

TANZANIA / JUDGMENT

jonas nehemia makali vs thomas sec school 2021 tzhcld 9 26 february 2021

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26 February 2021

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IN THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM REVISION NO. 893
OF 2019 BETWEEN JONAS NEHEMIA MAKALI..... APPLICANT VERSUS THOMAS
SECONDARY SCHOOL RESPONDENT

JUDGMENT

Date of Last Order: 10/02/2021 Date of Judgment: 26/02/2021 Z. G. Muruke This is an *ex parte* judgment emanating from the applicant's application to revise an award in Labour Dispute No. CMA/DSM/ILA/122/18/0 before Hon. Msina H.H. - Arbitrator on 5th November 2019. Application was supported by the applicant's affidavit. The same was not challenged by the respondent as he has never entered appearance to defend the application. The applicant challenged the CMA erred in law and fact by not awarding severance pay having found that he is the respondent's retiree. The CMA erred in law and fact by holding that he is not entitled to unpaid salaries and unpaid leaves while he pleaded the same before CMA. The CMA erred in law and fact by disregarding evidence a letter where the respondent admitted his claim. Hearing was by way of written submission. The applicant was unrepresented. In his submission on the 1st ground the applicant submitted that, it is undisputed that he voluntarily retired from his employment on ground of health problems. He tendered a number of documentary evidences which were admitted before CMA, but upon determination of the dispute the arbitrator awarded him only 199,000/= one month salary for annual leave payment and ignored other entitlements as provided under Section 44 of the Employment and Labour Relations Act, Cap 366 RE 2019 (herein the Act) despite all evidence to prove the claims. Further the applicant submitted that he was the respondent's employee from 2003 up to 2018 whence retired. On March, 2017 he submitted his claims to the respondent under exhibit D2, the respondent acknowledged the claims to a tune of 5p(=90/=). However the same was not granted by the arbitrator. On the applicant contended that, the arbitrator erred in law and fact by changing suo motto the compensation amount prayed in the referral form, on the reason of retirement of the applicant while the same was not a matter in dispute. The arbitrator departed from the prayers in the referral form to wit notice of termination, golden hand shake, severance pay, certificate of service, compensation, unpaid salary annual leave and NSSF and proceeded to award only 1 month salary 2 for annual leave. He referred the case of Power Road (T) Limited v

Haji Omari Ngomero, Rev. No. 36 of 2007 where it was held that; '...there is no provision in the Employment and Labour Relations Act, or in Labour Institutions Act, particular section 20 on powers of Mediators and Arbitrators to change suo motto on what appears on referral form. The arbitrator made by the arbitrator are therefor[^]figal[^]and set[^] aside. He therefore prayed for the application[^] be granted. After w consideration of the applicant's submission, theiissue[^]or determination is what the entitlements of the parties are. On records, it is undisputed that[^]h[^]pplicant voluntarily retired on 1st April,2017 after issuing the respondentia notice to retire for health problems through a letter dated w01 Marched?. The applicant herein was dissatisfied with the award[^] the arbitrator awarded him only Tshs.199, 000/=being payment for[^]leave&,allowance. The applicant alleged that the arbitrator erred iq[^]^fgr[^]ot awarding him his terminal benefits as required bv tlreJa%onl[^], because he is the one who retired voluntarily. Section 44 of tfge Ac|provides for payment on termination, as follows: ySe[^]o[^]4fl.-(;i[^]n termination of employment, an employer shall pay an [^][^]emplo[^][^] (a):a[^]remuneration for work done before the termination;

- (b) any annual leave pay due to an employee under section 31 for leave that the employee has not taken;
 - (c) any annual leave pay accrued during any incomplete leave cycle determined in accordance with section 31 (1);
 - (d) any notice pay due under section 41(5); and 3
 - (c) any severance pay due under section 42;
 - (f) any transport allowance that may be due under section 43.
- (2) On termination, the employer shall issue to an employee a prescribed certificate of service.' The applicant decided to terminate his employme[^]velationship through voluntary retirement due to health proble[^][^]herefore[^]ie is entitled to the benefits stated under Section 44 Csupra).. Tl[^]applicant in his CMA Fl prayed for payment of Notice, Goldetfhand shake, Severance pay, certificate of service, compensation, unparaysataryj[^]annual leave and NSSF. CMA awarded him only 199,000/= fckanhujJi'eave. According to the exhibit i[^]P4 in re.CQ&ds respondent's calculations of the applicant's benefits, the applic[^]n|wa[^] entitled to salary arrears, annual leave and transport allowance. Referring to Section 44 of the Act (supra) the applicant is not entitled[^]> rfeitice on the reason that he is the one who issued a notice o[^]Stii[^]nqgJ' to the respondent, not entitled to Golden hands shal«Jb|ea{j[^]jt[^]efe is no proof that both parties had an agreement on paym[^]nt[^]of[^]e|same upon termination. Also the applicant is not enfitted to [^][^]compensation as he failed to state why he should be compensate[^]Awhile he voluntarily retired. The applicant is only entitled to unpaid salary, annual leave, transport allowance and Severance pay as it is on records that the applicant had worked with the respondent for about twelve (12) years. Basing on that analysis, I hereby quash the arbitrator's order in regard to the parties' reliefs. The applicant be paid his entitlements as per 4 AP4 to wit unpaid salary Tshs.199,000/=, Annual Leave Tshs.199,000/=, Transport allowance 336,000/= and severance pay of twelve years from 2003-2016 as per

Section 42 of Act. The respondent should deduct a sum of 300,000/= which was paid to the applicant as part of his terminal benefits as easily noted under exhibit AP2 (payment voucher). & I thus allow the revision. Ordered accordingly. 5

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/jonas-nehemia-makali-v-thomas-secondary-school-terminationbenefits-tanzlii-2021

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