



MWAKA WA 82
TOLEO NA. 9

2 Machi, 2001

GAZETI

BEI SH. 200/=

LA

DAR ES SALAAM

JAMHURI YA MUUNGANO WA TANZANIA

Linatolewa kwa Idhini ya Serikali na
Kuandikishwa Posta kama
Gazeti

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TAARIFA YA KAWAIDA NA. 100

Notice is hereby given that Orders as set out below have been issued and are published in Subsidiary Legislation Supplement No. 8 dated 2nd March, 2001 to this number of the *Gazette*:—

Order under the Interpretation of Laws and General Clauses Act, 1972 (Government Notice No. 33 of 2001).

Order under the Interpretation of Laws and General Clauses Act, 1972 (Government Notice No. 34 of 2001).

Order under the Insurance Act, 1996 (Government Notice No. 35 of 2001)

Notice is hereby given that the following Bills to be Submitted to the National Assembly are published in a Bill Supplement No. 2 & 3 dated 2nd March, 2001 to this number of the *Gazette*:—

A Bill for an Act to amend the Dar es Salaam Water and Sewerage Authority Act, 1981.

A Bill for an Act to establish a regulatory authority in relation to the Surface and marine Transport Sectors and to Provide for its operation in place of former authorities and for related matters.

A Bill for an Act to establish the Education fund, to provide for management of the fund and for related matters.

A Bill for an Act to establish a Regulatory Authority in relation energy and water utilities and to provide for its operation in place of former authorities and for related matters.

A Bill for an Act to amend Certain written Laws.

A Bill for an Act to enact the Sugar Industry Act to provide for the establishment of Sugar Board of Tanzania, National Sugar Institute and the improvement development regulation of the Sugar Industry and matters related thereto.

A Bill for an Act to make Comprehensive provisions for the regulation and control of medicines and poisons and to provide for connected matters.

Matangazo yahusuyo mali za watu waliofariki, kuvunja mikataba ya ushirikiano na mengineyo, yakiwa ya manufaa kwa umma yaweza kuchapishwa katika *Gazeti*. Yapelekwe kwa Mhariri, Idara Kuu ya Utumishi—Ofisi ya Rais, S.L.P. 2483, Dar es Salaam, Simu za Ofisi 118531/4. Kabla ya Jumamosi ya kila Juma.

A Bill for an Act to make Comprehensive provisions for the regulation and control of medicines and poisons and to provide for connected matters.

TAARIFA YA KAWAIDA NA. 101

THE ELECTIONS ACT 1985
(ACT No. 1 OF 1985)

It is hereby notified for general public information that the LUDEWA CONSTITUENCY Parliamentary Seat became vacant on the 22nd February 2001.

The said vacancy has been caused by the death of Prof. Chrispin Donald Hauli who passed away on the 22nd February 2001.

HON. PIUS MSEKWA,
Speaker

TAARIFA YA KAWAIDA NA. 102

THE CONSTITUTION OF THE UNITED
REPUBLIC OF TANZANIA, 1977

NOTICE

APPOINTMENT OF DEPUTY MINISTER

It is hereby notified for general information that the following Deputy Minister having been appointed by the PRESIDENT took prescribed oaths on 15th February, 2001 entering upon the duties of his respective Office.

Hon. Abdulkader Abdulwahid Shareef, MP.
Deputy Minister, Ministry of Foreign Affairs and
International Cooperation.

STATE HOUSE,
Dar es Salaam. M. Y. C. LUMBANGA,
22nd February, 2001 *Secretary to the Cabinet*

TAARIFA YA KAWAIDA NA. 103

THE CONSTITUTION OF THE UNITED
REPUBLIC OF TANZANIA, 1977

NOTICE

APPOINTMENT OF PERMANENT SECRETARIES

It is hereby notified for general information that the following Permanent Secretaries having been appointed by the PRESIDENT took prescribed oaths on 1st February, 2001 before entering upon the duties of their respective offices:

Mr. Bakari Athuman Mahiza
Permanent Secretary
Ministry of Water and Livestock Development

Mr. Wilfred Ngirwa
Permanent Secretary
Ministry of Agriculture and Food Security

Mr. Ladislaus Columban Komba
Permanent Secretary
Ministry of Cooperatives and Marketing

STATE HOUSE,
Dar es Salaam. M. Y. C. LUMBANGA,
22nd February, 2001 *Secretary to the Cabinet*

TAARIFA YA KAWAIDA NA. 104

THE CONSTITUTION OF THE UNITED
REPUBLIC OF TANZANIA, 1977

NOTICE

APPOINTMENT OF REGIONAL ADMINISTRATIVE SECRETARY

It is hereby notified for general information that the following Regional Administration Secretary having been appointed by the PRESIDENT took prescribed oaths on 20th February, 2001 before entering upon the duties of his respective office:

Mr. Petter Bombo Barie
Regional Administrative Secretary,
Tabora Region.

STATE HOUSE,
Dar es Salaam. M. Y. C. LUMBANGA,
22nd February, 2001 *Secretary to the Cabinet*

TAARIFA YA KAWAIDA NA. 105

KUPOTEA KWA HATI YA KUMILIKI ARDHI
Sheria ya Uandikishaji wa Ardhi
(Sura 334)

Hati Namba: 20553.

Miliki aliyeandikishwa: KHATIBU MWATANDA.

Ardhi: Kiwanja Na. 93 Kitalu 'T' Temeke jijini Dar es Salaam.

Alwombaji: NBC (1997) Limited

TAARIFA INETOLEWA kwamiba Hati ya Kumiliki Ardhi iliyotajwa hapo juu imepotea na ninakusudia kutoa Hati mpya badala yake iwapo hakuna kipingamizi kwa muda wa miezi miwili tokea tarehe ya taarifa hii.

HATI YA ASILI ikionekana, irudishwe kwa Msajili wa Hati S. L. P. 1191, Dar es Salaam.

Dar es Salaam T. S. MWAKILEMA,
18 Januari, 1999 *Msajili wa Hati*

TAARIFA YA KAWAIDA NA. 106

MAKAMPUNI YALIYOFUTWA KATIKA
DAFTARI LA MAKAMPUNI
Sheria ya Makampuni
(Sura 212)

Inatolewa ilani chini ya kifungu 283 (5) cha Sheria ya Makampuni Sura 212 kwamba Makampuni yafuatayo yamefutwa katika Daftari la Makampuni.

1. RAAMII HOLDINGS LIMITED
2. CONSTRUCTION PLANNING CONSULTANTS LTD

.....
Msajili Msaidizi wa Makampuni

TAARIFA YA KAWAIDA NA. 107

SAWA SAWA STORES LTD

Kusudio langu ni kufuta kampuni yangu niliyotaja hapo juu kutokana na kufunga biashara niliyokuwa nikifanya kwenye kiwanja Na. 9 Kitalu 5 Mtaa wa Uhuru, Kariakoo kuanzia tarehe 1/1/2001. Cheti ya usajili ni Na. 27874 ya tarehe 23/6/1995.

Dar es Salaam, FAKHRUDDIN TAIBALI,
Mkurugenzi,

TAARIFA YA KAWAIDA NA. 108

FASHION BOUTIQUE LTD

Kusudio langu ni kufuta kampuni yangu niliyotaja hapo juu kutokana na kufunga biashara niliyokuwa nikifanya kwenye kiwanja Na, 5 Kitalu 5 Mtaa wa Uhuru, Kariakoo kuanzia tarehe 1/10/1998. Cheti ya usajili ni Na. 10853 ya tarehe 22/4/1985.

