pay subsistence allowance for the period the Applicant was waiting for the transportation cost.

The Applicant submitted on the second ground that under rule 27(3) (b) of G.N. No. 67 of 2007 the award was supposed to contain issues on dispute. In the dispute before the Commission there was issue of computation for subsistence allowance while waiting to be paid repatriation cost. The issue which is found on page No. 5 and 6 of the CMA award was

never decided by the Arbitrator. It was incorrect for the Arbitrator not to decide on the issue.

The last Applicant's issue is that the Arbitrator erred in law for not providing reason for not granting the claimed subsistence allowance from the date of the decision to the date of payment of the transportation cost. It is a trite law that decision must be justified. The Applicant prayed for the award be revised and the Applicant be paid salaries from 29<sup>th</sup> April, 2015 to 19<sup>th</sup> August, 2019 the period she was waiting to be paid the transportation cost to her place of domicile.

The Respondent had no submission on the interpretation of the law.

From the submission, the issues for determination are as following hereunder:-

- i. Whether the Commission ruling was not properly procured.
- ii. Whether the Arbitrator erred for the failure to order for the payment of subsistence allowance from the date of termination to the date of payment of the transportation cost to the Applicant.

In determination of the first issue whether the Commission ruling was not properly procured, the evidence on record shows that the Commission delivered it's ruling in respect of the Applicant prayers for computation of

repatriation cost on 2<sup>nd</sup> August, 2019. The Commission in the ruling determined the payment transportation of Applicant's personal effects and bus fare from Dar Es Salaam to Mbinga and ordered the Respondent to pay a sum of Tshs. 1,385,400/=. The Applicant submitted that the Commission ruling was not proper since the Arbitrator failed to consider the law that allows payment of subsistence allowance from the date of termination to the date of payment of repatriation allowance. The Applicant in his application before the Commission prayed for the Arbitrator to pay for transportation of his personal effects, payment of bus fare and the subsistence allowance between the period the date of termination of the contract to the date of payment of transporting the employee as provided by section 43 (1) of the Employment and Labour Relations Act, 2004. The Arbitrator did not order for payment of subsistence allowance as prayed and also there was reason given by the Arbitrator for not granting the subsistence allowance.

Reading the Commission ruling, the Applicant prayed to the Commission for the payment of subsistence allowance among other payment for repatriation. Despite the Applicant prayer, the Arbitrator said nothing about the prayer to grant subsistence allowance and there is no reason for the Arbitrator's decision. The Commission being a quasi – judicial body was supposed to determine all issues before it and to give reasons for the

decision. Thus, I find that the Commission ruling was not proper for failure to determine all issues before it and for failure to provide reason for decision not to determine the issue of subsistence allowance.

Turning to the second issue, the evidence available in record shows that the issue of payment subsistence allowance was addressed by both parties to the application before the Commission. The Applicant submitted that he was supposed to be paid subsistence allowance from the date of termination to the date of payment of repatriation cost. The Applicant argued that she was terminated on 29<sup>th</sup> April, 2015 but she was served with a cheque of her terminal benefits including transportation cost on 19<sup>th</sup> August, 2019. Thus, she was entitled to payment of monthly salary as subsistence allowance from the date of termination to the date of payment of the transportation cost. In opposition the Respondent submitted that the Applicant have been delaying or buying time in order earn more subsistence allowance and that the Applicant was supposed to collect her transportation cost at cash counter. This evidence is sufficient for this Court to determine on the issue of the subsistence allowance which was not determined by the Commission.

As it was submitted by the Applicant, the Employment and Labour Relations Act provides in section 43 (1) for the employer's duty to transport



the employee to place of recruitment where the employee's contract is terminated at place other than the place where the employee was recruited.

The section reads as follows:-

"43. - (1) Where an employee's contract of employment is terminated at a place other than where the employee was recruited, the employer shall either -

(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."

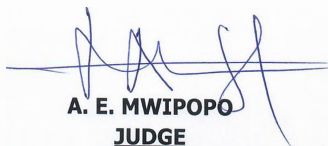
From above cited section, the employer is supposed to pay the employee for transportation of personal effects and transportation of the employee to the place of recruitment where the employment contract was terminated place other than where the employee was recruited [see. **Gasper Peter vs. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017, Court of Appeal of Tanzania, at Mtwara, (Unreported); and **Juma Akida Seuchago vs. SBC (Tanzania) Limited**,

Civil Appeal No. 7 of 2019, Court of Appeal of Tanzania, at Mbeya, (unreported)].

In the present case, this Court held in Revision No. 284 of 2016 that the Applicant who was recruited at Mbinga, Ruvuma Region was terminated at Dar Es Salaam on 29<sup>th</sup> April, 2015 hence she has right to be paid her transportation cost to Mbinga. The evidence available shows that the terminal benefits and transportation cost were paid to the Applicant through cheque on 19<sup>th</sup> August, 2019. Under section 43(1) (c) of the Employment and labour Relations Act, 2004, the Applicant is entitled to daily subsistence allowance on the basis of monthly basic salary for the period between termination of her employment to the date of payment of her transportation cost which is 27 months. The evidence available which is Applicant's salary slip shows that Applicant basic salary was Tshs. 714,140/= . Thus, the computation of the Applicant's subsistence allowance has to be on the basis of the above mentioned basic salary.

Therefore, I find the application for revision to have merits and I hereby allow it. The Respondent is ordered to pay the subsistence allowance for 27 months' which is sum of Tshs. 19,281,780/= to the Applicant in addition to terminal benefits and transportation cost paid to the Applicant on 19<sup>th</sup> August, 2019. The Commission Ruling is revised and set aside to the

extent discussed herein. Each party to the application to bear his own cost of the suit.

A handwritten signature in blue ink, appearing to read 'A. E. Mwiopo', is written over a horizontal line. The signature is stylized and cursive.

**A. E. MWIPOPO**  
**JUDGE**  
**13/11/2020**