



MWAKA WA 83
TOLEO NA. 14

5 Aprili, 2002

GAZETI

BEI SH. 250/=

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 Uk.

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Notice is hereby given that Regulations and Notice as Set out below have been issued and are published in Subsidiary Legislation Supplement No. 13 dated 5th April, 2002 to this number of the *Gazette*:—

Regulations under the National Social Security Fund (Employment Injury Benefits) Regulations, 2002 (Government Notice No. 97 of 2002).

Notice under the Public Leadership Code of Ethics Act, 1995 (Government Notice No. 98 of 2002).

Notice under the National Security Fund Act, 1997 (Government Notice No. 99 of 2002).

The Moshi Municipal Council (Development Levy) By-laws, 2002 (Government Notice No. 100 of 2002).

TAARIFA YA KAWAIDA NA. 123

THE CONSTITUTION OF THE UNITED REPUBLIC OF
TANZANIA, 1977

NOTICE

APPOINTMENT OF HIGH COMMISSIONER AND AMBASSADORS

It is hereby notified for general information that the following High Commissioner and Ambassadors having been appointed by the President took prescribed oaths on 25th February, 2002 before entering upon the duties of their respective Offices.

(i) Mr. Hassan Omar Gumbo Kibelloh,
High Commissioner - UK

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.

- (ii) Mr. Marwa Mwita Matiko, Ambassador, Nigeria.
- (iii) Mr. Patrick Segeja Chokala, Ambassador - Russia.

M. Y. C. LUMBANGA,
Secretary to the Cabinet

STATE HOUSE,
DAR ES SALAAM.
25TH FEBRUARY, 2002.

TAARIFA YA KAWAIDA NA. 124

THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, 1977

NOTICE

APPOINTMENT OF CHAIRMAN, VICE-CHAIRMAN AND COMMISSIONERS OF THE HUMAN RIGHTS AND GOOD GOVERNANCE COMMISSION

It is hereby notified for general information that the following Chairman, Vice-Chairman and Commissioners of the Human Rights and Good Governance Commission having been appointed by the PRESIDENT took prescribed oaths on 15th March, 2002 before entering upon the duties of their respective Offices.

- (i) Hon. Judge Robert Habesh Kisanga, Chairman.
- (ii) Mr. Mohamed Ramia Abdiwawa, Vice-Chairman.
- (iii) Ms Catherine Harrieth Mbelwa Kivanda, Commissioner.
- (iv) Mr. Stephen Zachariah Mwaduma, Commissioner.
- (v) Mr. Jecha Salim Jecha, Commissioner.
- (vi) Mr. Robert Vicent Makaramba, Commissioner.

M. Y. C. LUMBANGA,
Secretary to the Cabinet

STATE HOUSE,
DAR ES SALAAM.
25TH MARCH, 2002

TAARIFA YA KAWAIDA NA. 125

NBAA BODI YA WAHASIBU NA WAKAGUZI WA HESABU TANZANIA

KUSAJILI WAHASIBU NA WAKAGUZI WA HESABU (REGISTRATION OF ACCOUNTANTS AND AUDITORS)

Katika kikao cha 117 cha Bodi ya Wakurugenzi kilichofanyika tarehe 25 Januari, 2002 katika kuzingatia kifungu cha 8(1) cha Sheria Nambari 33 ya 1972 ya Usajili wa Wahasibu na Wakaguzi wa Hesabu [The Auditors and Accountants (Registration) Act. 1972] kama ilivyorekebisha na Sheria Namba 2 ya mwaka 1995 inatangaza kuwa wataalamu wafuatao wamesajiliwa kama:

- (a) Wakaguzi wa Hesabu walioidhinishwa (Certified Public Accountants in Public Practice) – CPA-PPs.
- (b) Wahasibu walioidhinishwa (Certified Public Accountants) – CPAs.
- (c) Cheti cha Uandikishaji na Utunzaji vitabu (Accounting Technicians) – ATs.

Ofisi ya Mkurugenzi Mtendaji,
Bodi ya Wahasibu na Wakaguzi wa Hesabu,
S.L.P. 5128,
Dar es Salaam.

L. S. L. UTOUH,
Mkurugenzi Mtendaji

CHETI CHA UANDISHI NA UTUNZAJI WA VITABU ACCOUNTING TECHNICIANS (AT's)

1. Na: AT 108.
Jina: Mr. Kerry Asumwisye Mwamsele.
Sifa: ADA – 1995.
Anwani: Iringa Consultancy and Commercial Co. Ltd.,
Box , Iringa.
2. Na: AT 109.
Jina: Ms. Mary A. Assey.
Sifa: ADA 2000.
Anwani: CORE Securities Ltd., Box 76800, Dsm.

WAHASIBU WA HESABU WALIOIDHINISHWA CERTIFIED PUBLIC ACCOUNTANT (CPAs)

1. Na: ACPA 986.
Jina: Mr. Salvatory Donasian Njau.
Sifa: CPA(T) – 1995.
Anwani: Tanzania International Container Terminal Services Ltd., Box 13412, Dar es Salaam.
2. Na: ACPA 987.
Jina: Mr. Hamim Muhidin Gwiyama.
Sifa: CPA(T) – 1997.
Anwani: First Capital Partners, Box 8020, Dar es Salaam.
3. Na: ACPA 988.
Jina: Mr. Clement C. E. Mwinuka.
Sifa: CPA(T) – 1993.
Anwani: TPDC, Box 2774, Dar es Salaam.
4. Na: ACPA 989.
Jina: Mr. Emilian P. R. Busara.
Sifa: CPA(T) – 1998.
Anwani: Plan International, Box 3517, Dar es Salaam.
5. Na: ACPA 990.
Jina: Mr. Robert E. Shemhulu.
Sifa: CPA(T) – 1994.
Anwani: TANESCO, Box 9024, Dar es Salaam.

6. Na: ACPA 991.
 Jina: Mr. Finehas A. Swai
 Sifa: CPA(T) – 1998.
 Anwani: Wateraid (T), Box 2190, Dodoma.

7. Na: ACPA 992.
 Jina: Mr. John F. Massawe.
 Sifa: CPA(T) – 1998.
 Anwani: TRA, Box 11491, Dar es Salaam.

WAHASIBU WA HESABU
 WALIOIDHINISHWA KWA MUDA
 TEMPORARY CERTIFIED PUBLIC ACCOUNTANT
 (T.ACPA)

1. Na: T.ACPA 985.
 Jina: Mr. Christopher Stephen Hornby.
 Sifa: CPA(K) – 1987; CPA(U) – 1996.
 Anwani: Net PAK Ltd., Box 53306, Nairobi – Kenya.

2. Na: T.ACPA 984.
 Jina: Mr. David Andrew Thorn.
 Sifa: CA (E&W) – 1990.
 Anwani: Tanzania Cigarette Co. Ltd., Box 40114, DSM.

3. Na: T.ACPA 983.
 Jina: Mr. James Barry Nehmer.
 Sifa: AICPA – 1998.
 Anwani: National Microfinance Bank Ltd., Box 9213, DSM.

4. Na: T.ACPA 997.
 Jina: Mr. Sanjeev Dangi.
 Sifa: CA (India) – 1995.
 Anwani: Union Trust Investments Ltd., Box 2763, DSM.

WAKAGUZI WA HESABU WALIOIDHINISHWA
 CERTIFIED PUBLIC ACCOUNTANT IN PUBLIC
 PRACTICE (CPA – PP's)

1. Na: ACPA 993.
 Jina: Ms. Witness N. A. Shilekirwa.
 Sifa: CPA(T) – 1997.
 Anwani: Deloitte & Touche, Box 1559, Dar es Salaam.

2. Na: ACPA 994.
 Jina: Mr. Salem O. S. Balleith.
 Sifa: ACCA 1992.
 Anwani: Whinney Murray & Co., Box 1994, Al Hamra District Jeddah 21441, Saudi Arabia.

3. Na: ACPA 995.
 Jina: Mr. Gosbert A. M. Kafanabo.
 Sifa: CPA(T) – 1995.
 Anwani: TRA, Box 11491, Dar es Salaam.

3. Na: ACPA 996.
 Jina: Mr. Joseph M. K. Mwacha..
 Sifa: CPA(T) – 1998.
 Anwani: TAC, Box 580, Dar es Salaam.

WAKAGUZI WA HESABU
 WALIOIDHINISHWA KWA MUDA
 TEMPORARY CERTIFIED PUBLIC ACCOUNTANTS
 IN PUBLIC PRACTICE (T.CPA-PP)

1. Na: T.ACPA 998.
 Jina: Ms. Anna K. Ooga.
 Sifa: CPA(Kenya) – 1982.
 Anwani: PWC, Box 43963, Dar es Salaam.

2. Na: T.ACPA 328.
 Jina: Mr. Gurudas D. Anvekar.
 Sifa: CWA (India) – 1986.
 Anwani: George Williamson Tanzania, Box 2667, DSM.