Dar es Salaam, FAKHRUDDIN TAIBALI,
Mkurugenzi,

TAARIFA YA KAWAIDA NA. 109

MKATABA WA HIARI

baina ya

OTTU

na

SHIRIKA LA NYUMBA LA TAIFA (NHC)

1/6/1998

Coram: L. C. Mlewa - Naibu Mwenyekiti

Ass: Mrs. Mloli, ATE - Yupo

Ass: Mr. K. C. Chambua, OTTU - Yupo

OTTU Branch: Mr. E. S. Tamiwa - Katibu wa OTTU - Yupo

Menejiment: Mrs. C. B. Luoga - Yupo

TUZO

Baada ya kuupitia Mkataba huu na kufanya marekebisho kadhaa, Mahakama imeona ya kuwa unafaa kusajiliwa na kuwa TUZO ya Mahakama. Umesajiliwa leo tarehe ya 1/6/1998.

(Sgd)

L. C. MLELWA

D/C

Inawasilishwa:

1. Meneja Mkuu,
N. H. C.,
S.L.P. 2977,
DAR ES SALAAM.

2. Katibu wa Tawi,
N. H. C.,
DAR ES SALAAM.

Certified true copy of the original.

20 Julai, 2000

B. E. NYAMUBI,
Registrar

SHIRIKA LA NYUMBA LA TAIFA

(N.H.C.)

**MKATABA WA HIARI WA HALI BORA YA
WAFANYAKAZI BAINA YA SHIRIKA LA NYUMBA
LA TAIFA**

NA

**MUUNGANO WA JUMUIYA YA WAFANYAKAZI
TANZANIA (O.T.T.U.)**

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1. *Utangulizi.*

Sisi Muungano wa Jumuiya ya Wafanyakazi wa Tanzania (OTTU) tujulikanao kama umoja wa wafanyakazi na Shirika la Nyumba la Taifa tujulikanao hapa kama Mwajiri kwa hiari zetu na katika hali ya maelewano tumefikia makubaliano katika masuala yaliyomo katika kumbukumbu hii ambayo yanaweka hali bora zaidi za kazi kwa wafanyakazi walioajiriwa na Shirika hili.

2. *Utambuzi.*

Muungano wa Jumuiya za Wafanyakazi wa Tanzania unalitambua Shirika la Nyumba la Taifa kuwa limewaajiri wafanyakazi ambao pia ni wanachama wake. Kadhalika Uongozi wa Shirika wanautambua Muungano wa Jumuiya ya Wafanyakazi wa Tanzania kuwa ndiyo chombo pekee cha Wafanyakazi kinachotetea haki na maslahi yao kwa ujumla kila chombo kimoja kinatambua kuwepo kwa chombo kingine kisheria na kwamba wafanyakazi hawa ni kiungo kikubwa cha ushirikiano baina yao.

3. *Wahusika*

Mkatoba huu utawahusu wafanyakazi wote wa Shirika hili walioajiriwa kwa masharti ya kudumu. Maana ya Wafanyakazi kwa mujibu wa Mkatoba huu ni Mkurugenzi Mkuu, Wakuu wa Kurugenzi, Mameneja wa Makao Makuu, Mameneja wa Mikoa, Wakuu wa Vituo na Wafanyakazi wote wa kudumu wa Shirika.

4. *Kudumu na Tarehe ya Kuanzia Mkataba.*

(a) Pande zote mbili zinakubaliana kwamba mkataba huu uanze kutumika kuanzia tarehe 1/7/1997. Na kudumu kwa miezi ishirini na minne (24). Upande wowote utakao kusudia kufuta kifungu chochote au kuongeza, kufanya marekebisho yeyote katika Mkataba huu unaweza kufanya hivyo kwa kuupa taarifa ya mwezi mmoja upande wa pili na kueleza sababu na makusudi hayo.

(b) Mkataba huu utaendelea kuheshimiwa kwa muda wote uliowekwa iwapo hapatakuwepo na upande utakaowahi kutoa taarifa kwa upande mwingine kwa makusudi ya kutengeneza upya mkataba huu.

(c) **KUBADILIKA KWA MKATABA**

Mkatoba unaweza kubadilishwa wakati wowote ndani ya kipindi cha miezi 24, ili mradi upande wowote wenye kusudio la kufanya hivyo uwe umetoa taarifa ya mwezi mmoja kwa upande mwingine ya makusudio ya kufanya hivyo.

5. *Upunguzaji wa Wafanyakazi.*

(a) Pande zote mbili zinakubaliana kujizatiti katika kulinda nafasi za kazi zilizopo na kufanya kila juhudi kuzuia uwezekano wa kupunguza wafanyakazi ambao tayari wana nafasi zao katika ajira.

(b) Upunguzaji wa wafanyakazi utachukua nafasi baada ya Uongozi wa Shirika kushauriana na Viongozi wa Tawi la OTTU, OTTU Wilaya na baada ya kufikiria njia nyingine za kukabiliana na hali hiyo, ikiwa ni pamoja na kuwahamisha wafanyakazi kutoka idara moja kwenda nyingine mpaka hapo itakapokuwa hali nzuri na kama lazima kwa kuwapunguza polepole.

(c) Ikiwa njia zote zitashindikana kwa kadri ya ujio wake Shirika litatazama masuala muhimu yafuatayo kwanza:-

- (i) Juhudi Kazini
- (ii) Uwezo wa kufanyakazi, usoefu na elimu
- (iii) Masuala ya kifamilia na kadhalika
- (iv) Umri Kazini (FILO)

(d) Shirika litawajibika kuwalipia mizigo kwa viwango vifuatavyo.

(i) Ngazi POS 1 - 4, PGS 1 - 3 Tani (3)

(ii) Ngazi PRS 1 - 4, PGS 4 - 8 na POS 5 - 8 Tani (4)

(iii) Ngazi PSS 1 - 4, PRS 5 - 10 na PGS 9 - 13 Tani (5)

6. *Saa za Ziada za Kazi -Overtime.*

(a) Siku za kawaida za kazi malipo ya ziada yatakuwa mara mbili ya mshahara wa saa moja ya kazi kwa kila saa inayozidi.

(b) Kazi itakayofanywa katika siku za mapumziko na siku za Sikukuu Mfanyakazi atalipwa mara tatu ya mshahara kwa kila saa moja ya kazi ya ziada.

(c) Malipo yāsizidi Basic Salary.

7. *Kuvuka Ngazi ya Mshahara*

Mfanyakazi aliyefikia "bar" na hawezi kupandishwa cheo kwa kukosa sifa zinazostahili, mwajiri amsaidie kupata sifa hizo kama kumpeleka masomoni kulingana na sera ya Mafunzo, na akishindwa kupata sifa hizo atabaki hapo hapo kwenye "bar".

8. *Kiinua Mgongo Maalum kwa Kustaafu Kustaafishwa na Kufariki.*

Pande zote tumekubaliana kuwa Mfanyakazi anaye achishwa kazi kwa kustaafu au kustaafishwa au anayefariki atakuwa na haki (au warithi) ya kupata kiinua mgongo maalum (Gratuity) kwa mpango ufuatao:-

S/No.	UMRI KAZINI	TUZO
1.	Miaka 5 mpaka 10	Mishahara ya miezi 4 kila mwaka aliofanyia kazi.
2.	Miaka 11 mpaka 15	(a) Mishahara ya miezi 4 kila mwaka aliofanyia kazi. (b) Mabati 30 (c) Cherehani 1
3.	Miaka 16 mpaka 20	(a) Mishahara ya miezi 4 kila mwaka aliofanyia kazi. (b) Mabati 30 (c) Cementi mifuko 40 (d) Cherehani 1
4.	Miaka 21 mpaka 25	(a) Mishahara ya miezi 4 kila mwaka aliofanyia kazi. (b) Mabati 60 (c) Cementi mifuko 60 (d) Cherehani 1

S/No.	UMRI KAZINI	TUZO
5.	Miaka 26 na kundlelea	(a) Mishahara ya miezi 4 kila mwaka aliofanyia kazi. (b) Mabati 80 (c) Cement mifuko 80 (d) Cherehani 1

9. Posho ya Njiani wakati wa Likizo

(a) Mfanyakazi atalipwa nauli yake yeye na familia yake kwenda na kurudi kila mwaka na kiasi cha Shs. 5, 000/= kwa kila anayesafirishwa na Shirika KAMA POSHO YA NJIANI. Familia ya Mfanyakazi Mume/Mke na Watoto manne walio chini ya miaka 18 au zaidi ya umri huo, lakini wanaosoma katika Shule na Sekondari ama vyuo.

