

TANZANIA / JUDGMENT

transenergy t ltd vs issa majanga others 2005 tzhc 245 25 august 2005

COURT
TZHCDECIDED
25 August 2005

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IN THE HIGH COURT OF TANZANIA AT PAR ES SALAAM. CIVIL APPEAL NO. 24 OF 2004
{Originating from Resident Magistrate's Court o f Dar es salaam at Kisutu Employment Cause No.
102 o f 1996 Hon. E H. Mingi S.R.M.) TRAN SEN ERG Y (T) LTD.....
APPELLANT Versus ISSA MAJANGA & 11 OTH ERS..... RESPONDENT 27th
July 2005 & 25th August 2005

JUDGEMENT

RWEYEMAMU, J : The respondent 'successfully' sued the appellant, its former employees, in district court Employment cause 102/96. The word successfully, is deliberately circumscribed for reasons I shall go into later. Suffice to state for now that both parties were represented by same counsels in this court as below, save for a brief period at the beginning but before trial, when the respondents were 'represented' by different labour fficers. Dissatisfied with the trial court decision, the appellant through its counsel Mr. Rwabutaza, submitted three ground of appeal to this court. The same were replied to by Mr. Myovela counsel for the respondents. It is may be important to mention that the appellant had also filed an application for stay of execution. It was not heard. Instead, the parties consented for the order to be stayed on 23/11/2004. That said; I have to point out at the outset that there are a number of substantive irregularities noted in this matter. First, this claim involved twelve plaintiffs/respondents. In the proceedings, only five turned up and testified. All twelve turned up once, on 3rd January 2002, when the case was merely mentioned. Yet the decree would appear to be in reference to all the twelve plaintiffs/respondents, i.e, including those who did not prove their claims. It would appear therefore, that the suit in the trial court proceeded as a representative suit. Such suits; governed by Order 1 rule 8 of the Civil Procedure Code, requires leave of the court to be sought, before commencement. Yet there is nothing on record to show that this procedure was followed. This irregularity is incurable as convincingly argued by Samatta, J. as he then was, in Pius Msingwa and 2 others Vs the secretary of Kijiji cha Ujamaa Marocha, 1979 LRT n, 13. And rightly so; for had that been done in this case on hand, then the five employees who testified, could have had clear a mandate to speak and bind their colleagues in their testimonies. On the evidence on record, they had no such mandate, as each respondent testified on individual claims. The second irregularity or rather' confusion, relates tc the issues framed, evidence led, its evaluation and the decision of the

trial court. In my opinion, the issues before the trial court, in this employment contract based claim were straightforward revolving around three areas: One, back pay or monies due to each employee before termination or dismissal: Two, entitlement for transport to domicile or place of recruitment after dismissal; (or repatriation in labour parlance.) Last, entitlement and quantum of subsistence allowance after termination but before repatriation. The confusion started with the evidence led at the trial - it was not directly related to the framed issues. The trial court framed issues as:

- 1) Whether the plaintiff's were not paid transport & Housing allowances during their employment.
 - 2) Whether the PI are entitled to repatriation fare and subsistence allowance.
 - 3) What reliefs are the parties entitled." Yet most of the evidence at the trial was directed at proving that the five respondents who testified were employed by the appellant. An issue not contested. No wonder, in the trial court judgment the evaluation and decisions made on each issue are so mixed up that it is impossible to tell what was decided: Understandably, so were counsels' submissions on appeal. To make the confusion obvious to the eye, I reproduce below, the relevant portion of the trial court judgment. "After going through all the evidence adduced by both parties in this case this Honourable court has framed the following issues to be determined: Whether the plaintiff are entitled to be paid transport house allowances and other remunerations
- Whether there are any costs for this suit. In talking the First issue it is not in dispute that the plaintiffs were employees of the defendant's Company and were dismissed from work in the year 1996, further with the evidence adduced by the plaintiff's side it is a verdict that they were not paid their transport allowance although Dwl stated that they were employed in Dar es salaam that is why they were not paid. It is provided by the laws of this country that employees once dismissed from work depending on the circumstances they are entitled to certain reliefs such as the transport allowances which is used for moving to their domicile places. Hence this Honourable court is satisfied with the evidence adduced by the plaintiff's and the defendant is hereby entitled to pay them transport allowance for moving to their domicile places, for the issue of subsistence allowance the plaintiffs' are also entitled to be paid for the period of time when their contracts were in existence. Therefore this Honourable court grants as follows
1. The plaintiffs to be paid their transport allowances and subsistence allowance in the said period of their contracts to the date they were dismissed.
 2. No order for costs" The trial court decree drawn from that decision reads as hereunder: "IT IS HEREBY ORDERED THAT:
1. That Plaintiff's to be paid their transport allowance and subsistence allowance in the said period of their contracts to the date they were dismissed. Clearly, issues framed at the commencement of the trial are different from those mentioned during summing up of the

