

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)  
AT DAR ES SALAAM**

**REVISION NO. 283 OF 2020**

**BETWEEN**

**TANZANIA REVENUE AUTHORITY ..... APPLICANT**

**VERSUS**

**SCHUBERT BEBWA ..... RESPONDENT**

**JUDGEMENT**

**S. M. MAGHIMBI, J:**

At the Commission for Mediation and Arbitrator (“the CMA”) the respondent herein successfully lodged a dispute No. CMA/DSM/KIN/R.404/2015/764 (“The Dispute”) on allegations of unfair termination following termination by the applicant after being charged and found guilty for breach of schedule 2 (16) and 2(2) of TRA Staff Regulations, 2009 RE 2012. The particulars of the allegations were that while he was on duty on various dates being a Tax Assistant, he made false financial records by posting illegitimate transactions in ITAX which did not appear in the bank statement. On the 25/05/2017, the CMA decided in favour of the applicant and in the award, the CMA ordered the applicant to reinstate the respondent to her position under Section

40(1)(a) of the Employment and Labour Relations Act, Cap. 366 R.E 2002. It appears that sometimes later, the respondent went back to the CMA lodging an application for calculation of actual amount of subsistence allowances that he is entitled to be paid following the aforementioned award. The arbitrator proceeded under Rule 29(1)(e)(2)(3)&(4) of the Labor Institutions (Mediation and Arbitration) Rules, G.N. No. 64/2007.

According to the records of the CMA, I have gathered that the applicant herein did not reinstate the applicant as ordered but instead, she opted to terminate her with compensations including 12 months' salary, salary from 1<sup>st</sup> June – 30<sup>th</sup> September, 2017, 15% PPF pay and severance allowance. Dissatisfied with the amount of compensation, the applicant lodged in this Court and Execution Application No 591/2017 and while the execution was still pending, the applicant further paid the respondent additional amount of Tshs. 28,628,701.42 which included basic salary of Tshs. 8,719,290/-; employer's Social Security contributions to the tune of Tshs. 2,732,155.93, Housing Allowance Tshs. 4,983,654.92 and repatriation expenses at the tune of Tshs. 5,193,600/-.

Dissatisfied with the amount of subsistence allowance paid, the respondent went back to the CMA and lodged an application praying to be further awarded a certificate of service, subsistence allowance of four years alleging that she was terminated on 30/05/2015 and repatriated four years later on the 05/07/2019. The amount of subsistence allowance she claimed amounted to the tune of Tshs. 116,800,000/-. The applicant strongly disputed the application on the ground that the applicant was employed at Dar-es-salaam although his place of domicile was in Bukoba. It is also alleged that when the matter was at execution stage before this court, it was discovered that there was increase of salary by 5% on 10/10/2017 which was not effected on initial calculations. Therefore, his entitlement was recalculated and the CMA was kind enough to award the respondent an amount of subsistence allowance claimed and other benefits, the amount awarded was Tshs. 191,824,380/- in total. The applicant was aggrieved by this decision of the CMA and had lodged this application under the provisions of Rules 24 (1), 24 (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d) and 28 (1) (a) (c) (d) (e) and Rule 55 (1) (2) of the Labour Court Rules, GN No. 106 of 2007 (LCR). The application is supported by the affidavit of Ms. Jacqueline Chunga, the applicant's Advocate. On the other hand, the respondent challenged the application by filing his counter affidavit.

The application was argued by way of written submissions, the applicant was represented by Ms. Jacqueline Chunga, learned Counsel. However, I have noted that in his Notice of Representation lodged under the provisions of Rule 56(c) of LCR, the respondent notified the Court that he will be represented by Advocate Patrick Seuya and Brian Magoma from Smile Attorneys, while the reply submissions were drawn and filed by Mr. Walter Shayo and Mr. Andrew Malesi, learned Counsels.

Arguing in support of the application Ms. Chunga submitted that the respondent filed an application at the CMA for certified calculations in respect of the arbitral award dated 25/05/2017. That the Arbitrator concluded the respondent's place of recruitment was Bukoba-Kagera and he was entitled to the payment of subsistence allowance of Tshs. 191,824,380/= being the salary of one year and ten months.

Ms. Chunga strongly argued that the respondent is not entitled to the amount ordered because he was employed in Dar es Salaam and terminated in Lindi where he was paid his repatriation costs from Lindi to Dar es Salaam on 28/05/2015. She further submitted that the paid transfer benefit from Dar es Salaam to Bukoba amounting to Tshs. 5,193,600/= was a mistake. She strongly argued that the employer is obliged to transfer an employee to the place of recruitment as in

accordance with section 43 (1) (b) of the Employment and Labour Relations Act [CAP 366 RE 2019] (ELRA).