(b) Likizo ya Siku 28 haitahesabika pamoja na siku za Jumomasi, Jumapili na Sikukuu za Ki-Taifa.

10. Matibabu

(a) Wafanyakazi na familia zao watapata matibabu bure.

(b) Familia katika maana Mkataba huu ni yeye mwenyewe, Mke/Mume, Baba, Mama Watoto na yeyote anayemtegemea, ambaye anatambuliwa na Mwajiri.

(c) Watoto kwa maana ya Mkataba huu ni wale walio chini ya umri ya miaka 18 au wale ambao wana umri zaidi ya miaka 18 lakini wasoma shule za Sekondari na vyuo.

(d) Kwa Mkataba huu na kuzingatia ripoti ya Bodi au Jopo la Madaktari (Medical Board), Mwajiri atoe/achangie huduma ya matibabu ya Mfanyakazi au familia yake endapo watapaswa kutibiwa nje ya nchi, Gharama/mchango huo kutegemea na uwezo wa Shirika unaweza kuwa hadi gharama zote kwa matibabu ya Mfanyakazi, na hadi nusu gharama kwa mtegemezi wake.

(e) Ikigundulika na daktari kuwa Mfanyakazi anamatatizo ya macho yanayohitaji miwani basi mwajiri agharamie kwa gharama nafuu.

11. Gharama za Mazishi.

(a) Mwajiri atatoa usafiri, Sanduku, Sanda na Shada la maua kwa Mfanyakazi atakayefariki na kiasi cha Sh. 100,000/= fedha taslim, zikiwa ni rambi rambi. Pamoja na gharama nyingine za mazishi.

(b) Endapo Mke, Mume, Baba na Mama wa Mfanyakazi ndiye aliyefariki, Mwajiri atatoa gharama ya kusafirisha maiti kupelekwa nyumbani kwake. Vile vile atatoa fedha taslimu Sh. 100,000/= zikiwa ni rambi rambi kama aliyefariki ni Mume au Mke wa Mfanyakazi; na Shs. 50,000/= kama ni Baba au Mama.

(c) Mwajiri atatoa usafiri ndani ya Mkoa anakofanyia kazi Mfanyakazi endapo mtoto wa Mfanyakazi ndiye aliyefariki ni kiasi cha Sh. 50,000/= fedha taslimu zikiwa rambi rambi.

(d) Familia na mizigo ya Mfanyakazi aliyefariki vitasafirishwa na Mwajiri hadi nyumbani kwake kwa gharama zilizotajwa katika kifungu Na. 5(d).

12. Huduma ya Chai na Chakula

Kwa vile utaratibu wa saa za kazi ni kuanzia saa 2.00 asubuhi mpaka saa 10.00 jioni na kwa kuwa muda huo haumwezeshi Mfanyakazi kupata chai nyumbani kwake. pande zote mbili zinakubaliana kwamba Mwajiri atoe posho ya Shs. 20,000/= kwa ajili ya chai na chakula ili kumwezesha Mfanyakazi aweze kufanya kazi kwa nguvu zaidi.

13. Ada za Wanachama

Ada za Wanachama wa OTTU zitakatwa kutokana na asilimia mbili (2%) au kiwango kitakachotangazwa na OTTU kwa mshahara ghafi wa kila Mwanachama na kiasi hicho kama malipo ya huduma za OTTU (Ottu Sevice fees) kwa kila mfanyakazi asiye Mwanachama wa OTTU.

14. Motisha kwa Umri Mrefu Kazini

Pande zote mbili tumekubaliana kuwa Wafanyakazi watapewa motisha kwa utumishi wao usiopungua miaka 10 mfululizo kazini kwa mpango ufuatao:—

- (a) Miaka 10 Zawadi Bati 5 geji 28 mita 3
- (b) Miaka 15 Zawadi Bati 8 geji 28 mita 3
- (c) Miaka 20 Zawadi Bati 10 geji 28 mita 3
- (d) Miaka 25 Zawadi Bati 15 geji 28 mita 3
- (e) Miaka 30 Zawadi Bati 20 geji 28 mita 3
- (f) Tuzo ziamanane na vyeti ambavyo ni SEALED kwa sahihi ya Mkurugenzi Mkuu.

15. Posho ya Mahitaji Muhimu kwa Wafanyakazi.

Pande zote mbili tumekubaliana kuwa Wafanyakazi wote wasio na ajira ya Bodi ya Wakurugenzi watalipwa posho kama ifuatavyo:—

- (a) posho ya Nyumba Sh. 10,000.00
- (b) posho ya Maji Sh. 2,000.00
- (c) posho ya Umeme Sh. 4,000.00

16. Tuzo kwa Wafanyakazi Bora.

Wakati wa Sherehe ya Sikukuu ya Mei Mosi ya kila Mwaka Kitaifa, pande zote mbili tumekubaliana kuwa Mfanyakazi bora wa Shirika atatuzwa kama ifuatavyo:—

- (a) Kituo Sh. 30,000/= na nyongeza mbili za Mshahara
- (b) Mkoa Sh. 50,000/= na nyongeza mbili za Mshahara
- (c) Kurugenzi Sh. 75,000/= na nyongeza mbili za Mshahara
- (d) Kitaifa Sh. 100,000/= na nyongeza mbili za Mshahara
- (e) Ikiwa Mfanyakazi anayehusika mshahara wake umefikia BAR Mwajiri amlipe fedha taslimu za nyongeza mbili mara miezi 12 kwa mkupuo mmoja.

17. Usafiri

Pande zote mbili tumekubaliana kuwa Mwajiri atawalipa wafanyakazi posho ya usafiri kwa siku zote za kazi yaani Jumatatu hadi Ijumaa. Ulipaji utakuwa kama ifuatavyo:—

- (a) Kwa Mkoa wa Dar es Salaam, Kinondoni, Temeke na Ilala wafanyakazi watalipwa posho ya usafiri kwa nauli halisi kwa mabasi 6 kwenda matatu na kurudi matatu.

- (b) Wafanyakazi wote walio nje ya Mkoa wa Dar es Salaam watalipwa posho ya nauli halisi kwa mabasi 2 kwenda moja na kurudi moja.
- (c) Wafanyakazi watako kuja ofisini kufanya kazi siku za Jumamosi, Jumapili na Sikukuu watalipwa posho ya usafiri kama ilivyo (a) na (b) hapo juu.

18. *Huduma kwa Matawi ya NHC.*

Pande zote mbili tumekubaliana kuwa matawi ya OTTU NHC yatapatiwa huduma kadhaa kama posho ya takrima na kusaidiwa usafiri kwa shughuli za kichama.

19. *Motisha za Jumla.*

Pande zote mbili tumekubaliana kuwa zitakuwepo motisha za jumla kwa wafanyakazi wote kama ifuatavyo:-

- (a) Tafrija ya kila mwaka kwa Wafanyakazi.
- (b) Endapo Mfanyakazi ataokoa mali ya Shirika, basi alipwe tuzo sawa na asilimia kumi (10%) ya bei ya kifaa alichookoa au mishahara ya miezi miwili chochote kitakachokuwa kidogo.
- (c) Shirika litayarishe kalenda zenye maudhui ya Shirika lenyewe halafu zigawanywe kwa Wafanyakazi wote.

