

A There is no evidence on the record that DW9 was charged with the execution of the powers and duties of the office of Sheha. DW9 was therefore not a licensing authority under section 2 of the Cloves Act under which a "licencing authority" means any public officer
 B authorized by law to issue permits for any of the purposes for which a permit is required under the Act. DW9 was not a licensing authority for reasons hopefully amply explained above.

C There is a second reason to fault Exhibit D1. It reads in part as follows:

Ndugu Juma Ali Abdalla, na Suleiman Habib, Salum Muh'd Sefu wameruhusiwa kupeleka karafuu zao gunia 38 na mapeto 7 MkoaNumber

D Section 3(1) and (2) of the Cloves Act 1985 provides as follows:

3(1) No person other than the corporation shall export cloves.

E (2) For the purposes of section 3(1) "export" included the taking or transportation of dry cloves from one area of the country to another without a valid permit issued for the purpose and the reason for such taking or transportation to be indicated therein.

F Mr Ussi K. Haji's core complaint in this appeal concerned the rejection by the learned Regional Magistrate of Exhibit D1. Under section 3(1), the export of cloves is restricted to the corporation, that is the Zanzibar State Trading Corporation. However for any other person to do so, there must be a valid permit issued to that effect under subsection (2). The purpose and reason for the export of cloves must
 G be indicated in the permit. There is no such indication of the purpose and reason for the transportation of the cloves from Kwamwinyikazi to Mkoani. This is a mandatory requirement whose absence, as it was in Exhibit D1, renders the permit invalid.

H In the event, and for the reasons stated above, we dismiss the appeal in its entirety.

I

**ALI ABDALLA AMOUR AND ABDALLA ALI
 ABDALLA v. AL-HUSSEIN SEFUDIN (SAFI STORES)**

COURT OF APPEAL OF TANZANIA
 AT ZANZIBAR

(Lubuva, Munuo and Nsekela, JJ.A.)

CIVIL APPEAL No. 91 OF 2002

(From the Judgment of the High Court of Zanzibar at Vuga, Dourado, J. dated 26 November 2001, in Civil Appeal Number 25 of 2001)

Labour law – Terminal benefits – Assessment of terminal benefits – Assessment done by Labour Officer but disputed by the appellants – Whether assessment by Labour Office was reliable.

Labour law – Respondent had given money for purchase of motor cycle as means for transport for the first appellant while working for respondent – Whether the motor cycle belonged to the respondent on termination of the contract of employment.

Civil Practice and Procedure – Judgment – Judgment too scanty and contained in only two sentences – Whether meeting the requirements of a judgment – Order XLVI, rule 31 of the Civil Procedure Decree Chapter 8 of the Laws of Zanzibar.

In the Regional Magistrate's Court the appellants filed a suit against the respondent claiming a total of TZS. 1 560 000 as terminal benefits and the release, to the first appellant, of a motor cycle. The respondent disputed the claims. In its decision, the Regional Magistrate's Court ordered payment of TZS. 130 000 and TZS. 780 000 as terminal benefits to the first and second appellant respectively, based on a calculation done by the Labour Office. The appellants were dissatisfied and appealed to the High Court which dismissed their appeal, hence, this second appeal.

Held: (i) The judgment of the High Court in this case dismally falls short of what is provided for under Order XLVI, rule 31 of the Civil Procedure Decree Chapter 8; Judicial Officers at all levels of the judicial hierarchy are enjoined to adhere to this

A provision of the Civil Procedure Decree in Tanzania Zanzibar and Order XX, rule 3 of the Civil Procedure Code 1966 in Tanzania Mainland;

(ii) In the circumstances of the case, the calculations worked out by the Labour Office, a well established and credible office, conversant with labour disputes, are sufficiently reliable;

(iii) It seems to us that the first appellant's version that he purchased the motor cycle is more credible than that of the respondent; as a civil case, it is our view that he has proved his claim for the motorcycle on a balance of probabilities.

C Orders accordingly

Statutory provisions referred to:

- D 1. Civil Procedure Decree Chapter 8, Order XLVI, rule 31.
2. Civil Procedure Code 1966 Order XX, rule 3

Mr Ussi Khamis Haji for the Respondent

E

JUDGMENT

(Dated 11 November 2003)

F **Lubuva, J.A.:** In the Regional Court at Vuga, the appellants, Ali Abdalla Amour and Abdalla Ali Abdallah filed a suit against the respondent, Al-Hussein Sefudin (Safi Store).