TAARIFA YA KAWAIDA NA. 126

MKATABA WA HIARI

Baina ya

OTTU/COTWU (T) – D'SALAAM

na

WALFORD MEADOWS – DAR ES SALAAM

23/11/2000

Coram: C. E. R. – D/C
 Ass.: Mrs. E. I. Mloli, ATE – Yupo
 Ass. Mr. S. Baweni, OTTU – Yupo
 OTTU Branch: Mr. Muhando, OTTU – Yupo
 Menejiment: Mr. Rajesh Lathigra – Director Yupo
 cc. A. Ngozi.

TUZO

Haya ni maombi ya kusajili mkataba wa hiari kuhusu Retreachment ya Wafanyakazi wa Kiwanda cha Walford Meadows Limited, baina ya COTWU kwa upande mmoja, na menejiment kwa upande mwingine. Hakuna shaka kuwa mkataba huu ni mzuri na umekidhi matakwa ya sheria, nimeridhika kuwa unafaa kusajiliwa kama ulivyoletwa na inaamriwa hivyo.

Usajili wa mkataba huu unakuwa TUZO za Mahakama ya Kazi na kuwa na nguvu ya kisheria mara moja.

Tuzo hii imetolewa nami leo hii tarehe 23/11/2000 mbele ya wahusika.

(Sgd.)

C. E. R. William, D/C

Nakala: Mkurugenzi,
 Walford Meadows,
 S.L.P. 4537,
 Dar es Salaam.

Certified true copy of the original.

24/1/2001

B. E. NYAMUBI,
 Registrar

**MEMORANDUM OF AGREEMENT ON
RETRENCHMENT
BETWEEN WALFORD MEADOWS LTD. AND
COTWU (T) WALFORD MEADOWS BRANCH**

For the purpose of the imminent Retrenchment exercise due to take place in due course and in the absence of a valid voluntary agreement. A joint meeting took place on 4th Feb., 1999 between Walford Meadows Ltd. Management team and COTWU (T) Walford Meadows Branch committee at which the following were agreed as mutual modus:-

1. The number of staff to be retrenched shall be forty (40) inclusive of volunteers.

2. Due to lack of funds facing the Company retrenchment shall be made in smaller groups of people upon availability of funds.

3. Retrenchment criteria:-

- i. Ill health
- ii. Voluntary
- iii. Inefficiency
- iv. Old age
- v. Filo

4. When an employee is declared Redundant shall be Notified in writing and employment shall cease immediately upon receipt of redundancy package and terminal social security documents along with his/her letter of notification.

5. Remuneration shall be as under:-

- i. One month salary in lieu of notice.
- ii. Leave balance dues.
- iii. Days worked (unpaid) during the period.
- iv. Severance allowance.
- v. NPF according to the regulations.
- vi. T.Shs. 550,000.00 as handshake including transport to home of domicile self/personal effects.

6. Validity of the contract for the forty (4) persons to be affected by the retrenchment exercise is valid for three months period from 1st April up to 30th June, 1999.

7. Failures to effect a Retrenchment exercise within the agreed upon period will nullify the validity of this contract.

8. In case the Company's Financial status improves and if a need of employing new staff arises, special priority to be given to those ones who have been retrenched.

SIGNATURES.

We confirm our agreement memorandum on retrenchment by signing today.

The 19th March, 1999 day of Friday in here under:-

For and on behalf of:
WALFORD MEADOWS (T) LTD.

For and on behalf of:
COTWU (T) W. M. BRANCH

.....
GIANCARLO BONANNO,
Managing Director

.....
MHANDO G. Y.
Branch Chairman

.....
VENANCE J. MBOGO,
Administrative Officer

.....
CHRISTOPHER LUYENGA,
Ag. Branch Secretary

TAARIFA YA KAWAIDA NA. 127

Mkataba wa Hiari Na. 7 wa 2001

Baina ya

OTTU/TPAWU - DAR ES SALAAM

MTIBWA SUGAR ESTATES CO. LTD - MOROGORO

Coram: C. E. R. William

- DC

Ass:

- Hawapo

OTTU Branch: Mr. R. M. Mtundu, CM

-Yupo

Mr. G. B. Mugeta, Secr.

-Yupo

TPAWU Taifa: Mr. H. M. Issa

-Yupo

Management: Mr. H. Yahya, D/General

-Yupo

Mr. E. S. Ngowi, DMDA

-Yupo

Mrs. V. Maseti

-

cc

J. Mwambona

TUZO

Nimepitia mkataba huu wa hiari na nimeridhika kuwa umeletwa kwa hiari ya pande zote za mwajiri Mtibwa Sugar Estates Ltd. akiwakilishwa na Bw. E. S. Ngowi (DMDA) na Wafanyakazi wake kadri walivyowakilishwa na Tawi la OTTU/TPAWU la tawini Bw. Mtundu. Pia taratibu zote zimepitwa kama ipasavyo pamoja na kupata kibali cha Kamishna na Kazi na Mhe. Waziri wa Kazi na Maendeleo ya Vijana na Michezo.

Kwa hiyo naupitisha mkataba huu wa hiari. Mkataba huu unaandikishwa na unakuwa ni TUZO ya Mahakama hii.

Tuzo hii nimeitoa leo tarehe 7 mwezi Juni, 2001 na kutiwa muhuri wa Mahakama hii.

Certified true copy of the original

(Sgd)

C. E. William, D/C

01.08.2001

B. E. Nyamubi,
Registrar

The Voluntary Agreement No. 6 of 2000/2002 Between
Mtibwa Sugar Estates Ltd

and

Tanzania Plantations and Agricultural Workers Union
(TPAWU)- Morogoro

1. Preamble

We, Mtibwa Sugar Estates Ltd, Morogoro referred to as the Employer of the one part, and the Tanzania Plantation and Agricultural Workers' Union referred to as TPAWU of the other part, do hereby confirm in writing that we have voluntarily agreed on the following Agreement that sets out the conditions of employment of employees including remuneration of wages, fringe benefits, scheme of service, health and safety, etc. Following the privatization of the company, and taking into consideration the many challenges that the Tanzania Sugar Industry, and in particular Mtibwa Sugar Estate, will have to face in future, e.g. trade liberalization, increased competition from imports, need to reduce production costs and step up overall efficiency so as to improve the competitiveness of locally produced sugar, it

is in the mutual interest of both parties that they work hand in hand in order to ensure the sustainable development of the company and the welfare of the employees. In this respect, therefore, they have agreed that the general philosophy that should govern this Agreement is that all remuneration: wages, fringe benefits and other incentives will be related to productivity and determined according to the financial strength of the company.

2. Acknowledgement/Recognition

(a) The Employer recognizes and respects TPAWU as the sole voice and negotiator of the statutory rights of all workers employed by Mtibwa Sugar Estates Ltd. on all matters related to conditions of employment, scheme of service and other remunerations.

(b) TPAWU on the other hand recognizes and respects Mtibwa Sugar Estates Ltd. as the sole Employer of all workers of the Company concerned with this Voluntary Agreement.

3. Scope of Agreement

This Agreement is applicable to all permanent Company employees who are members of TPAWU and all those employees who pay TPAWU services in accordance with clause 3:4:1 of the 1998 TPAWU constitution except (i) members of the senior management (grade MSES 12 and above) who will volunteer to be treated in a separate agreement and inform TPAWU of their decision, and (ii) employees with special overseas contracts and non-Tanzania citizens.

4. Participation

The two parties have agreed that through TPAWU branch, workers will participate in deliberations on target setting, productivity, incentives as well as workers' and employer's rights on attaining/surpassing production targets.

5. TPAWU Membership

- (i) Any employee of Mtibwa Sugar Estates Ltd is free to be a member of TPAWU as soon as he joins the Company on permanent terms.
- (ii) If TPAWU members comprise 50% of the total labour force, the employer shall deduct 2% of the wage from non-TPAWU members to pay for the TPAWU services offered to Company employees as stipulated by labour laws in force.

6. TPAWU Fees

The Employer shall deduct entrance fees from new TPAWU members and monthly subscription fees from all employees of Mtibwa Sugar Estates and 98% of which will be remitted to TPAWU Headquarters in accordance with applicable legislation or as advised by TPAWU Headquarters from time to time. The balance of 2% will be for the use of Mtibwa TPAWU branch.

7. Probation Period

Employees on permanent terms shall be on a probation period of six months, which can be renewed for another period

of six months if necessary. Seasonal employees shall be under probation for two months.

At any time during the probation period the employee may give a resignation notice of between 1 and 30 days. Likewise, the Employer may adopt the same procedures to terminate the services of the employee.

8. Wages & Salaries

Minimum Wage

As a general principle, the two parties have agreed that Management would review the minimum wage each year after consultations with TPAWU and in accordance with the company's ability to pay, provided that the amount should not be less than the statutory minimum wage.