30. MIKOPO YA ELIMU KWA WATOTO WA WAFANYAKAZI

Pande zote mbili tumekubaliana kuwa mfanyakazi anayesomesha watoto atakopeshwa mkopo wa kusomesha watoto ili mradi Mfanyakazi huyo hana mkopo mwingine wa kusomesha na ili mradi mkopo huo utarudishwa kwa kipindi cha miezi 12 kutoka kwenye mshahara wake.

21. *Sare za Mei Mosi*

Pande zote mbili tumekubaliana kuwa sare za Mei Mosi ya kila mwaka zitatolewa bure kwa Menejimenti pamoja na Wajumbe wa Halmashauri za matawi ya OTTU.

22. *Uthibitisho*

Kwa niaba ya
Muungano wa Jamuiya
za Wafanyakazi wa
Tanzania (OTTU)

Kwa niaba ya
Shirika la Nyumba la
Taifa (NHC).

1. SHABANI BAWENI,
Katibu Otu (W) Temeke.

HARUNA MASEBA,
Mkurugenzi Mkuu.

2. STANLEY KINYAHEMBE,
Mwenyekiti wa Tawi la Otu
Shirika la Nyumba la Taifa
Makao Makuu.

MAKONGORO MAHANGA,
Mkurugenzi wa Fedha
na Tawala.

3. EZEKIEL TAMIWA,
Kaimu Katibu wa Tawi
Shirika la Nyumba la Taifa
makao Makuu.

VICTORIA MANDARI,
Mwanasheria wa
Shirika

TAARIFA YA KAWAIDA NA. 110

MGOGORO WA KIKAZI

baina ya

AHMED LANGAI - MOROGORO

na

KIWANDA CHA TUMBAKU (DIMON)

RULLING

MWAIPOPO, J.

This is a trade inquiry which started being heard in Morogoro during this Court's Circuit sessions in July, 2000 sitting with the Gentleman Assessor Mr. Kingazi up to the closure of the complaint's case in which only one witness the complainant himself one Ahmed Isack Langai testified as PW. 1.

When the respondent opened up his defence in October, 2000 here in Dar es Salaam the gentleman assessor Mr. Kingazi could not continue sitting in this trade enquiry for he was committed to other important matters and he requested exemption from continuing serving as an assessor in this case which was granted. The Court therefore continued hearing the defence with out any Court assessor as per Act No. 2 of 2000 which become operative on 14/4/2000 allowing this Court to hear trade dispute without assessors where need be. Prior to this stage in Morogoro the second gentleman Assessors Mr. Shing'wenda had opted out of this case with leave of the Court because as the Regional Secretary of the Workers' Organization of TPAWU (Tanzania Planters and Agriculture Workers Union) he had on a number of occasions dealt with this trade dispute at its preliminary stages.

This trade enquiry has been prosecuted by Mr. Issa a trade Unionist from TPAWU headquarters in Dar es Salaam and the Respondent Dimon Morogoro Tobacco Processors Ltd has been defended by Mr. Kalenga their Legal Officers.

The source of their dispute is the termination of Mr. Ahmed Isack Langai the Complainant from employment effected by the employer on 4/10/1999 by serving him with a letter produced as exhibit P. 10. This complainant challenges such termination from employment as having been done unlawfully against him since he says he was neither told reasons for being terminated nor charged, tried, given chance to defend himself thereof for any disciplinary offence. He therefore seeks reliefs, from this Court of being reinstated back to work in his former post and being paid all his salaries and office allowances from 4th October, 1999 until his reinstatement is effected.

The employer has opposed as usual every claimed relief by the employee and complainant on reasons that there were disciplinary offences of insubordination and administrative incompetence committed by the complainant warranting his dismissal from employment. But, that, the employer leniently dealt with the complainant by merely terminating him from

employment instead of dismissing him as he otherwise deserved, that as employer he was antitled to do so under their employment agreement produced as Exhibit D.2. He further stated that he has met all his obligations of paying the terminal benefits of shs. 2,771,387/59 which were collected by the Complainant on 27/10/2000.

The complainant testified as PW.1 and produced 17 exhibits marked as Exhibit P.1-14. The Respondent on his part called two witnesses PW.1 Francis Masawi who is the Mechanical Engineer and immediate boss of the complainant and PW.2 Knowles Lumambo the Personnel Manager, the respondent produced 4 exhibits marked Exhibit P.1-4. The Court will take into account DW.2's letter of 15/11/1999 to the Commissioner of Labour with its attached defence statement in response to Exhibit D.3 and to which response the complainant replied with Exhibit D.4. I have taken into consideration the said DW.2's letter of 15/11/1999 in order to maintain the flow of the written correspondences which transpired between these two adversary parties and the Commissioner of Labour in order to bring sense and understanding to exhibits P.11 (which is the same as Exhibit D.3) and D.4. The same letter of DW.2 of 15/11/1999 has been for case of reference, been marked as Exhibit C.1 for the letter and C.2 for the defence statement of the employer. These exhibits are in the Labour Commissioner's file which is part of this Court's file record which was brought here for purposes of opening up this dispute in this Court as moved by the Labour Commissioner under S.8 of the Industrial Court Act of 1967 as amended.

Moreover, in his sworn testimony DW.2 Knowles Lumambo testified repeating his objection he raised in his letter of 15/11/1999 Exhibit C.1 to the Labour Commissioner that the dispute had not followed the required legal procedures of passing through the conciliation of the dispute at the level of the District and Regional Labour Officer who would have then referred it if they failed to reconcile the parties to the Labour Commissioner.

When being sworn as PW.1 the complainant said he was employed as Assistant Mechanical Engineer without indicating his level of education, professional qualifications and certificate as mechanical engineer. On the other hand, DW.2 testified that the complainant was employed initially on 1/15/1998 by oral agreement as an estate manager and later on 1/5/1999 he was employed by a written contract of employment as shown in exhibit D.2 as an assistant Manager under DW.1 Mechanical Engineer. I accept the testimony of DW.2 that the complainant was orally employed as estate Manager on 1/5/1998 and was later on 5/7/1999 employed by a written contract in Exhibit D.1 as an assistant manager under the Mechanical Engineer DW.1. He was employed by the Respondent Dimon Morogoro Tobacco Processors Ltd for only 1 year and 5 months before he was terminated from employment. When the trial started 4 issues were drawn for determination as follows:-

1. Whether the Employer followed the procedure in terminating the employment of the complainant and in giving reasons thereof to the complainant.

2. Was the complainant given chance to defend or explain himself before being terminated from employment?

3. Whether the complainant committed any employment mistakes or disciplinary offences or not which justified his termination from employment or otherwise i.e. reinstatement into employment.

4. What reliefs are the parties entitled to get from this Court?

From all the testimonies of the 3 witnesses who testified in Court being PW.1 DW.1 and DW.2 and all the documents produced I can see only one written evidence in Exhibit P.10 which is the termination of employment letter written by the Factory Manager Mr. Guy Medonald on 4/10/1999 which was quite brief and brittle in these words:-

"Dear Mr. Langai,

Re: Termination from Employment

Due to certain matters that have risen, we regret to inform you that the company no longer requires your services with effect from 4/10/1999.

You will be paid one month's salary in lieu of notice and your accumulated leave days amounting to 37 days.

We wish you every success in your future employment.

Yours truly

GUY MACDONALD

Factory Manager"

In this letter certainly no reasons at all were given for the termination of employment of the complainant. The letter mentioned certain matters that had risen leading the employer to terminate the employment. The same certain matters were not disclosed in this letter of termination which was I hold a wrongful omission amounting to a failure on the part of the employer to follow the laid down administrative procedure of notifying the complainant about the purported arisen matters effecting their employment relationship to the extent of terminating their employment contract.

