

TANZANIA / JUDGMENT

20030909 TZHC Arusha

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA - AT ARUSHA CIVIL APPEAL NO. 8 OF 2002 (Original Mbulu District Court Employment Cause No. 4 of 2001) HAMAD KIMEA vs. MANAGER BONITE BOTTLERS ARUSHA. RESPONDENT JUDGMENT

T: ~ In December, 1999, the appellant Hamad Kimea was employed by the respondent, the Manager Bonite Bottlers Ltd as a casual worker at Karatu Depot. In May, 2000, when he was busy working at the said depot, a bottle of soda fell down and broke into pieces. One of these pieces flew towards his eye and injured it. He asked the said Manager to assist him so that he may get treated but he refused. Then, he went to the Workers Association and complained about his refusal to do so. After hearing both parties the said Association ordered the Manager to assist him. He complied with this order and the appellant undertook his treatment at Mount Meru Hospital. When his eye recovered, he reported back to work but the Manager refused to continue employing him. He sued him in Mbulu District Court which opened Civil Employment Cause No. 4 of 2001 claiming for a total sum of shs. 962,800/- as terminal benefits including other expenses. The said court awarded him shs. 110,800 out of his total claim of shs. 962,800. At the end of his judgment, the Senior District Magistrate ordered that the suit succeeds in the following items: -1. Salary arrears 62,800/=

2. Transport 18,000/=, 3. Accommodation 15,000/=

4. Meals 15,000/= Other claims were disallowed on grounds that being a casual worker, he was not entitled to them. He then appealed to this court in May, 2002. On 28th July, 2003, learned counsel for the respondent Mr. Ngalo raised a preliminary point of law against his appeal. He submitted that the appellant did not attach a copy of the decree to his petition of appeal and that as he did not do so his appeal is improperly before the court and it should be dismissed. He contended that under Order XXXIX, rule 1 (1) or the Civil Procedure Code, 1966, it is mandatory that the appellant has to attach a copy of the decree to his memorandum of appeal. He referred the court to the case of *HoJo Stanley & Sons vs. Alim* 2 Cth, 1 KUEY (1988) 1 ILR 173; *ge s 50* and the case of *Mariam Abdallah*, 1 W & A (1991) TIB, at pages 196 - 198. In the former case the appeal was dismissed by the High Court of Tanzania at Dar es Salaam Registry on ground that the memorandum of appeal had not been accompanied by a copy of the decree. It was held that it is mandatory that a memorandum of appeal be accompanied by a copy of the decree as per Order XXXIX

rule (1) of the Civil Procedure Code, 1966, and that where a memorandum of appeal is not accompanied by ... /3 == 3 - a cor; r d f" ~ e-ecre-e there is no legal ~-t-a:tion -at- all and so the appeal is incompetent and should be dismissed. In the latter case, the Court of Appeal of Tanzania maintained the same legal position by holding that Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966 is mandatory in requiring every memorandum of appeal to be accompanied by a copy of the decree or order appealed from and that where an appellant has failed to comply with this provision, the appeal is not properly before the court and must be dismissed. In this case, the appellant submitted that his memorandum of appeal was accompanied by a copy of the decree issued by Mbulu District Court., Unfortunately, the record of his appeal does not bear him out. As a matter of fact, his memorandum of appeal in this case is not accompanied by a copy of the decree appealed from as required by Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966. Therefore, his appeal is improperly before this court, and I cannot entertain it because it is trite law that where a memorandum of appeal is not accompanied by a copy of the decree or order appealed from as required by Order XXXIX rule 1 (1) of the Civil Procedure Code, 1966 the appeal has to be dismissed. I hereby dismiss it but each party has to bear own costs. ~-t;-----.r-...._ Ao SHANGWA. JUDGE 9/9/2003 ... /4 r 11 \I. ;j 11 :[11 ii ' 1: I :t i 11 :r 4- i =='1 r l I · I i · Delivered in Open Court at Arusha, in the presence of the 11 ,, 1· I/ Appellant and in the absence of Counsel :ifOl:' the respondent Ir 11 this 9th day of September, 2003" 1111. ·i Ii II :- , ;! ~1' A" SHANGWA 1 , r JUDGE ! I 9/9/2003 I 1' ;\ i' 1! AS;vm. /1 ,, Ijl II ,, 11 .I t i 1'! 11 t I I ~ 1, 'ii l ' "1: it r) . , 1 ! I ' T 1) I' I, ' ! i I l ., if . I' ., i i . i j fl ...I · ! i (1 · l , I ' I I L I' 11 ! [j i' j [\ I ' i j l 11 l 1 · 1: i I. I ,,, IJ t t I, I I · 1: 11 fl 1! , 1 , ~. 1' i, 11 ; f I' 1 ! 1 f · , r

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