In this context, the two parties have agreed that the minimum wage for the employees will be increased to Tshs. 45,000 (forty five thousand shillings) per month with effect from 1 October 2000 and to Tshs. 50,470 (fifty thousand four hundred and seventy shillings) as from 1 September 2001.

9. Working Hours

- (a) The two parties have agreed that all the workers shall work for 45 hours a week.
- (b) The two parties have also agreed that in order to promote harmonious work relationship between the Employer and employees TPAWU branch secretary will be allowed five (5) hours per week to attend employees with labour relation problems in the TPAWU office.

10. Overtime Payment

- (a) Employees working in excess of 45 hours a week shall be entitled to overtime payment in accordance with existing labour laws.
- (b) If an employee is required to work on rest days, the Employer will have the right to assign work to the employee and his overtime payment shall be as stipulated under section 10(a) above.
- (c) Staff of grade MSES 10 and above shall not be entitled to overtime but would be considered for a special responsibility allowance ranging from 0 to a maximum of 10% of basic monthly salary on a case-by-case basis.
- (d) Subject to prior approval of the Employer, all overtime hours shall be paid either in cash and/or in the form of off days.

11. Task Definitions

- (a) Cane cutters
 - (i) 20 metres long by 17 cane rows in areas of good cane stand and above in areas of poor cane stand. The Minimum output per manday shall not be less than 4 (four) tons.
 - (ii) Cut cane shall be piled in heaps to facilitate easy loading.
- (b) Weeders

- (i) Three inter-rows or 750m
- (ii) More than three inter-rows or 750m where average weed density is not high.

(c) Sugarcane Planting

Placing seedcane stalks in two and a half rows or 625m, cutting the stalks into pieces and covering the seedcane with soil.

(d) Fertilizer Application

Apply manual six (6) bags of 50 kg each of mineral fertilizer.

(e) Herbicides Application

Uniform application of herbicide to an area of 1.25 hectare including mixing the herbicide and filling it in knapsack sprayers.

(f) Irrigation

- (i) Shifting 74 pieces of irrigation pipes from one and a half inter-row to another at a distance of 24m and arrange them accordingly.

- (ii) To turn on hydrants and make sure that the sprinklers irrigate properly throughout the shift.

(g) Drainage

To dig between 3 and 50 metres long depending on the depth of the drain or an equivalent of 4 m3.

- (h) All tasks mentioned above may be reviewed upward if there is any change in the cultural practices or in case of introduction of new technologies leading to improved labour productivity.

12. *Safety Measures*

The Employer shall institute, whenever required, safety measures such as provision of gloves, apron, goggles, boots, raincoats, masks, helmets to boiler workers, cooks, herbicide applicators, insecticide fumigators, painters, sewage attendants, etc.

13. *Management Authority and Responsibilities*

- (a) The Employer will have the authority and responsibilities of planning, assigning and supervising duties with the objective of increasing productivity and profitability.
- (b) The Employer will formulate Company policies and procedures, organization structure, scheme of service and staff regulations.

14. *Education and Work Efficiency*

(a) *Education/Training*

- (i) The Employer shall form a workers education committee in collaboration with TPAWU.
- (ii) The Employer shall provide appropriate training to workers in their respective skills/professions for the benefit of the Company and the workers themselves.
- (iii) There shall also be an AIDS education committee and a Social Welfare Committee.
- (iv) The Employer shall consider releasing TPAWU

Field Branch committee members to attend seminars and/or training programs so long that their leave/absence does not affect their normal duties.

(b) *Work Efficiency*

In order to raise the level of productivity at places of work the Employer shall:—

- (i) ensure that workers use tools of work carefully to avoid unnecessary breakdowns.
- (ii) ensure proper utilization of safety gears at places of work and institute disciplinary measures in accordance with labour laws in force in case of default.
- (iii) ensure proper utilization of working hours.
- (iv) provide workers with good services like transport, medical treatment, etc.
- (v) ensure that health and safety conditions prevail at work places.

15. *Incentives*

- (a) The Employer will nominate best workers every year who will be presented with best workers certificates. The Employer will award each of the nominated best workers an amount of money of Tshs. 70,000/= or a gift with the equivalent value of money.

An employee nominated as a national best worker and who is normally presented his award by the Guest of Honour at the National May Day celebrations will be given a special award of not less than Tshs. 500,000/= so long that Mtibwa S. E. is not selected to nominate the candidate for the award by TPAWU headquarters more than once every four years.

- (b) The Employer shall make available a Board of Honour for records on which names and photographs of all best workers will be publicly displayed in their honour each year.
- (c) A token sitting allowance of Tshs. 5,000/= will be paid to each TPAWU branch committee member for TPAWU meetings convened by the Employer to discuss on specific issues that are normally not dealt with during the regular meetings between the two parties.
- (d) There shall be an incentive scheme (package) for all employees who will be registered with the Industrial Court of Tanzania as elaborated in appendix 1 of this Agreement. This scheme includes all the benefits awarded to employees.

16. *Medical Examination and Medical Treatment*

- (a) Each prospective employee will be medically examined by the employer's Chief Medical Officer in accordance with the labour laws.

- (b) At any given time the Employer shall have the right to require an employee to undergo medical examination and will have the final say if the contract of the employee has to be terminated as a result of the doctors' medical examination report.
- (c) While the Employer exercises his right to require an employee to undergo medical examination, he will bear the costs thereof.
- (d) All Employees will be provided with medical records cards for getting local treatment free of charge for themselves, their spouses and legal children under 18 years or up to a maximum of 25 years in case the children are attending formal education.
- (e) Employees working in hazardous environments will be medically examined twice a year at the Employer's costs to monitor the state of their health condition.
- (f) The Employer shall only be responsible for illness expenses and injury sustained in the course of the employee's job occupation.

17. Annual Leave

- (a) Each employee will be entitled to 28 days annual leave after working for 12 consecutive months.
- (b) The Employer will pay full fare travelling expenses to the employee concerned and his/her spouse and half fare for a maximum of four children when proceeding on a annual after every two years.

18. Compassionate Leave

A seven (7) days compassionate leave on full pay will be granted to an employee on death of his/her father/mother, husband/wife and employee's child to mourn the deceased relative.

19. Maternity Leave

- (a) A female employee will be granted 84 days maternity leave after every three years without forfeiting her entitlement to her normal annual leave.
- (b) If a female employee gives birth to a child who dies after 1½ years and if after the death of the child she becomes pregnant and gives birth to a child safely she will be entitled to maternity leave even if the period of three years has not elapsed.
- (c) A female employee will be allowed one and a half-hour per day to go to breastfeed her child for a period of 18 months. Female employees residing far away from their work places will be released one and a half-hour before the official closing time.
- (d) When a female employee attains a pregnancy of six months she will have her task reduced by half.

- (e) A female employee will be exempted from night shift on attainment of six months pregnancy and for a period of nine (9) months after delivery if the child remains alive.

20. Sick Leave

- (a) A permanent employee excluding the one on probation period will be entitled to (i) fully paid sick leave for a period of six months and half paid sick leave for the subsequent six months in case of serious illness and (ii) a maximum of 15 days paid sick leave per year in case of minor illness.
- (b) A temporary employee will be entitled to (i) a fully paid one-month sick leave and half paid one-month sick leave in the subsequent month in case of serious illness and (ii) a maximum of 7 days paid sick leave per year in case of minor illness.

21. Workers Uniforms

- (a) The present practice of issuing either one or two uniforms and protective devices every year to office messengers, ward attendants, drivers turboys, tractor operators, technicians, electricians, mechanics, store keepers, cleaners, gardeners, herbicide applicators fumigators, nurses, agronomic hands, stock verifiers, cane cutters, weeders, security guards, irrigation, guest house attendants, masons, plumbers, carpenters, store clerks, health workers, etc will be continued.
- (b) An employee will put on uniforms and use protective devices as directed by the Employer. He/She will also be responsible for keeping the uniforms clean.
- (c) Uniforms will remain the property of the Employer who reserves the right not to issue new ones unless on presentation of old ones.
- (d) One bar of soap will be provided every two months to herbicide applicators.

22. Termination of Employment and Job Vacancies

- (a) The Employer shall not terminate the services of an employee unless there are good reasons to do so. In any case due consideration shall be given to the employee's work ability, conduct and his importance to the job. Similarly procedures of the Security of Employment Act (No. 62 of 1964) will be followed.
- (b) The following shall not constitute reasons for terminating the services of an employee:—
 - (i) Being a member of TPAWU and carrying TPAWU activities outside working hours and during working hours with the permission of the Employer.
 - (ii) Contesting any position in the trade union or being Chairman, Secretary or member of the TPAWU branch committee.

- (iii) Complaining against or participating fully in giving evidence against the Employer or Employer's representative in a case involving the breaking of laws.
- (iv) An employee's tribe, race, colour, religion, gender, political ideology and personal activities provided that they do not affect work efficiency.