The complainants right as an employee to be told the reasons for his termination from employment prior to his being terminated is constitutional as provided for under Article 13(6)(a) of the United Republic of Tanzania Constitution of 1977 as amended which I will call it as the Union Constitution for the purposes of this ruling that:-

"..... When the right and duties of any person, are being determined by the Court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against decision of the Court or of the other agency concerned."

The Respondent as employer was such an other agency who was required while deciding upon the employment rights and duties of the complainant as an employee to give a fair hearing by way of notifying the complainant about his misconduct and misbehaviour when dealing with other officers

of Companies working with or performing the work of his employer and by a way of giving a chance to the complainant to explain his side of the story i.e. to defend himself.

Of course, DW.1 Francis Masawi testified on oath that he warned orally the complainant by calling him for a drink whereby he discussed with the complainant about the complainant's misbehaviour and he thought they had settled their differences so that the complainant would change in his misconduct only to learn later on from their Boss the Factory Director also called Factory Manager interchangeably (Mr. Guy Macdonald) that the complainant had derided him that he could not sit (to reconcile) with dogs.

Again, even the Factory Director/Manager called a meeting going by the testimony of DW.1 which meeting involved PW.1 (the complainant), DW.1 (Mr. Masawi The Factory Director) (Mr. Macdonald) in which the complainant was warned of his misbehaviour and during which meeting the Factory Director the two of them to reconcile i.e. complainant and the same DW.1 did not accept the apology of PW.1 (the complainant) (DW.1) for he thought that the complainant was not genuine (crocodile tears) and so he ultimately ended up writing a letter of formal written complainant to the Factory Manager/Director as shown in exhibit P.5.

All these oral warnings and meeting meant to tell the complainant of his poor administrative misbehaviour were proper administrative and disciplinary actions taken against the complainant which ought to have been reflected into a prior letter indicating their intention to terminate the employment of the complainant for his to react to them in writing and if he happened to give similar unsatisfactor answers as he had previously done orally they could have then proceeded to impose their desired termination of contract. That would have made a big difference because by the time they terminate his contract the complainant would have been given reasons as well as having been given a chance to defend himself. Failure to do so has caused the complainant to be condemned with the termination of his employment without being heard, and to be embarrassed and injured in his expectation as a continuous employee of the respondent. Para 10 (a) of the Contract of employment which provided that the employer is entitled to summarily dismiss the complainant for any cause of interperance, insubordination and any kind of misconduct etc cannot relieve the employer from wrongfulness in dealing with the complainant dispute their leniency by not dismissing him as such because to establish such cause for a summary dismissal the employer had still a constitutional obligation to tell the complainant such earmarked cause for summary dismissal and to give a chance to the suspect to defend himself.

Since the employer was lenient and decided merely to terminate his employment then he should have abided at least by para 14 of the Employment agreement Exhibit D. 2 which provides as follows:—

"..... 14. This agreement may normally be terminated by either the Employer or the Employee giving to the other one month's notice in writing of the intention to terminate the contract"

There is no provision in this contract of employment for Summary termination of employment in 24 hours notice or less than that period on payment of a month's salary in lieu of notice as it was done in Exhibit P. 10. All 3 witnesses i.e. DW.1 and DW. 2 as I mentioned above Knowles Lumambo the Personnel Manager testified that the complainant was called back from leave only to be terminated from employment on the spot with immediate effect. This was an inhuman treatment which embarrassed and injured the ego, feelings and respect of the complainant contrary to the same Article 13 (6) (e) of the Union Constitution which Provides that:—

"No person shall be subjected to inhuman treatment."

Dispute the employer's wrongfulness in terminating the employment of the complainant as explained above at least there was some prior oral disciplinary warning metted upon him by both DW. 1 and the Factory Director. I believe in the testimony of DW. 1 and DW. 2 to that effect.

On the first issue of determination therefore, I hold that the employer wrongfully did not follow the procedure in terminating the employment of the complainant by his failure to give reasons for the termination and a chance of the complainant to defend himself.

The second drawn issue was whether the complainant was given chance to defend himself. This issue has already been dealt with and answered above quite exhaustively while dealing with the first issue drawn.

The third issue drawn was whether the complainant committed any employment mistake or disciplinary offences or not which justified his termination from employment or otherwise i.e. reinstatement into employment.

The employer at the stage of the Commissioner of Labour when called upon in Exhibit P. 11 and P. 14 to defend himself to defend himself allegedly for an unlawful termination of the complainant's employment replied with Exhibit P. 13 and D. 3 and C. 1(a), (b) and (c) in which in short he alleged that the dispute was improperly before the Commissioner of Labour for not abiding to section 6 (1) and (2) of the Industrial Court Act No. 41/1967 as amended thereby passed the District Labour Officer. The employer further alleged that the complainant committed acts of insubordination to his head the Mechanical Engineer as per complaints raised in Exhibit D. 4 and as per utteranced he made that he could not talk with dogs. He was also alleged to have misbehaved aggressively and uncooperatively against Stream team Contractors of Zimbabwe including failure to provide transport to them Exhibit P. 2, that he shouted rudely on workers of Thermax Ltd who were suppliers of boiler and Steam Spare parts to Dimon from Nairobi and that the same Thermax officials threatened to pull out of their contract to construct the steam system at the Dimon Co. Morogoro as per Exhibit P. 4. He also is alleged to have been rude and uncooperative to Mr. Kasanga while over seeing the drilling of a water well at Dimon as per Exhibit P. 3. etc.

The complainant has opposed all these allegations as being infounded and the exhibits as having been cooked up and concocted to victimise him and justify their unlawful termination of his employment. The complainant has argued that had he been so misbehaving and misconducting himself his employer would not have shifted him from being an estate manager to being an Assistant Manager and that he would not have signed the written contract in Exhibit D. 2.

The argument of concocted exhibits P. 2 (same as Exh. D. 1) P. 3, P. 4 P. 5 seem to be unfounded for these documents have been brought to Court and produced as exhibits by the complainant himself. In his testimony in Court PW. 1 alleged that he was not served with copies of all these documents which were talking about his misbehaviour and indiscipline in his work performance without being copied to him. He has not shown how then he acquired them all if they were not copied to him. Possibly he got them at the stage of the inquiry of this dispute by the Labour Commissioner. It is then when the employer produced all these documents to the Commissioner of Labour so as to prove the indiscipline misconduct of the complainant. It would appear that when these documents were served upon him (the complainant) he was fascinated by them and took them as supportive and prosecutive to his cause. The respondent who also wanted to depend himself using the same documents in his defence in this trial testified through DW. 1 by adopting the contents of these complainants documents as his own. In our adversary system of adjudication of justice and trade disputes it can now turn out that both sides are no longer in dispute in respect of those documents for they both refer the same documents to prove their side of the case for the complainant he relies on these documents to prove that they were forged and cooked up to victimise him whereas the employer relies on them to provide the truth and proof of his insubordination and grave misconduct.

Out of the two sides the employer is more credible in showing the truth of their contents and that they were written in the course of the complainants' misconduct. For example Exhibit P. 5 was authored by DW. 1 who has repeated testifying on oath relating the same contents who has withstood the intense cross examination of Mr. Issa quite credibly and unshakingly. Exhibits P. 2 and P. 4 too were addressed to DW. 1: So, he must have got them as testified in Court. Somehow Exhibit P. 3 about the drilling of water well is a bit weak for it was addressed to the Factory Director Mr. Macdonald who did not testify in Court. So, it is a bit hearsay evidence and is disregarded by this Court. The oral allegation that the Director heard the complainant utter that DW. 1 was a dog and he would not sit with him to resolve their difference is clear hearsay evidence which cannot prove the alleged misconduct and I disregard it completely. But the quarrels and fights which ensued when DW. 1 was warning the complainant by himself and at the meeting with the Factory Director are incidents which DW. 1 Personally witnessed and participated into them. I believe in all these allegations of misconduct as having indeed been committed by the complainant against DW.1 his immediate boss and to the outside company workers and officials of Thermas Co. and Steam Team Co.