G The appellants were claiming a total of TZS. 1 560 000 terminal benefits and the release of the motorcycle Honda Registration Number ZNZ 18875. The claim was that the appellants had worked for sometime for the respondent who terminated their services without paying them terminal benefits. As observed earlier, the first appellant also prayed H for the respondent to be ordered to release the motorcycle, Honda Registration Number ZNZ 18875 withheld by the respondent.

I According to the respondent, he provided the money for the purchase of the motorcycle for use by the appellants in the course of working for him. Apparently, at some stage, the respondent had advised the

appellants to go to the Labour Office for calculation of the terminal benefits. In its decision, the Regional Court ordered payment of TZS. 130 000 and 780 000 as terminal benefits to the first and second appellants respectively. The appellants being dissatisfied appealed to the High Court which dismissed the appeal. Undaunted, the appellants have appealed to this Court.

In this Court, the appellants were unrepresented. They filed a five-point memorandum of appeal which we think in essence raises two issues. First, that the learned judge erred in arriving at the decision to dismiss the appeal without analyzing and considering the proceedings and evidence presented before the Regional Court. Second, that the judge also erred in not ordering the release of the motorcycle Honda Registration Number ZNZ 18875 in favour of the first appellant. Addressing the Court, the first appellant briefly stated that he is entitled to the motorcycle because there was evidence in support of his claim. For instance, he said the registration card for the motorcycle was in his name and that the sale agreement was also between him and the seller, one Ali Salum. To the contrary, he stated that the respondent had no evidence to support him in this regard.

F For the respondent, Mr Ussi Khamis Haji, learned counsel, appeared. It was his submission that in the Regional Court, the magistrate framed three issues which he addressed, analysed and finally came to the conclusion that the first and second appellants were only entitled to the payment of TZS. 130 000 and 780 000 respectively. While conceding that the High Court ruling of 13 November 2001, subject of this appeal, scantily dealt with the matter in one line, he maintained that the decision to dismiss the appeal was sound. He urged for the dismissal of the appeal.

H From the record, there is no gainsaying that the judgment of the High Court is too scanty for any meaningful opinion on the learned judges' own consideration and views of the evidence of the case as a whole. The judgment clearly shows that the judge having stated that the Regional Magistrate awarded TZS. 130 000 and TZS. 780 000 to the first and second appellants respectively and that the motor

A cycle, Honda Reg. Number ZNZ 18875, belonged to the respondent, his analysis and views of the case is contained in the following two sentences.

B I am unable to upset these findings of fact. The appeals of both appellants are hereby dismissed.

C From the scanty way in which the judgment was written, we appreciate Mr Ussi's anxiety and uncertainty on whether the judgment as it is, meets the requirement of the provisions of Order XLVI, rule 31 of the Civil Procedure Decree Chapter 8 of the Laws of Zanzibar. It provides:

31 - The judgment of the Appellate Court shall be in writing and shall state:

- D 1. The points for determination;
2. The decision thereon;
- E 3. Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

F We think that this provision of the Civil Procedure Decree provides sufficiently clear guidelines to the Courts for what is to be expected in a judgment. The guidelines are, with respect, too clear and unambiguous to require any further elucidation, all the more so at the High Court level. In this case, it goes without saying that the judgment, as extracted above, dismally falls short of what is provided for under Order XLVI, rule 31 of the Civil Procedure Decree. Judicial Officers at all levels of the judiciary hierarchy are enjoined to adhere to this provision of the Civil Procedure Decree in Tanzania Zanzibar and Order XX, rule 3 of the Civil Procedure Code 1966 in Tanzania Mainland.

H The learned judge of the first appellate High Court having failed to analyse and assess the evidence adduced before the Regional Court, we shall step into the shoes of the High Court in order to do that which the High Court judge should have done. In doing so, we are fully aware of the fact that this is a second appellate Court which normally does not interfere in findings of fact, in order to satisfy

ourselves that there was sufficient evidence upon which the Court of first instance, namely the Regional Court could properly and reasonably come to the finding and conclusion it did.