23. *Workers Retrenchment/Redundancy*

If the Employer experience financial constraints and thereby be forced to retrench workers the following will have to be observed:—

- (a) The Employer will give sufficient reasons to TPAWU branch at the earliest regarding his intention to retrench by starting the number of workers to be retrenched.
- (b) The need for good work performance.
- (c) Duration of service of an employee.
- (d) Age of an employee.
- (e) The status of employee's family and dependants.
- (f) Other things being equal the principle of first in last out will be applicable and that priority will be given to retrenchees whenever there is need to undertake recruitment.
- (g) Compensations will be paid to retrenched workers, the quantum of which will be determined by the Employer after consultation with TPAWU when the case arises.

24. *Retirement*

- (a) Subject to prior approval of the Employer, an employee may decide to go on a voluntary retirement at the age of between 50 and 54 years.
- (b) An employee will go on compulsory retirement at the age of 55 years.
- (c) An employee intending to retire voluntarily shall give a written six months notice of his/her intention to retire. If Management approves his/her request, he/she will be entitled to half of the retirement benefits.
- (d) The two parties have agreed that an employee going on compulsory retirement or retiring on medical grounds will be entitled to the following benefits depending on the number of years he has served the Company:—
 - (i) An employee with 15 years of service will be paid 5 salaries and 50 kgs of sugar.
 - (ii) An employee with 20 years of service will be paid 6.5 salaries and 50 kgs of sugar.
 - (iii) An employee with 25 years of service will be paid 8 salaries and 50 kgs of sugar.
 - (iv) An employee with 30 years of service and above will be paid 10 salaries and 50 kgs of sugar.

N. B. There shall be no objection for paying these benefits to an employee who falls short of six months to be able to qualify for getting the benefits.

- (e) A special consideration will be given to those employees who will go on compulsory retirement in June 2001 as follows:—
 - (i) An employee with 15 years of service will be paid 10 salaries and 50 kgs of sugar.
 - (ii) An employee with 20 years of service will be paid 13 salaries and 50 kgs of sugar.
 - (iii) An employee with 25 years of service will be paid 16 salaries and 50 kgs of sugar.
 - (iv) An employee with 30 years of service and above will be paid 20 salaries and 50 kgs of sugar.

25. *Deaths and Funerals*

- (a) The two parties have agreed that at any time if an employee of the Employer passes away whether within the Employer's premises or outside the Employer's premises or while on annual leave and provided that the employee has been in the service of the Employer for more than one year, then the Employer will bear the costs for the coffin, and pay Tshs. 50,000/= (fifty thousand only) in case of normal death and Tshs. 100,000/= (one hundred thousand only) in case of fatal accident while on duty as condolence or bereavement grants to the bereaved family.
- (b) The Employer shall pay Tshs. 20,000/= (twenty thousand only) as condolences to an employee on the death of his/her spouse and Tshs. 10,000/= (ten thousand only) on the death of a child.
- (c) The Employer shall give 25 kgs of sugar to the bereaved family.

26. *Maafa or Bereavement Fund*

- (a) The Employer will collaborate with TPAWU to educate employees on the importance of Maafa/Bereavement Fund that will be funded by contributions obtained from deductions effected in employees' salaries. There shall also be a bereavement fund constitution and a committee to oversee proper utilization of the fund.

27. *Sport & Games Development*

There shall be various sports and games like football, netball, cultural dancing troupe, etc. for entertaining workers that will be promoted by the Employer.

28. *Transport Services*

- (a) The Employer shall provide free transport services for ferrying employees to and from their work places starting from the main and at Mabau and neighbouring villages such as Kunka, Kidudwe and Kisala. Failure to provide such services as a result of unforeseen circumstances will not constitute a reason for workers to report late on duty.
- (b) The Employer will provide transport facilities for

ferrying employees and their families within the estate and to Mabau according to an itinerary and a timetable to be worked out jointly by the Employer and TPAWU.

- (c) The Employer will meet costs of transport and related expenses for an employee on official duty or performing duties for the interest of the Employer.
- (d) The Employer shall provide transport to field workers such as cane cutters, weeders, irrigators, etc. going to and from work places starting from specified centres etc.

29. Labour Disputes

All labour disputes between the Employer and employee, which can be resolved under the Security of Employment Act No. 62 of 1964, will be handled accordingly.

However, other disputes and differences that do not fall under the Security of Employment Act No. 62 of 1964 will first be deliberated between the Employer and TPAWU branch with the objective of reaching a consensus.

If no consensus is reached, the dispute will be referred to higher authorities and if still no consensus is reached at this level, the handling of the dispute will follow the procedures laid down in the Industrial Court of Tanzania Act 41/67.

30. Seasonal Employees

By acknowledging that cane cutters and other workers are recruited on seasonal basis during the harvest for a period of between 4 and 8 months every year, the two parties have agreed to recognize that these employees form a vital group of the workforce of the company and that they are also TPAWU members. Their conditions of employment will therefore be as follows:—

- (a) In collaboration with TPAWU, the Employer will arrange an induction program for these employees at work places, residential places, dangerous areas, safety precautions and recreational centres.
- (b) A cane cutter will be provided with a decent accommodation. The number of cane cutters per room will comply with the labour laws. The Employer will set aside funds for improving the condition of cane cutters' camps and the beddings every year.
- (c) Uniforms and working tools will be issued to a cane cutter depending on the nature of the work and tools will remain the property of the Employer.
- (d) Where the employee is required to have an identity card, the Employer will meet the costs for acquiring it.
- (e) Seasonal employees will be entitled to 7 days leave for every three months of service which will be paid at the end of the contract in cash in lieu of leave. But those terminating their contracts before the end of the season will not be paid the leave.
- (f) Seasonal cane cutters will be provided with clean and safe drinking water, tea and porridge at their places of work.

- (g) The minimum wage for cane cutter will be equal to the one approved by the Employer but will not be below the statutory minimum wage announced by the government from time to time.

- (h) For the purposes of resolving labour disputes which may occur at work places both parties have agreed that TPAWU branch will serve as the link between the Employer and cane cutters and that cane cutters will participate in TPAWU affairs as soon as cane harvesting starts.

31. Date of Commencement and Duration of the Agreement

- (a) The two parties have agreed that the effective date of commencement of this Agreement will be 1st October, 2000 and that it will remain in force for a period of 24 months.

During the said period, if either party wishes to review the Agreement or to delete any clause in the Agreement, conditions stipulated in clause 27(3) of the Industrial Court Act 41/67 will be followed.

- (b) Nevertheless, this Agreement may be amended by either party provided that the party wishing to do so gives the other party a one-month notice regarding his intention to do so.
- (c) This Voluntary Agreement shall remain in force all the time until a new one is signed by both parties.

32. Labour Laws

The two parties have agreed that there is no clause in this Voluntary Agreement intended to contravene any Labour Law applicable either to the employer or employee. Where any clause in this Agreement is in dispute with any labour legislation then such clauses shall stand to be replaced and hence amend the Agreement to read consistent with the law.

IN WITNESS WHEREOF the parties in this Voluntary Agreement have endorsed the Agreement with their seals and signatures on the date and in the year and in the manner hereinafter.

Date 7/10/2000

Date 7/10/2000

For and on behalf of:—

For and on behalf of:—

Mtibwa Sugar Estates Ltd

Mtibwa TPAWU Field Branch

.....
General Manager

.....
Chairman
TPAWU Field Branch

.....
Secretary
TPAWU Field Branch

.....
Zonal TPAWU Secretary

.....
Deputy Secretary General
TPAWU Headquarters

.....
Secretary General
TPAWU Headquarters

Appendix 1

MOTIVATION AND INCENTIVE PACKAGE

	ITEM	WORKERS	INCENTIVE
1.	Canteen subsidy coupons	- seasonal cane cutters	Tshs. 110 per day upon completion of task.
2.	Saturday premium	- cane cutters	Tshs. 725 upon completion of normal task.
3.	Cane burning allowance.	- cane cutters	Tshs. 400 per day.
4.	Special allowance for cleaning of evaporators and repairs of boilers.	- boiler and evaporator cleaners including CED workers	Tshs. 1,000 per day
5.	Hardship allowance	- security guards - Nurses, Nursing assist, Ward Att. - Boiler and evaporator cleaner & chemical Att. - Toilet cleaners - Sewage & drains cleaners	5% of basis salary, subject to a minimum attendance of 25 days per month.
6.	Risk allowance	- Herbicide sprayers	10% of daily wage upon completion of task
7.	Bonus for attaining weekly target regarding cane crushing*	- Factory employees - Cane cutters & transport staff - TWS employees - Employees in Service & Other department.	100% 80% 80% 60%
8.	Sugar Coupon*	All employees	5 kg/month
9.	Housing allowance	- All permanent employees residing outside the Company premises	See Appendix 2
10.	Children Education assistance.	- All permanent employees having children studying in secondary schools and colleges	Tshs. 20,000 per child per annum up to maximum of 4 children.