The complainant seems to be intolerant, intemperate and extravagantly drunk with the power of the good money he used to earn from his same employer with whom he was at loggerhead. For example, he responded to the Commissioner of Labour in Exhibit D. 4 concerning the allegation that he had bypassed the necessary stage in the settlement of his dispute through the District Labour Officer of Morogoro by evoking his big post as Manager and superscale salary (He was getting US\$ 1,4000 salary per month over shs. 1,200,000/=) as the good measures that made the District Labour have no power to deal with him. If the amount of salary and money the parties to a trade dispute have got were the ground empowering jurisdiction upon Labour officials and other officials under the Industrial Court Act realm to handle it then even the Commissioner of Labour or any official of this Court would not have power to deal with his dispute for being public servants who definitely earn less salaries than the one he used to get with Dimon, the respondent. Another example of the proneness of the complainant to exaggeration is his statement at the start of his testimony in Court that he was an Assistant Mechanical Engineer whereas the testimonys of DW. 1, DW. 2 and Exhibit D.2 show that he was merely an assistant Manager to the Actual Mechanical Engineer DW.1. Even in Exhibit D.4 he told the Commissioner of Labour that he was a Manager while he was merely an assistant Manager. In Court here he testified that he was not warned orally or by any meeting with the Factory Manager or anybody else which, in view of the other evidence of the respondents side as analyzed above is untrue and incredibly unworth of belief.

The complainant, I hold in respect of the 3rd issue for determination that committed disciplinary offences of insubordination to his boss the Mechanical Engineer and employment mistakes of misconduct and lack of co-operation to other workers of companies of Steam Team (pvt) Ltd and Hermox Ltd. I hold further that these misconduct and insubordination justified the employer to terminate him from employment because the complainant was a burden and a liability not only to "his employer Dimon Morogoro Tobacco Processing Ltd but also he created unfavourable working conditions for foreign Companies such as Hermox Ltd of Nairobi and Steam Team (pvt) Co. Ltd of Zimbabwe which were subcontracted to work for his employer such that the employer was entitled to terminate their employment contract in terms of para 14 of their employment agreement in exhibit D.2 quoted above. The failure to give a written one month's notice to the complainant as held above is merely a technical error for in fact the employer according to the testimony of PW. 1 himself and DW. 2 indeed did recall the complainant from leave on 8/9/1999 which he had started enjoying of since 1/9/1999 and notified them that he was being terminated from employment. The actual letter of termination was issued on 4/10/1999 and received by the complainant on the same date.

Otherwise under the Union Constitution its article 25 (1) (a), (b) and (2) which is relevant to both of them (Complainant and Respondent) provides as follows:—

"25 (1) Work alone creates the material wealth in society, and is the source of the wellbeing of the people and the measure of human dignity. Accordingly, every person has the duty to —

- (a) participate voluntarily and honestly in lawful and productive work;
- (b) observe work discipline and strive to attain the individual and group production targets desired as set by law.

(2) Notwithstanding the provision of sub article (1), there shall be no forced labour in the United Republic."

Both the employer and the employee are persons who are equal before the law in terms of Article 13 (1) of the same Union Constitution which provides as follows:—

"13 (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law."

Such equality between the employer and the employee must be observed by this Court in dealing with their employment and contractual relationship so that they each participate voluntarily and honestly in lawful and productive work as per article 25 (1) of the same Union Constitution cited above. The voluntariness and honesty of the employer and employee in remaining together as such as per their employment contract is valid only as long as both maintain lawful and productive work. When there is neither lawful nor productive work being performed by either side any part to the employment contract should be free to voluntarily and honestly terminate the employment agreement. Here evidence has been established that there was indiscipline and misconduct and insubordination committed by the complainant which was quite unlawful as per their contracts' term in para 10 (a) of Exhibit D. 2 and quite unproductive to the work of Dimon Thermax and Steam Team. To do otherwise would be going against the same quote Article 25 (1) of the Union Constitution which prohibits forced labour in Tanzania which applies to both the employer that he should not be forced to keep in employment someone involuntarily and dishonestly if he has good cause. Just as no employee should be forced to remain in employment even if he has good cause to de terminate his employment. The employer, to answer the last portion of the 3rd issue drawn for determination, I hold was entitled to terminate the employment of the complainant.

The collateral issue of whether it was lawful to jump the stage of the District Labour Officer will not be discussed and determined here because it was not drawn as an issue in this inquiry.

The fourth issue is what reliefs are the parties entitled to get from this Court.

Since this Court has found the complainant guilty in insubordination and of disciplinary misconduct his reliefs to be reinstated to his former employment and post with all the benefits are hereby dismissed.

Since the employer on his part has also been found guilty on his own wrongfulness of not giving reasons for terminating the employment of complainant although he had many good reasons as held above and he did not give the complainant chance to defend himself he is hereby held liable to pay 3 (three) months salaries to the complainant on top of all the terminal benefits paid so far. The same (three) 3 months salaries shall carry no other fringe benefits and allowances such as housing, transport etc. other than the gross monthly salary and shall be subject to taxation mere penalty imposed by this Court.

This ruling is delivered in the presence of both parties and now it becomes an award of this Court this 23/11/2000

E. L. K. MWIPOPO, J.
Chairman

23rd November, 2000

23/11/2000

Court: Uamuzi umetolewa mbele ya pande zote mbili.

E. L. K. MWIPOPO, J.
Mwenyekiti

23 Novemba, 2000

TAARIFA YA KAWAIDA NA. 111

MGOGORO WA KIKAZI NA 42 WA 1999

baina ya

TPAWU

na

KILOMBERO SUGAR CO. LTD

UAMUZI

MWAIPOPO, J. (MK)

Kwa vile Memorandum of Understanding imekwishaletwa mahakamani na haikupingwa na ina vipengere vinavyotaka kusiwepo tena mgogoro wowote mahakamani mimi sikubali kupoteza muda wa Mahakama kurudi kwa mention nyingine juu ya suala hili hili. Kwa hiyo naingiza kwenye rekodi ya mahakama hii kuwa mgogoro huu umemalizika kadri ya Memorandum of Understanding ilivyoletwa kama Kielelezo Pd. 1.

Jalada hili ninalifunga. Kama kuna yeyote kati ya pande hizi mbili ambaye anataka tafsiri ya uamuzi huu au Memorandum of Understanding hiyo itabidi alete maombi rasmi ya kufanya hivyo by Chamber Summons etc. formally.

Kwa hiyo Uamuzi huu sasa unakuwa Tuzo ya Mahakama hii kwamba wameelewana nje ya Mahakama kama ilivyo kwenye Memorandum of Understanding.

Nimesoma Uamuzi huu leo mbele ya pande zote mbili leo tarehe 15/11/2000.