evidence in the judgment, and both are different, from the decision as indicated by the underlined portions of the judgment, and different with the decree. This probably led to the third irregularity. That irregularity is that it is not clear what the trial court decision is. For example: What amount of back pay is due to each employee, among the five who testified or the twelve named as plaintiffs?, and on which items? What decision was made regarding entitlement to repatriation? What decision was made regarding entitlement to subsistence, and what was the basis of the awarded amount? But even more confusing; is the period the subsistence allowance relates to. Does it relate to the period after employees were terminated but before repatriation- as indicated by their pleadings in the trial court or during the period of their employment, as the trial judgment and decree, indicates? The appellant's counsel submitted the following grounds on appeal: " 1. The Hon. Learned Trial Magistrate erred in law and in fact in granting the Respondents to be paid transport allowances that they were not entitled to.

2. The Hon. Learned Trial Magistrate erred in law and in fact in granting the Respondents to be paid subsistence allowance while their employment contracts had been terminated.
3. In the alternative the Hon. Learned Trial Magistrate erred in law and in fact in granting the Respondents subsistence allowance at the rate of Tshs. 4,000/= per day, the rate that is not provided for under any law of the country" And in his written submission, counsel advanced arguments supported by authorities; that the employees/respondents had been paid all their dues before termination; that respondent/employees were not entitled to repatriation; that they were not entitled to subsistence, and in the alternative queried the basis of paying subsistence at the rate of Shs. 4,000/= awarded. Naturally counsel for the respondent replied with equal force. That may be so, but both counsels were reading into the trial court judgment matters not raised therein. Instead, they were arguing as though proper issues were framed, evidence led and evaluated, and a decision made thereon. As explained, such was not the position. What do I make of these anomalies? In my opinion, the errors were so fundamental that if not corrected, they would lead to a miscarriage of justice. In fact the trial court decision falls short of qualifying as a judgment. To be called a judgment, a decision must generally contain "points of determination, decision thereon and reasons for the decision" This decision does not. Despite my awareness of the need for employment cases like the present to be dealt with quickly; I also know such decisions have to be arrived at justly, and so long as this mode of settling labour disputes remains in use, sometimes delay will be unavoidable. This is one such case. In view of the irregularities pointed out above, while not oblivious of the consequence to the parties, I set aside the lower court decision and order that the case be heard de novo by another magistrate of competent jurisdiction. Before concluding, I should point out facts leading to the unfortunate delay in preparation of this judgment: This matter was handled by me while stationed at Dar es Salaam; it was last ordered to proceed by way of written submission, and judgment scheduled for 10/2/2005. Before written submissions were filed, I was transferred to an upcountry station where the file was finally submitted to me to prepare this judgment on 29th July 2005. R.M. RW EYEMAMU JUDGE 25/8/2005 This judgment is certified and sent

to Dar es salaam registry where it shall be delivered to the parties by the District Registrar.
R.M. RWEYEMAMU JUDGE 25/8/2005

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