* as per conditions in force

Appendix 2

Grade of employee	Housing allowance per month (Tshs)
MSES 1	4,500
MSES 2	5,000
MSES 3	5,500
MSES 4	6,500
MSES 5	7,500
MSES 6	8,500
MSES 7	9,500
MSES 8	11,000
MSES 9	12,500
MSES 10	16,000
MSES 11	18,000

TAARIFA YA KAWAIDA NA. 128

MGOGORO WA KIKAZI

baila ya

AGNES NYONGOLE - D'SALAAM

na

NEW AFRICA HOTEL - DAR ES SALAAM

UAMUZI

William - DC

Mlalamikaji Agness Nyongole, aliajiriwa na New Africa Hotel, Dar es Salaam tarehe 1/7/95 kama Mpokeaji wageni na mtuza fedha. Mnamo tarehe 6/1/99 Mlalamikaji alipata barua ya kuachishwa kazi jambo ambalo hakuridhika nalo. Kwa hiyo, baada ya kufuata utaratibu uliowekwa kisheria, alifikisha shauri lake katika Mahakama hii akidai kuachishwa kazi kwake ni uonevu hivyo anaomba mahakama itoe amri arudhishwe kazini.

Akitoa ushahidi wake Agnes Nyongole, akiongozwa na Wakili wake Bw. Ami aliiambia mahakama ya kuwa aliajiriwa na Hoteli ya New Africa July, 1995 na elendelea na kazi hadi Januari 1999, alipopata barua ya tuhuma tarehe 19/12/98 kielelezo P. 1. na tarehe 6/1/99 alipata barua ya kuachishwa kazi Exht. P.2.

PW. 1 baada ya hapo alijaza Fomu TD.2 ikiwa ni kufuata taratibu (Procedure) kwa mtu aliyeachishwa kazi. Alijaza pia Fomu 1-4 ikiwa ni Exht. P.4, P.5 na P.6.

Katika ushahidi wake alieleza kuwa sababu za kuachishwa kazi ni kitendo cha kufanya "double posting". Akielezea maana ya "double posting" alisema kuwa walikuwa na mteja aliyepanga katika hoteli yao chumba Na. 542 na 540 na kuwa waliingiza gharama mara mbili. Katika maelezo yake Bi. Agnes alisema kuwa hiyo "posting moja" aliingiza yeye kwenye Computer na hiyo nyingine ya mtu huyo huyo iliingizwa na Bw. Manish ambaye ni Meneja bila kumtaarifu Agnes.

Pw. 1 aliifahamisha mahakama kuwa sababu ya pili iliyomfanya akaachishwa kazi ni kitendo cha kutunza fedha iliyolipwa na mteja huyo. Bi Agnes alieleza hatua alizochukua baada ya kutokea "double posting". Kuwa alimjulisha Elizabeth ambaye alisema alikuwa Supervisor wake ambaye alikataliwa na menejiment kuwa Elizabeth hakuwa Supervisor wa Agnes kwani wote walikuwa Cashier na Receptionist.

Statement ya "double posting" ilikubaliwa kielelezo P.8.

Katika kuhojiwa na menejiment Bi. Agnes alieleza kuwa hizo "double posting" zilitokea mara nyingi kwa wafanyakazi wengine na zilisahihishwa.

Akijibu swali aliloulizwa na Wakili wa Menejiment Bi. Agnes alisema kuwa unapotokea "double posting" wafanyakazi hutunza fedha za mteja huyo kwa zaidi hata ya miezi miwili (2) vile vile alisema kuwa kwa vile Bw. Marwaha ambaye ndiye alitoa fedha mara mbili alikuwa na mteja wao wa kila mara na alijua kuwa akija atakabidhiwa fedha yake.

Na akaulizwa swali la nyongeza na Wakili wake Bi. Agnes alisema kuwa hawana muda maalum waliopewa wa kuhifadhi pesa za wateja zilizozidi.

Upande wa Mlalamikaji ulimwita Daudi Kosoe (PW) alieleza Mahakama hii alikuwa akifanyakazi New Africa Hotel toka 1995 na aliacha mwenyewe 1999. Alisema kuwa alifanya kazi kama Cashier, na Mkaguzi wa usiku pia na alimalizia akiwa Credit controller. Alimjua Bi. Agness aliyefanyakazi kama Receptionist PW. 2 Daudi alieleza taratibu za kiofisi pindi mgeni anapotoka hotelini na kazi za Receptionist. Alisema kuwa Receptionist walipewa fedha za ziada "flow" ili kusaidia katika kutoa chengi au paid out.

PW. 2 alielezea kuwa kama kuna "double posting" Receptionist anatumza pesa hizo baada ya kutoa ripoti kwa duty meneja.

Upande wa utetezi yaani New Africa Hotel Ltd. ulileta mashahidi wawili yaani Bwana Manongi Kilembe na Bwana John Lotuma. Bw. Manongi aliiambia Mahakama ya kuwa aliwahi kuajiriwa na Hotel New Africa kama Mkurugenzi wa Ndani, mwaka 1995 hadi sasa. Bw. Manongi alielezea utaratibu wa kazi zilizokuwa kwa Receptionist kuwa walipokezana. Alisema kila Receptionist aliyemaliza zamu yake alifunga pesa za makusanyo kwenye Banking Bag na kuzikabidhi kwa meneja wa zamu DW. 1 alitoa kitabu cha Hotel procedure kielelezo D.1 alisema kuwa baada ya Bw. Marwaha kulipa mara mbili. Bi Agnes alifanya masahihisho na kuonyesha mgeni amelipa entry moja tu. DW. 1 alisema kuwa Bi Agnes hata baada ya kufanya correction hakuarifu menejiment. DW. 1 alieleza mahakama kuwa menejiment ilijua juu ya "double posting" baada ya Bw. Marwaha kupiga simu na kusema kuwa alilipa mara mbili Bw. Manongi alitoa Bill ya terehe 17/11/98 iliyopokelewa kielelezo D.3 na pia barua ya Elizabeth iliyopokelewa kielelezo D.2. Shahidi wa pili upande wa utetezi Bw. John Lotuma (D.2) aliyeajiriwa kama Human Resources Manager alisema alifahamu Mlalamikaji Bi. Agnes na alitoa barua ya ajira ya Agnes Mlalamikaji Exht

D.5. Alieleza kuwa Mlalamikaji aliachishwa kazi kwa kutofuata taratibu za kuchukua fedha kwa mteja. DW. 2 alimalizia kwa kusema kuwa hatua hizo zilianza baada ya mteja kulalamika. Hata hivyo kwa hatua hizo shahidi alielezea kuwa mlalamikaji alipewa haki zake zote na hazikukanushwa na mlalamikaji pia.

Katika kujibu hoja za wakili wa mlalamikaji, shahidi wa pili alisema kuwa mlalamikaji hakutakiwa kukaa na fedha za mteja na kwamba Mlalamikaji alizirudisha baada ya mteja kulalamika. DW. 2 alielezea mahakama hii kuwa kwa mlalamikaji ilikuwa kosa lake la kwanza na waliamua kumpunguza kazi. Huu ulikuwa mwisho wa ushahidi kwa upande wa Walalamikaji/utetezi na pia upande wa mlalamikaji.

Kamishna wa kazi alipoleta mgogoro huu kwa uchunguzi chini ya kifungu cha 8(a) cha Sheria ya Mahakama ya Kazi Na. 41 ya mwaka, 1967 kama ilivyorekebisha na Sheria Na. 2 ya mwaka, 1993 alitaka Mahakama hii ichunguze mambo yafuatayo na kuyatolea uamuzi.

- (1) Kama taratibu za kumwachisha kazi mfanyakazi huyo zilizingatiwa kisheria.
- (2) Kama sababu za kumwachisha kazi zilitokana na mfanyakazi huyo kukiuka taratibu za hoteli zinahusu namna ya kuhifadhi fedha za mteja.
- (3) Kama mahusiano Kati ya Meneja Mkuu na Mlalamikaji ndio chanzo cha mgogoro.
- (4) Kama Mlalamikaji alipewa nafasi ya kujieleza kaba ya kuchukuliwa hatua.
- (5) Kama kuchukua haki zake kunaweza kumzuia mfanyakazi huyo kutoendelea kulalamika hatua ya kiachishwa kazi.
- (6) Masuala mengine yeyote ambayo mahakama itaona yanafaa kuchunguzwa kwa madhumuni ya kuiwezesha mahakama yakazi kufikia uamuzi wa haki na Tuzo.

Nikizipitia "final submissions" zilizowasilishwa na pande zote mbili zilizoandikwa kwa lugha ya kiingereza upande wa mlalamikaji nikitumia lugha ya mahakama hii Kiswahili ninasema kuwa utaratibu wa kumwachisha kazi mfanyakazi wake haukufuatwa. Msomi Ami anasema kuwa upande wa mwajiri ulifuata taratibu zilizoweka na "Staff Book" ambao mwajiri alisema kuwa mfanyakazi alikubaliana na taratibu hizo kwa hiari yake alipoajiriwa.