She strongly submitted that the respondent place of recruitment is Dar es Salaam and not Kagera as per offer letter dated 17/10/1977 and acceptance of offer of employment dated 15/10/1999 which shows the respondent's address is Dar es Salaam. Ms. Chunga firmly stated that the respondent is not entitled to subsistence allowance because he was timely transported from Lindi to Dar es Salaam (the place of recruitment). She therefore urged the Court to set aside the Arbitrator's order of payment of subsistence allowance.

Responding to the application Mr. Shayo and Mr. Malesi strongly submitted that the respondent is entitled to be paid subsistence allowance as rightly held by the Arbitrator from the date of termination to the date he was repatriated to Bukoba. They stated that the respondent was terminated on 30/05/2015 and when the matter was referred to the CMA it was found that he was unfairly terminated thus, the applicant was ordered to reinstate him. They also contended that the Ms. Chunga made reference to exhibits which are not part of the record and urged the court not to consider the same.

Mr. Shayo and Mr. Malesi went on to submit that instead of reinstatement, the applicant opted to pay the respondent 12 months salaries as compensation for the alleged unfair termination. They submitted that the applicant was paid his repatriation allowance to Bukoba on 05/07/2019 therefore he is entitled to subsistence allowance from the date of termination on 30/05/2015 to the date he was paid his repatriation allowance. To support his stance, he cited Court of Appeal cases of **Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civ. Appl. No. 35 of 2017 and the case of **Juma Akida Seuchago v. SBC (TANZANIA) Limited**, Civ. Appl. No. 07 of 2019. On the basis of the above submission, he urged the court to dismiss this application.

In rejoinder Ms. Chunga agreed with Mr. Shayo and Mr. Malesi that evidence cannot be introduced through submission but she argued that, there is no any prejudice to either party which has been caused by the background narrated by the applicant's Counsel. As to substantive part of the matter she reiterated her submission in chief. Regarding the cases cited she contended that the same are distinguishable to the circumstances of this case.

After considering the rival submission of the parties, CMA and Court records as well as relevant laws I find the court is called upon to determine whether the respondent is entitled to the subsistence allowance ordered by the Arbitrator.

I fully agree with Mr. Shayo and Mr. Malesi's submission and the cases cited that upon termination of employment an employee is entitled to subsistence allowance during the period between termination of his employment and the date of payment of transportation to the place of recruitment. That is the position of the law embodied under section 43 (1) of ELRA which is to the effect that: -

*'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 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.'*

On the basis of the above position of the law, it is very clear that determinant factor on payment of transport allowance or repatriation allowance and substance allowance for any employee including public servant is a place of recruitment and not place of domicile, this is the position in the case of **Higher Education Student's Loans Board v. George Nyatega**, Lab. Rev. No. 846 of 2018 HC DSM (unreported). The question before hand is where was the respondent's place of recruitment. Relying to the facts and evidence on record, it is revealed that the solicitation of the respondent's employment was at Dar es Salaam. This is proved by the respondent's offer of employment and his acceptance to offer of employment (exhibit TRA8) where he indicated that his address was in Dar es Salaam. Had the trial Arbitrator considered the relevant documents he would have arrived at a different finding. I do not agree with the Arbitrator's finding that the applicant failed to tender sufficient evidence to prove the respondent's place of recruitment. The Arbitrator was wrong to consider the respondent's



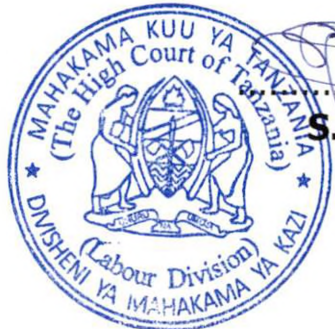
leave form and conclude that the respondent's place of recruitment was Bukoba.

I have noted the respondent's Counsel submissions that the applicant paid the respondent transport allowance to Bukoba, in this regard I join hands with Ms. Chunga that the said payment was mistakenly done and it is not sufficient evidence to determine the respondent's place of recruitment. Therefore, since the respondent was terminated in Lindi and was transported back to Dar es Salaam on 28/05/2015 which is his place of recruitment he is not entitled to subsistence allowances awarded to him by the Arbitrator.

In the result I find the present application has merit. The Arbitrator's award of Tshs. 191,824,380/= as subsistence allowance is hereby quashed and set aside. The respondent is not entitled to subsistence allowance for the reasons stated herein above.

It is so ordered.

Dated at Dar es Salaam this 20<sup>th</sup> day of October, 2021

The seal of the High Court of Tanzania, Labour Division, is circular. It features a central emblem with a scale of justice and a book, flanked by two figures. The text around the emblem reads "MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania)" at the top and "DIVISION YA MAHAKAMA YA KAZI (Labour Division)" at the bottom. To the right of the seal, there is a handwritten signature in blue ink, followed by the printed name "S.M. MAGHIMBI" and the title "JUDGE" below it.

**S.M. MAGHIMBI**  
**JUDGE**