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**IN THE HIGH COURT OF TANZANIA
AT SONGEA
DC CIVIL APPEAL NO. 7 OF 2008
SONGEA D/COURT CIVIL CASE NO. 18 OF 2004**

**PHILBERT MBEPERA.....APPELLANT
VERSUS:
MUNICIPAL DIRECTOR
OF SONGEA.....RESPONDENT**

**6/11/2008 - HEARING CONCLUDED
16/3/2009 - JUDGMENT DELIVERED**

J U D G M E N T

L.M.K. UZIA, J.

This is a appeal from the decision of the District of Songea (Mtega RM) dismissing the application No. 18 of 2004 filed by the Appellant, Philibert Mbepela ex-teacher.

According to the evidence on record, the Appellant was an employee of the respondent, Songea Town Director. He taught pupils in several schools. His service came at an end on 31/1/1996, after he was found guilty of some offences committed while serving as a teacher. The Teachers service Commission declared in its letter to the appellant that, he was summarily dismissed. "Hivyo Bodi Kuu ya tume ya Utumishi wa Walimu (TSC) imekufukuza **KAZI NA UTUMISHI** tangu tarehe 31/01/1996". It seems the appellant was not satisfied, he appealed to the President. The President of the United Republic through the Chief Secretary dismissed his appeal. The Chief Secretary communicated to Mwalimu Mbepera the following words "Aidha Mheshimiwa Rais amethibitisha adhabu uliyopewa ya

kufukuzwa kazi na Utumishi kuwa ulistahili kulingana na makosa yako."

Having received that letter, the appellant filed a Civil Case in the District Court claiming a total of shs. 100,000,000/= being night allowance. The District Court found in favour of the respondent that the appellant was dismissed from employment therefore was not entitled to payment of night allowance because he was not in his duties as a teacher. He was entitled to transport allowance under section 67 (1) (e) of the Teachers Service commission Act, GN 459 which states:-

***"Members of the service, other than
Those on temporary terms of service,
May be granted free transport however
Travelling as therein provided:- on
Termination of appointment or dismissal."***

The appellant was not satisfied with that decision he has appealed against the District Court decision. Briefly, the appeal contained one ground, namely,

- 1) The letter TSC/RUV/CM. 12935/88 of 9.4.96 used to Support the judgment Report No. 18/2004 under section 343 PC Cap. 16 was forged. Grounds for believing that the letter was forged as follows;
 - (i) The letter TSC/RUV/CM 12935/88 of 9.4.96 was cancelled by the High Court (T) Appeal No. 3/2005, the District Court had no power to use it support his judgment in application no. 18/2004.

- (ii) DW1 and DW2 gave contradictory statements, while DW1 told the court that the appellant was dismissed on 31.1.96 the other one said he was retired on 31.12.2008.
- (iii) Exhibits P1, P2, P3, and 4 was not supporting dismissal.
- (iv) My application was not under section 60,61,62,63,64 and 65 GN 459 of TSC. My application is under section 103 (3) (b) of Employment.

When the appeal was brought for hearing, the appellant had nothing new in addition, on other side Mr. Waryuba, urged this court to dismiss the appeal because the appellant was informed about his transport benefits immediately after the dismissal letter was served on the appellant, instead he did not go to fetch his transport benefits which would help him to go his home village, therefore there was no point of him claiming night allowance while he was not an employee.

Going by the trial court record I found that there were two facts which were not in dispute, that

- 1) The appellant was the employee of the respondent.
- 2) He was dismissed from employment.

The only dispute issue lies on whether he was entitled to night allowance as prayed in the original plaint.

With regard to the disputed issue, I find that the appellant is ploughing sand, because, the dismissal letter which was served on him was clear, letter reference TSC/RUV/C/M.12935/88 of 9/4/1996 and

on 18th/4/96,. the Respondent, among other things, informed the appellant by a letter reference CO/TSC/M.12935/19 dated 18/4/96 his basic right under section 67 (1) (e) and 69 (d), to collect his repatriation allowance by 22nd/4/1996. For the reasons known to him, the appellant refused to go to the respondents offices to get the necessary service.

With such overwhelming evidence, the appellants appeal has no merit a claim of shs. 100,000,000/= is not right.

I dismiss the appeal and due to the nature of the appeal I order no costs.


L.M.K. Uzia,

Judge

16/3/2009

Right of Appeal explained.


L.M.K. UZIA

JUDGE

16/3/2009

LMKU/ESY