Msomi Ami alikataa kitendo cha mwajiri cha kutumia "Staff Book" kumwajibisha mfanyakazi. Alisema huko ni kukiuka taratibu zilizowekwa na sheria kutumika na mwajiri alitakiwa afuate taratibu zilizowekwa chini ya Sheria ya Usalama Kazini (Security of Employment Act) na si "Staff Book". Alisema mwajiri alitumia hujia fupi ya kumkomoa mwajiriwa na hivyo kupingana na "Security of Employment Act".

Akiendelea na hoja za mwishi Msomi Ami alieleza kuwa kitendo cha "double posting" kilisababishwa na meneja Bw. Manish, akaendelea kueleza kuwa haikuwa kazi ya Bw. Manish bali ni kazi za Cashier (mweka Hazina) hivyo haikuwa sahihi kumwajibisha Cashier kwa kosa lililofanywa na Manager

ambaye hakumwarifu Cashier kuwa ameshapost fedha za mteja.

Akajadili kitendo cha kuweka fedha kwenye locker, Msomi Ami alisema kuwa haoni kosa la mteja wake kuhifadhi fedha za mteja wa Hotel Mr. Marwaha katika Locker alizitoa zilipotakiwa. Alisema kuwa kitendo hicho kilipaswa kumpelekea mwajiri kupata onyo na si kuachishwa kazi. Ami alisema kwa niaba ya mteja wake Agnes aliripoti kwa Elizabeth ambaye alikuwa ni Supervisor wake kwa hiyo hakupaswa kuachishwa kazi kwa kitendo hicho cha kwanza.

Katika maelezo ya mwisho Msomi Ami aligusia sababu za uzee kuwa ndiyo iliyosababishwa mteja wake kuachishwa kazi. Kwa vile ushahidi huo au aliyesikia hakuja kuihakikisha mahakama juu ya jambo hili naona haya ni maneno tu ya kusikia (hearsay evidence). Msomi Mr. Ami hakuwa na la kupinga kuhusu kupewa nafasi ya kujitetea.

Akijibu hoja ya tano alitoa kesi mbili ya MOHAMA VS THE UNIVERSITY OF DAR ES SALAAM (1981) T.L.R. na ALLY LINUS & 11 OTHERS VS TANZANIA HARBOUS AUTHORITY and another Civil Appeal No 2 of 1983, Court of Appeal of Tanzania (unreported) zilizojadiliwa kuhusu kudanganyika kuchukua mafao baada ya kuachishwa kazi. Msomi Ami alisema kuwa waajiri walizoea kuwadanganya kuchukua mafao ili wasiwe na nafasi ya kuleta madai dhidi ya mwajiri.

Kwa kumalizia Msomi Ami alisema kuwa kuachishwa kazi kwa mlalamikaji kulikuwa rahisi kwa kukosekana Tawi la Chama mahala pa kazi. Alisema kuwa lingekuwapo tawi la chama isingelikuwa rahisi kwa mwajiri kutoa adhabu ya kumwachisha kazi mfanyakazi.

Kwa hitimisho Msomi Ami alisema kuwa kutokuwepo Tawi la Chama cha Wafanyakazi mahali pa kazi kunakuwa ni kukiukwa taratibu na kuwanyima haki za kikatiba (constitutional right) Mahakama ya Kazi. Hivyo aliomba mahakama hii imwamuru mwajiri amrejeshe kazini mfanyakazi.

Kwa upande wa mwajiri katika hoja za mwisho (final submission) ziliwasilishwa na Msomi Wakili Fatma. alikubaliana kuwa kifungu cha 37 (1) (b) cha Sheria ya Usalama Kazini kinatoa utaratibu wa kufuata wakati mwajiri anamwachisha kazi mfanyakazi, na akasema kuwa katika kesi mwajiri alifuata taratibu zote zilizowekwa na sheria iliyotajwa hapo juu na kumalizia kwa kusema kuwa mfanyakazi alipoajiriwa alikubali masharti yote kwa hiari yake. Pia alizungumzia nidhamu kwa wafanyakazi ili kuvutia wateja. Alisema bila nidhamu wateja wangelikimbia hoteli. Msomi Fatma alisema kuwa kitendo cha mfanyakazi alichokitenda na mwajiri kumwachisha kazi kilikuwa sahihi ili kuwadhibiti wafanyakazi.

Katika kujibu hoja ya pili Msomi Fatma alisema "double posting" haikusababishwa na Manager bali ilisababishwa na mfanyakazi na ndiyo maana aliomba radhi. Alisema kama hakufanya kosa kwa nini aliomba radhi? Pia alisema kitendo cha Manager kupost Bill ya Customer ni cha kawaida kwani

kingeliweza kujionyesha kwenye computer na hivyo kumfanya Agness asiingize tena mara ya pili.

Akielezea zaidi Msomi Fatma alisema kuwa kama hiyo haikutosha, mfanyakazi Agness alifanya (correction) masahihisho na kuchukua pesa za mteja na kuzihifadhi kwenye locker. Msomi Wakili Fatma alisema kuwa Lockers zilitumika kuhifadhi nguo zao, wanapokuwa kazini na siyo pa kuhifadhi fedha. Hivyo Msomi Fatma akasema kuwa mfanyakazi alikiuka taratibu za kuhifadhi fedha za wateja.

Akijibu hoja za maandishi za mlalamikaji Fatma alisema kuwa Mlalamikaji hakudanganywa ili apokee mafao yake kwa kumziba mdomo asilalamike. Fatma alisema kuwa Mlalamikaji alivunja masharti ya mikataba ya ajira na hivyo kulipwa mafao yake kama yanavyotakikana na sheria.

Msomi Fatma alikubali kuwa hili lilikuwa kosa la kwanza kwa mlalamikaji na akasema walimwachisha kazi kuzuia vitendo hivyo visiendelee kwenye hoteli. Na kupinga zaidi suala la mlalamikaji kurudishwa kazini kwani alisema kuwa ingeliwapa kichwa ma-cashier wengine watakaofanya vitendo kama hivyo.

Msomi Fatma alidai kuwa taratibu hazikufuatwa hadi kuleta shauri hili mahakamani. Kwani amedai kuwa Afisa wa kazi hakukubali kuachisha suluhisho mwajiri alipokuwa na shida na badala yake akalipeleka shauri hili kwa Kamishana wa Kazi. Aliendelea kueleza kuwa Afisa wa Kazi alitakiwa ajitahidi kusuluhisha ili kufikia mwafaka badala yake akaliharakisha kupeleka kwa Kamishana wa Kazi.

Akihitimisha aliomba rai kwa mahakama hii kutokubali kumrejesha mlalamikaji kazini na hivyo kuomba madai ya mlalamikaji yatupiliwe mbali.

Nikianzia na hoja ya kwanza, kwa vile hakuna tawi la Chama cha Wafanyakazi mahala pa kazi hivyo inaonyesha kuwa management ilimwandikia barua ya kujieleza tu. Vile vile mlalamikaji alitakiwa na Bw. Nick kuomba radhi na kurudisha fedha za mteja. Tukuangalia sheria inasemaje kifungu cha 37 cha Sheria ya Usalama kazini kinamtaka mwajiri anapokusudia kumwachisha kazi mfanyakazi impe notisi ya mwezi. Tukuangalia kwa upande wa Mlalamikaji baada ya kuzirudisha fedha za mteja, Meneja Bw. Manish alimwandikia kimemo na kumpa barua ya kumwachisha kazi. Zaidi ya kimemo hakuna notice aliyompa ikihusu kusudio la kumwachisha kazi. Ingawa upande wa mlalamikaji ulidai kuwa taratibu za kumwachisha kazi mfanyakazi zilifuatwa kisheria lakini Msomi Wakili wa Mlalamikaji hakusema ni sheria zipi zilifuatwa. Alichokieleza ni kuwa mfanyakazi alikubali masharti ya ajira kwa hiari yake. Je, kukubali masharti ya ajira ndiyo aachishwe kazi bila kufuata sheria inayoongoza masuala ya ajira.

Katika kujibu suala hili sina budi kueleza kuwa mikataba yote ya ajira inaongozwa na Sheria ya Kazi (Employment Ordinance) na Sheria ya Usalama Kazini (Security of Employment Act). Sheria hizi zimetungwa na Bunge ili kulinda wafanyakazi na mwajiri kwa ujumla.

Sheria hizi hazina budi kufuatwa katika kulinda haki za mwajiri na mfanyakazi. Pindi zinapokiu kwa basi anayehusika itakuwa amenyimwa haki za msingi.

Kipengere cha pili ni kama sababu za kumwachisha kazi zilizotokana na mfanyakazi huyo kukiuka taratibu za hoteli zinazohusu namna ya kuhifadhi fedha za mteja. Katika ushahidi uliotolewa na John DW.2 alisema kuwa fedha hizo (PW. 1) Agness aliziweka fedha hizo kwenye kabati la kuhifadhi nguo zao za kazi.