B From the record, it is clear that in the trial Regional Court, both the appellants testified that they had worked for the respondent at the shop for different lengths of time. They admit that there was no written agreement setting out the terms and conditions of their employment. As regards the total claim of TZS. 1 560 000 against the respondent, the appellants were not very clear how this amount was arrived. The first appellant stated that he was paid TZS. 50 000 per month by the respondent. This was admitted by the respondent in his evidence when stated that he was paying the first appellant TZS. 1 500 per day and that in a month he paid a total of TZS. 50 000 including petrol and fare allowances. The second appellant, according to the respondent was paid TZS. 20 000 a month rising to TZS. 50 000 a month, when his service was terminated. According to the evidence of the respondent, upon his advice the appellants took the matter to the Labour Office where it was decided that the first and second appellants were to be paid 130 000 and TZS. 780 000 respectively. The appellants have refused to be paid these amounts, the respondent further testified.

F With regard to the motorcycle Honda, Registration Number ZNZ 18875, the evidence of the first appellant was that, when he was re-engaged by the respondent, he had acquired the motorcycle. He said he had purchased it for TZS. 600 000 from one Ali Salum. The sale agreement shows his name and that of the seller. Furthermore, it is in the first appellant's evidence that the registration card of the motorcycle is in his name and not that of the respondent. On this, the record also shows that the respondent gave the first appellant TZS. 700 000 for the purchase of the motorcycle and that he had no time to enquire about the registration card. According to the evidence, the respondent had authorized and given money for the purchase of the motorcycle as a means of transport for the first appellant while on duty working for the respondent.

A On the evidence as analysed, we are satisfied that the trial Regional Magistrate was justified in his finding that the first and second appellants were only entitled to payment of TZS. 130 000 and TZS. 780 000 respectively as terminal benefits.

B Otherwise, we agree with the magistrate that there was no basis for granting payments over and above this amount. It is to be observed that there was no written agreement from which it could be said with certainty what the terms of the payment upon termination of service would be. In our view, in the circumstances of the case, the calculations worked out by the Labour Office, a well established and credible office which is conversant with labour disputes, are sufficiently reliable. We think had the learned judge addressed, analysed and considered this evidence as the trial magistrate did, still, he would have come to the same conclusion. In the event, we find no merit in the appeal pertaining to the terminal benefits. As found by the Courts below, the first and second appellants are entitled only to TZS. 130 000 and TZS. 780 000 respectively as terminal benefits.

E On the other hand, with regard to the motor cycle Honda Registration Number ZNZ 18875, upon our own evaluation of the evidence, we think the learned judge was in error in not holding that the first appellant had proved the case on a balance of probabilities. It seems to us highly unlikely that the respondent, as a diligent businessman, would in the normal course of life allow such a free hand on the part of an employee to this extent. That is, giving money TZS.700 000 to the employee to purchase the motorcycle as transport in the course of duty without bothering in the least about the sale agreement, the registration card and the seller. To the contrary, an employer in the position of the respondent would normally buy the motorcycle, register it in his name or firm and then entrust it for use to the employee. For this reason, it seems to us that the first appellant's version that he purchased the motorcycle is more credible than that of the respondent. As a civil case, it is our view that he had proved his claim for the motorcycle on a balance of probabilities.

A All in all therefore, for the foregoing reasons, we dismiss the appeal in respect of the first and second appellants with regard to the termination benefits. The appeal in respect of the first appellant, regarding the motorcycle is allowed. It is accordingly ordered that the motorcycle Honda Registration Number 18875 is to be released B to the first appellant, Ali Abdalla Amour. No order as to costs.

C EXPEDITO DAUDI CHUNGA v. NSOMBO AND CO. LTD

D
HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(Massati, J.)

E
(PC) CIVIL APPEAL No. 94 OF 2003

Probate and Administration – Sale of the estate under administration – Court orders sale by auction at a given price – Whether the sale may be conducted at variance with the orders of the Court. F

Probate and Administration – Sale of the estate under administration – Requirement of Notice before effecting the order for sale – Rules governing execution proceedings in Primary Courts – The Magistrates' Courts (Civil Procedure in Primary Courts) Rules 1964. G

H The Primary Court appointed the appellant administrator of the estate of the late Angelo Daudi Chunga. But before the letters of administration had been filed, the beneficiaries unanimously consented that the deceased's house be sold. The house was then valued at TZS. 9 500 000 and the Trial Court ordered the respondent to auction the house accordingly. The respondent sold the house at TZS. 4 000 000 and the Trial Court endorsed the certificate of sale for that price. Aggrieved, the appellant filed an application for revision in the District Court but was unsuccessful, hence this Appeal. I