E. L. K. MWIPOPO, J.
Mwenyekiti

15 Novemba, 2000

MGOGORO WA KIKAZI NA. 42 WA 1999

baina ya

TPAWU

na

KILOMBERO SUGAR CO. LTD

UAMUZI

MWAIPOPO, J. — Mwenyekiti

Hii ni session ya Mahakama ya Kazi na taarifa zilizoletwa mapema na Msomi Mrs. Kashonda, Advocate wa Kilombero Sugar Co. Ltd. alipokea summons. Ndiyo maana Msomi Ms. Munguto ameleta barua akiomba iahirishwe kwa vile ana taarifa juu ya kusikilizwa kwa mgogoro huu leo hapa Morogoro. Mahakama haikutarajia kuwepo kisingizio au sababu ya kuahirisha mgogoro huu kwa sababu eti Wakili yuko Mwanza. Shughuli ya Mwanza haikutajwa kwenye barua ili tujue kama ni kuhudhuria kwenye Mahakama ya juu zaidi kuliko Mahakama hii n.k. Kwa vyovyote vile barua ya Msomi Mrs. Mnguto kwa mwajiri ilipaswa inakiliwe kwa walalamikaji TRAWU na pia kwa Msajili wa Mahakama. Kwa kufanya hivyo Mahakama na Walalamikaji wangejua kabla ya kuondoka kuja Morogoro kwamba mgogoro unaweza usisikilizwe Mahakama ikakubali kuahirishwa kwake na hivyo ingepunguza gharama za walalamikaji.

Kwa upande wa kuahirisha mgogoro huu kama alivyoomba Bw. Muchunguzi Personnel and Administrative Officer wa Kilombero Sugar Co. ombi hilo ni la msingi kwani ameleta barua ya Mwakili akiomba iahirishwe. Kwa vyovyote huu ni mgogoro mzito na mgumu unaohitaji huduma ya Msomi Wakili Kashonda. Pia Bw. Issa -- Deputy Secretary General wa TRAWU amekubali kuahirishwa huko ili na yeye apate nafasi ya kujibu utetezi wa Mwajiri ambao umeletwa na K. S. C. mnamo tarehe 5/7/2000 na kukopiwa TRAWU Kilombero Sugar Co. Lakini bado wanasema hawajapata nakala yao.

Waugwana Wazee wa Mahakama na Mimi mwenyewe tunakubali kuahirisha mgogoro huu kwa madhuni ya Wakili kuweza kuhudhuria na pia TRAWU kuweza kujibu utetezi ulioletwa kama watapenda kufanya hivyo.

Hata hivyo kama nilivyoeleza hapo juu upande wa pili ulikuja umejiandaa kusikiliza mgogoro huu na Mahakama pia ilikuja imejiandaa kusikiliza mgogoro pamoja na Waugwana wazee wa Mahakama mmoja kutoka Dar es Salaam na mwingine wa hapa hapa Morogoro. Kama Msomi Ms. Kashonda au Msomi Ms. Munguto wangetujulisha mapema juu ya kutokuendelea na kusikiliza mgogoro huu tusingeharamia safari hii kwa jinsi mahakama ilivyofanya na jinsi walalamikaji walivyofanya. Kwa upande wa Mahakama hakuna gharama zitakazorudishwa kwani zinagharamiwa na Serikali. Kwa upande wa walalamikaji wana haki ya kurudishiwa gharama zao na hoja hii imeungwa mkono na Waugwana Wazee wa Mahakama wote wawili baada ya kushauriana nao, Muungwana Mzee wa Mahakama Bw. S. H. Sultan na Muungwana Mzee wa Mahakama Bw. E. S. Shing'wenda. Mimi pia nakubali gharama zirudishwe kwa mlalamikaji na naagiza zirudishwe kama ifuatavyo.

Bw. Issa mwendeshaji wa Mgogoro huu arudishiwe night moja Morogoro Shs. 40,000/0 na gharama za mafuta litre 35x2 kwenda na kurudi litre moja shs 518 x 70 litres = Shs. 36,260/= Pia wafanyakazi wanne waliokuja kwenye ushahidi walipwe nauli Shs. 2,000/= x 2 (to & fro) na posho ya Shs 10,000/= kwa night moja jumla Shs. 14,000/= x 4 = 56,000/= Jumla Mwajiri Kilombero Sugar Co. itarudisha gharama za Shs. 40,000/= + 36,260/= na 56,000/- = 132,260= tu kwa TRAWU mara moja (hadi kufikia tarehe ya kikao kijacho).

Kama mgogoro huu umeangukia kwenye Makubaliano kati ya Mwanasheria Mkuu wa Serikali, PSRC, Hazina, K. S. C. na TRAWU au la watazungunza pande zote mbili za mgogoro huu kabla ya kuanza kusikilizwa iwapo upande wowote utapenda kufanya hivyo. Walalamikaji wachukuwe utetezi wa Mwajiri hivi sasa na kama wanataka kujibu basi wafanye hivyo ndani ya mwezi mmoja kuanzia leo hadi tarehe 18/8/2000 nakala wampatie Msomi Ms. Kashonda moja kwa moja pamoja na Mwajiri K. S. C.

Kusikilizwa kwa mgogoro huu kunaahirishwa hadi tarehe 7/9/2000 Dar es Salaam kama alivyoomba Msomi Mnguto kwenye barua yake.

E. L. K. MWAIPOPO, J.

Mwenyekiti

18 Julai, 2000

TAARIFA YA KAWAIDA NA. 112

MGOGORO WA UCHUNGUZI

baina ya

YOHANA B. MSHUZA — DAR ES SALAAM

na

BODI YA KAHAWA TANZANIA — MOSHI

UAMUZI

Shayo — D/C

Kwa barua yake ya tarehe 28/12/99 yenye Kumbukumbu Na. KZ/U.10/MG/1029/10 Kamishna wa Kazi aliwasilisha mbele ya Mahakama ya Kazi mgogoro wa Kikazi kufanyiwa Uchunguzi kwa mujibu wa kifungu cha 8 (a) cha Sheria ya Mahakama ya Kazi Na. 41/67 kama ilivyorekebishwa na Sheria Na. 3/90 na 2/93. Kwa kutambua kwamba mlalamikaji kwa mujibu wa kumbukumbu zilizopo, aliachishwa kazi tarehe 24/3/92 lakini uchunguzi wa mgogoro wa kikazi ukafunguliwa hapa mahakamani tarehe 14/1/2000, mahakama ilibaini kuwa mgogoro huu wa uchunguzi haukuwapo kihalali, na ikawataka pande zote ziliete maelezo yao kuhusiana na hoja hiyo ili uamuzi uweze kutolewa.

Katika hoja zake kimaandishi, mlalamikaji Yohana B. Mshuza ameelezea kwa kirefu sana hatua alizochukua mara tu baada ya kuachishwa kazi tarehe 24/3/92 na jinsi suala lake lilivyoshughulikiwa na vyombo vya Serikali vilivyopewa jukumu la kutatua mgogoro ya kikazi kama vile Tawi la Chama cha Wafanyakazi. Afisa wa Kazi n.k.

Hata hivyo, cha msingi anachodai mlalamikaji ni kuwa Afisa wa Kazi wa Wilaya ndiye aliyemchelewesha suala lake kwa kulipeleka Baraza la Usuluhishi chin ya Sheria ya Usalama Kazini na matokeo yake Baraza la Usuluhishi likatoa uamuzi tarehe 2/6/98 kuwa alikuwa kwenye Menejimenti na kushauriwa kupeleka suala lake Mahakama ya Kazi kwa utekelezaji. Anaendelea kudai kuwa baada ya uamuzi wa Baraza la Usuluhishi, Afisa Kazi wa Wilaya alijaza Fomu TD 1 na TD 4 na kupeleka kwa Kamishna wa Kazi ambaye baada ya uchunguzi wake na akauleta mgogoro huu wa kikazi kwa uchunguzi

Mahakama ya Kazi tarehe 28/12/99. Kwa hali hiyo mlalamikaji anaiomba Mahakama hii, kwa mujibu wa kifungu cha 21 cha Sheria ya Ukomo wa muda (Law of Limitation Act) muda wa Ukomo uanzie tarehe 2/6/98 tarehe ambayo uamuzi wa Baraza la Usuluhishi ulitolewa. Na kama hilo haliwezekani, basi anaomba kutumia kifungu cha 44 cha "Law of Limitation Act" ili mahakama hii isimamishe shauri hili apate muda wa kupeleka maombi yake kwa Waziri wa Sheria kupata muda wa ziada.