Vile vile kuna ushahidi kuwa Bw. Manish alifanya Posting ya kwanza. Suala la kujiuliza kwa nini Agness hakumwarifu Manager baada ya kugundua hiyo double posting? Ushahidi uliotolewa na pia maelezo ya Elizabeth Kirima yalieza kuwa nanukuu "Agness aliripoti kwamba mgeni Mr. Marwaha ana over charge ya Bill yake ndipo nilipoamua kama Shift Leader kumruhusu Agness kuhifadhi pesa hiyo kwenye Safe ili akija arudishiwe.

Hakuna ubishi kuwa hata kwenye ushahidi kuwa Agness alipotakiwa kutoa fedha hizo alizitoa zote. Suala la kuwa na pesa hizo zilitolewa kwenye nini sidhani kama ni suala la msingi. Kwani pesa hizo zilitolewa kwenye kabati, tena kabati la Agness la kuhifadhi nguo. Pia tukirudi nyuma ni kuwa mgeni Mr. Marwaha alichek out tarehe 18 Novemba, 98. Na katika barua zake pia Bi. Agness alikubali kuwa aliweka fedha hizo kwa vile aliamini kuwa Bw. Marwaha atakuja kwa vile yeye ni mteja wao mara kwa mara. Nanukuu memo ya Bi. Agness ya tarehe 22/12/98

Exht 1.

" I kept the cash in my locker not for sealing but because Mr. Marwaha is our regular guest and cash was to be handed over as soon as he check in".

Kama Agness asingelikuwa mwaminifu, asingelitunza fedha hizo zilizosababishwa na kuingiliwa na meneja aliyekiingiza kwenye kazi za receptionist. Na kwa kufanya hivyo, Mlalamikaji amebeba mzigo mzito wa kuachishwa kazi wakati meneja akifurahia na kuendelea na kazi. Katika uchunguzi huu nimeona kuwa taratibu hazikufuatwa na pia kulikuwa ni kama uonevu. Pia katika ushahidi umeonyesha kuwa mlalamikaji hajawahi hata kufanya kosa lingine wala kuonywa kwa kosa lolote lile.

Tatu kama mahusiano kati ya Meneja Mkuu na Mlalamikaji ndiyo chanzo cha mgogoro. Hakuna ushahidi uliotolewa na upande wowote unaoonyesha kuwa kulikuwa na aina fulani ya mahusiano kati ya watu hawa wawili. Katika hoja za mwisho zilizowasilishwa na msomi Wakili Ami alimtetea Mlalamikaji aligusia kuwa mteja wake alisikia toka kwa rafiki yake wakisema mlalamikaji kuwa mzee. Hii napenda kumfahamisha Msomi Wakili Bw. Ami kuwa mahakama mara nyingi haitilii maanani ushahidi wa kusikia (hearsay) hasa ukizingatia kuwa hata huyo aliyesikia hakufika kuja kutoa ushahidi. Hivyo kwa upande wa mahakama (with due respect) hoja hiyo haina msingi.

Nne kama Mlalamikaji alipewa nafasi ya kujieleza kabla ya kuchukuliwa hatua. Katika kuchunguza hatua hiyo mlalamikaji aliandika barua "D.4" ya tarehe 2/12/98 alijibu "memo" ya Manish kwa tuhuma hizo na kwa majibu hayo alitakiwa ajieleze. Kwa vile hiyo "memo" haikutolewa mahakamani, imekuwa ni vigumu kujua malalamiko au shutuma alizotakiwa kujibu ni zipi.

Tano kama kuchukua haki zake kunaweza kumzuia mfanyakazi huyo kutoendelea kulalalmika hatua ya kuachishwa kazi. Katika kuchunguza shauri hili hakuna kitu chochote wala sheria yoyote inayokataza mlalamikaji kuchukua mafao yake na asilalamikie hatua ya kuachishwa kazi. Mlalamikaji katika shauri hili analalamika kuwa kuachishwa kwake kazi hakukuwa halali. Yeye hakulalamikia malipo. Hata akilalamika kuhusu malipo hakatazwi na sheria kutochukua anacholipwa kwanza.

Baada ya kuchambua hoja zote ambazo Kamishna wa Kazi aliitaka mahakama hii kuzifanyia uchunguzi, mahakama iliwapa nafasi washauri wote kuleta maoni yao. Washauri hao hawakuweza kuniletea maoni yao mpaka wakati naandika uamuzi huu.

Kama nilivyokwisha chambua ushahidi na mambo ambayo Kamishna wa Kazi aliyetaka tuyachunguze mambo yafuatayo nimeona kuwa la kwanza nimeridhika kuwa taratibu zilifuatwa na mlalamikaji zinazotakikana na sheria ila kwa upande wa mwajiri hakufuata taratibu zinazotakiwa katika kumwachisha kazi, kwani alitakiwa aweke kikao na yajadiliwe mbele ya kikao. Nimeridhika kuwa mwajiri alikiuka taratibu zilizowekwa na sheria kufuata na kuufanya utaratibu mzima kuwa batili. Katika kuchunguza hoja ya pili nimeridhika kuwa Hoteli ya New Africa hawakuwa na mwongozo mzuri wa kuwadhibiti wafanyakazi. Kila mmoja alijifanyia kazi kiholela bila kufuata taratibu zilizowekwa na sheria. Kufuata mwenendo uliowekwa wa "Staff Book" huo ulikuwa ni mwongozo tu uliowekwa na hoteli na siyo sheria. Pia yeye mwajiri hakuwa na utaratibu mzuri juu ya fedha za wateja zilizolipwa ziada. Kama hayo yalitokea pia kwa wengine na kama walivyosema kwenye ushahidi wao kuwa siyo mara ya kwanza mteja kuzidisha fedha, hakuna adhabu yeyote waliyoitoa kwa wenzake. Hivyo naamini kuwa kuachishwa kazi mlalamikaji kulikuwa kwa uonevu na bila kufuata taratibu zilizowekwa na sheria.

Vile vile nikizingatia hoja ya tatu ni wazi kuwa mlalamikaji alinyimwa haki yake ya msingi kusikilizwa. Badala yake kupewa adhabu ya kuachishwa kazi hivyo kukiuka misingi yote iliyowekwa na sheria.

Kufuatia yote hayo na sababu nilizozitoa hapo juu naamini na kwa kufuata sheria ya usalama kazini na sheria za kazi utaratibu mzima wa kumwachisha kazi mlalamikaji haukufuatwa na hivyo kulifanya zoezi zima kuwa batili.

Kwa hiyo basi naamuru mlalamikaji arejeshwe kazini mara moja. Alipwe haki zake zote toka tarehe aliyoachishwa kazi Januari, 1999, hadi tarehe ya uamuzi huu.

CT: Baada ya kumaliza kuandika na kabla ya kuusoma uamuzi huu; muungwana mshauri Bw. Mjema alileta maoni yake saa 5.20 asubuhi wakati nimewaeleza wahusika kuwa uamuzi nitausoma saa 8 mchana.

Hivyo naandika maoni yake kama alivyoandika kuwa:

Bi Agness Nyongole, hakutendewa haki katika kuachishwa kazi. Pia Bi Agness alipokea haki zake ili kumfanya aweze kuhimili maisha huku akiendelea na shauri lake. Vile vile aliandika kuwa Mlalamikaji hakukiuka taratibu zozote isipokuwa aligundua kosa la mkuu wake na hicho ndicho kitu kilichofanya aachishwe kazi. Mwisho alisema Mlalamikaji hakusikilizwa na kuhojiana ana kwa ana na wahusika wote katika shauri hili. Hivyo alitoa maoni kuwa Mlalamikaji arejeshwe kazini tangu tarehe ya kuachishwa kazi 6 Januari 1999.

Baada ya hapo sioni sababu ya kuyajadili maoni haya hapa kwa wakati huu, Washauri wanapaswa kuleta maoni yao mapema ili kuiwezesha mahakama kuyajadili kwa wakati muafaka, na siyo wanavyotaka wao. Hii inasabisha ucheleweshaji wa mashauri na kutowatendea haki wahusika.

Uamuzi huu umesomwa hapa Dar es Salaam tarehe 20/7/2001 mbele ya Bw. Kilembe (Internal Auditor wa New Africa Hotel).

(Sgd)
C. E. R. WILLIAM
Naibu Mwenyekiti

20/7/2001

Certified true copy of the original.