Katika maelezo yake ya kujibu hoja hizo mlalamikaji, mlalamikiwa akiwakilishwa na Afisa wake Bw. Mussa Kopwe naye alieleza kwa kirefu mambo mengi ambayo yalichanganya Sheria ya Usalama kazini, Sheria ya Mahakama ya Kazi Na. 3/90 na 2/93 hasa vifungu vinavyohusiana na migogoro ya Kikazi. Hata hivyo hoja yake ya msingi ni kwamba taratibu za kuwasilisha mgogoro wa kikazi hazikufuatwa na kwamba malalamiko hayakuwasilishwa mahakamani katika muda unaotakiwa kwa mujibu wa Sheria ya Ukomo wa muda wa maombi (Law of Limitation Act) kwani umeletwa mahakamani baada ya miaka 8 kupita. Kwa hali hiyo, anatoa rai kuwa shauri hili litupiliwe mbali.

Waungwana washauri wote wawili Bw. Mbezi (ATE) na Bw. Masoud (OTTU) wameungana katika maoni yao kwamba Afisa Kazi ndiye aliyemsababishia mlalamikaji kuchelewesha shauri lake kwa kutokumshauri mkondo sahihi wa kuchukua kwa hiyo mahakama hii itumie uwezo wake wa kumpa mlalamikaji nafasi ya kusikilizwa shauri lake.

Nimepata fursa ya kupitia hoja zilizotolewa na pande zote mbili pamoja na maoni ya waungwana washauri yafaa kuharakisha kusema na mapema kwamba huu ni mgogoro wa Kikazi wa Uchunguzi kama ulivyoletwa na Kamishna wa kazi kwa mujibu wa kifungu cha 8(a) cha Sheria ya Mahakama ya Kazi Na. 41/67 kama ilivyorekebishwa na Sheria Na. 3/90 na 2/93, na wala siyo mgogoro wa kikazi chini ya kifungu cha 4(1) cha Sheria hiyo hiyo, kama pande zote mbili zinavyodhania katika maelezo yao kuhusu uhalali wa kuwepo kwa mgogoro huu mbele ya Mahakama ya Kazi. Imenibidi niseme hivyo kwa sababu tofauti na uchunguzi wa migogoro ya kikazi, migogoro ya kikazi ya kawaida ndiyo iliyowekewa utaratibu maalum na muda maalum wa kuwasilisha malalamiko hadi kufunguliwa/ kuletwa kwa mgogoro mahakamani, yaani vifungu 4 (1)–6(3) vya sheria Na. 2/93. Katika shauri hili, ambalo ni uchunguzi wa mgogoro wa kikazi, mlalamikaji aliachishwa kazi tarehe 24/3/92 lakini mgogoro ukaletwa mahakamani na Kamishna wa Kazi tarehe 13/1/2000 yaani baada ya miaka 8.

Ndiyo maana kabla ya kusikilizwa kwa mgogoro huu, Mahakama ikawataka pande zote mbili zito maelezo kama mgogoro huu wa uchunguzi upo hapa kihalali kwa kuhofia kuwa umepitwa na muda.

Kulingana basi na maelezo ya pande zote mbili, hakuna ubishi kwamba mlalamikaji kweli aliachishwa kazi tarehe 24/3/92 na ni ukweli ulio wazi kuwa mgogoro huu uliletwa mahakamani na Kamishna wa Kazi tarehe 13/1/2000. Tangu kuachishwa kazi hadi mgogoro unaletwa Mahakamani ni kipindi cha miaka 8. Migogoro ya Kikazi ni aina ya migogoro inayotawaliwa na Sheria ya Mikataba ya Ajira.

Kwa utaratibu wa kisheria mikataba ya ajira inaangukia chini ya Sheria inayoweka muda wa mashauri yatokanayo na mikataba, ambayo inasema (Law of Limitation Act, '71) kwamba mashauri hayo lazima yawasilishwe mahakamani katika kipindi cha miaka sita na siyo zaidi (item 7 jedwali la kwanza).

Katika shauri la mgogoro wa uchunguzi lililoamuliwa na Jopo la Majaji Mahakama Kuu Dar es Salaam – Misc. case No. 141/94 – N. M. C. Vs Hamisi Juma and 90 others iliamua ifuatavyo, nanukuu:—

"..... and we hold that the applicants had to comply with the Law of Limitation Act '71 by bringing their litigation before the Industrial Court within six years as per Paragraph 7 of the 1st schedule to the Law of Limitation Act '71. This is so because the litigation is based on contract. In the result we hold that the trade dispute which has culminated from these proceedings was time barred when it reached the Industrial Court".

Kwa msimamo huo wa busara nao mgogoro huu wakati unafikia mahakama hii ulikuwa umekwishapitwa na wakati. Kwa maana hiyo basi, Mahakama hii haina uwezo kisheria kusikiliza mgogoro huu wa uchunguzi. Kutokana na hali hiyo si jukumu la mahakama hii kutaka kujua ni nani alichelewesha au ni nani hakufanya jukumu lake. Kazi ya mahakama ni kuipokea Sheria kama ilivyo maana suala ni kama mgogoro uko ndani ya muda au hapana.

Kutokana na sababu hizo ndiyo maana sijakubaliana na waungwana washauri kwamba mlalamikaji apewe nafasi ya kusikilizwa kwa vile Afisa Kazi wa Wilaya ndiye aliyechangia kuchelewa kwa mgogoro huu. Kwa hitimisho basi, mgogoro huu haupo mbele ya mahakama kihalali kwa vile umepitwa na wakati wa mahakama hii haina uwezo kisheria kuusikiliza. Kwa hiyo nautupilia mbali na jalada linafungwa.

Uamuzi huu umetolewa nami leo hii jumatano tarehe 25/10/2000 mbele ya wahusika na unakuwa tuzo ya Mahakama ya kazi.

Sgd.

A. A. M. Shayo,
Naibu Mwenyekiti
25/10/2000

Certified true copy of the original

B. E. NYAMUBI,
Registrar

TAARIFA YA KAWAIDA NA. 113

UTHIBITISHO NA USIMAMIZI WA MIRATHI

(Katika Mahakama Kuu ya Tanzania, Dar es Salaam)

SHAURI LA MIRATHI NA. 61 LA MWAKA 2000

*Maombi ya Barua za Usimamiaji wa Mirathi ya James
George Lamb, Marehemu wa Dar es Salaam*

na

Mrs. Anna James Lamb, Muombaji

TAARIFA YA KAWAIDA

(Kanuni ya 75)

Watu wote wanaodai kuwa na haki katika mirathi ya Marehemu aliyetajwa hapo juu wanafahamishwa kufika na kuangalia mashauri haya katika jalada kana wanaona inafaa kabla ya kutolewa uthibitisho kwa mwombaji aliyetajwa hapo juu.

Mapingamizi yoyote kuhusu maombi haya yawe yameandikishwa mnamo au kabla ya tarehe 8 mwezi wa Mei, mwaka 2001.

Imewasilishwa Dar es Salaam leo tarehe 8 mwezi wa Februari, mwaka 2001

.....
Naibu Msajili

TAARIFA YA KAWAIDA NA. 113A

THE ELECTIONS ACT, 1985

(ACT NO. 1 OF 1985)

It is hereby notified for the general Public information that, the SOLWA CONSTITUENCY Parliamentary Seat became vacant on the 7th February, 2001.

The said vacancy has been caused by the death of Bhikhu Mohamed Bhikhu who died on the 7th February, 2001.

HON. PIUS MSEKWA,
Speaker