01 Agosti, 2001,

B. E. NYAMUBI,
Registrar

TAARIFA YA KAWAIDA NA. 129

UCHUNGUZI WA MGOGORO WA KIKAZI

NA. 37 WA 1999

baina ya

ND. NDOWO JOSEPH, DAR ES SALAAM

na

SCANIA (T) LTD., DAR ES SALAAM

UAMUZI

WILLIAM, DC

Huu ni uamuzi unaotokana na uchunguzi wa mgogoro kati ya Bibi Ndowo Joseph na Scania (T) Ltd. Mlalamikaji

alianza kazi mwaka 1978 kama "Cadet Clerk". Baada ya kuhudhuria mafunzo ya Computer kielelezo P.1 kinavyoonyesha mlalamikaji alibadilishiwa kazi mwaka 1987 na kuwa Computer Operator, mwaka 1997 alipata nafasi ya masomo ya "Telephone Operator" na alipata cheti P.2.

Katika utendaji wake wa kazi mwaka 1985 alichaguliwa kuwa mfanyakazi bora kama ilivyo kwenye kielelezo P.3. Ilipofika tarehe 18.5.98 alipewa barua ya kupunguzwa kazi. Mlalamikaji hakuridhika na hatua hiyo na kudai kuwa Walalamikaji walikiuka masharti yaliyowekwa na kifungu cha 7 (saba) cha mkataba wa hiari. Mlalamikaji alitoa Mkataba wa hiari kielelezo P.5.

Akifafanua kuhusu kifungu hicho cha saba Mlalamikaji alidai kuwa kifungu kilisema wajumbe washirikishwe katika kujadili mkataba wa hiari, akasema kwa vile wajumbe hawakushirikishwa basi mkataba ulikuwa batili na hivyo kufanya upunguzwaji pia kuwa batili.

Jambo la pili, mlalamikaji alidai kuwa mwajiri alimpunguza kazi kabla ya mkataba kusajiliwa. Alisema kuwa alipunguzwa kazi mwezi wa tano (5) na mkataba kusajiliwa mwezi 11/98. Katika hoja ya tatu mlalamikaji anaeleza kuwa mwajiri aliajiri mtu mwingine aitwaye Magreth Chagula muda mfupi tu baada ya kumpunguza kazi kama alivyotoa kielelezo P.6. Mlalamikaji anadai kuwa alipotoka mafunzo ya Telephone Operator alikuta mtu mwingine akifanyakazi kama Telephone Operator/Receptionist na hivyo kukiuka masharti ya FILO.

Mlalamikaji aliitaka mahakama ipitie kesi ya JUMUIYA YA WAFANYAKAZI DHIDI YA MOROGORO REGION COOPERATIVE 6/92 alisema mahakama hii ilisisitiza masharti ya FILO yafuatwe.

Jambo la nne Mlalamikaji anadai kuwa alistahili pia kulipwa mafao ya kutimiza miaka 100 ya kampuni akadai kuwa mwajiri hakumlipa kwa madai kuwa waliostahili ni wafanyakazi waliostaafu tu, kama alivyotoa kielelezo P.7.

Kutokana na hayo yote mlalamikaji aliiomba mahakama hii imwamuru mwajiri amrejeshe kazini.

Shahidi wa pili wa mlalamikaji (PW.2) Martin Yamo akiwa mfanyakazi pia wa Scania (T) Ltd. alisema kupunguza wafanyakazi kulifanyika ili kupunguza gharama za uendeshaji na pia kuondoa nafasi zisizo za lazima Bw. Martin alisema kuwa Scania iliondoa kwa kuwapunguza wafanyakazi wote wa Idara ya Ulinzi na kuleta askari wa kukodi. PW. 2 Martin alisema kuwa wafanyakazi wengine walipunguzwa ikiwa ni pamoja na mlalamikaji aliyekuwa Telephone Operator. PW.2 Martin alikubali kuwa Scania/ mwajiri hakutumia utaratibu sahihi wa kupunguza wafanyakazi. Alisema kuwa menejimenti waliwaita na kuwaeleza uamuzi wa mwajiri. PW.2 alisema kuwa ilitakiwa menejiment ikae na Chama cha Wafanyakazi ili kujadili masuala ya upunguzaji wafanyakazi na gharama

itapunguzwa vipi na wapi na siyo kujipangia tu na kuleta kwa utekelezaji.

PW.2 Bw. Martin alikiri katika ushahidi wake kuwa nafasi ya Ndowo imepata mwajiriwa mwingine baada ya yeye kupunguzwa kazi. Kwa hiyo alisema hakuna gharama yoyote liyopunguzwa kwa kumpunguza Ndowo.

Pia Bw. Martin alisema kuwa pamoja na kukubaliana na zoezi hilo lakini alisema kuwa taratibu zilikiukwa. Katika kujibu hoja ya menejiment, Bw. Martin alisema kuwa menejiment ilileta kwenye kikao waliyokwishayapanga ayari, hivyo hakuna walichojadili mwajiri na viongozi wa wafanyakazi. Na pia alisema kuwa wao walikubali kusaini ambayo ni makosa waliyoyafanya.

Huu ulikuwa mwisho wa upande wa mlalamikaji.

Akijibu hoja za mlalamikaji, Bibi Sharbano Kabisa ambaye ni Meneja Utawala wa Scania alisema kuwa taratibu zote zilifanyika katika kuwapunguza kazi wafanyakazi. Pia katika maelezo yake alisema kuwa waliwahusisha wahusika wote wa TUICO katika kujadili suala zima la kuwapunguza kazi kama ilivyoonyesha kielelezo D.1.

Bibi Kabisa alisema baada ya kikao cha kwanza, walikaa tena kikao kati ya TUICO na menejiment kama ilivyo kwenye kielelezo D.2 ya tarehe 21/4/98.

Bibi Kabisa alisema kuwa taratibu zote za kumwachisha kazi B. Ndowo zilifuatwa na kwa kusaini mkataba halali kati ya Scania na TUICO. Bibi Kabisa alikataa kwa kuajiri mtu mwingine badala ya Ndowo na kuiomba mahakama hii itupilie mbali madai ya mlalamikaji.

Kamishna wa Kazi alipouleta mgogoro huu kwa barua yake yenye Kumb. Na. KZ/U.10/MG/1138/4 ya tarehe 31/8/99 chini ya kifungu cha 8(a) cha sheria Na. 2/1993 aliiomba mahakama hii iyachunguze yafuatayo:—

- (i) Kama, Mkataba uliotumika kumpunguza kazi mlalamikaji ulikuwa halali.
- (ii) Kama ulikuwa na sababu yoyote ya msingi ya kumpunguza kazi.
- (iii) Kama katika nafasi yake aliajiriwa mtu mwingine
- (iv) Kama, utendaji wake kazi ulikuwa mbaya.
- (v) Masuala mengine ya kisheria ambayo yataiwezesha mahakama kutoa uamuzi na TUZO.

Baada ya kupata muhtasari wa ushahidi toka pande zote mbili walalamikaji na walalamikiwa suala la kwanza ambalo linapaswa kujadiliwa na kuamuliwa ni je ni kweli mkataba uliotumika kupunguza kazi mlalamikaji ulikuwa halali.

Nilipata maoni ya mshauri Bw. Pazi OTTU na sikupata maoni ya mshauri Bw. Kingazi, ATE. Hivyo mshauri Bw. Pazi nami tumeona ya kuwa lalamiko hili si la kweli hata kidogo. Upande wa Walalamikiwa umethibitisha ya kwamba Tawi la OTTU/TUICO la Kampuni ya Scania (T) Ltd. lilishirikishwa kikamilifu katika suala zima la kupunguza wafanyakazi wa kampuni hiyo. Kwanza kabisa Walalamikiwa

walitoa kumbukumbu za kikao cha pamoja kati ya uongozi wa kampuni ya OTTU/TUICO kilichofanyika tarehe 21/4/1998. Muhtasari huo uliotolewa na kupokelewa hapa mahakamani kama kielelezo D.1. Bw. M. Yamo shahidi wa pili (PW.2) alihudhuria kikao hicho kama Mwenyekiti wa Tawi la OTTU/TUICO. Agenda kuu ya mkutano huo ilikuwa nanukuu "kufuatia ufanisi duni wa kibiashara wa kampuni ya Scania Tanzania Branch kulikuwa na hoja ya kupunguza baadhi ya wafanyakazi" na kuwa kikao kilisema kuwa pande zote mbili zilikubaliana kwa hiari kama ilivyo kwenye mkataba wa hiari kati ya OTTU/TUICO na menejiment ya Scania Tanzania Branch 16/11/98. Mkataba huo ulifuata taratibu zote za utendaji zilizofuata misingi ya sheria.

Suala la kusema kuwa mkataba ulisajiliwa baada ya yeye kupunguzwa kazi halina msingi wowote kwani ungelirudishwa bila kusajiliwa hapo angelikuwa na sababu ya kuukataa mkataba.

Suala la pili ni je kulikuwa na sababu yoyote ya msingi ya kumpunguza kazi katika kulichunguza suala hili sehemu yake ya kazi ilikuwepo kwenye kigezo 1(b) katika mkataba wa hiari kuwa nanukuu

"(b) kufutwa kwa nafasi — baada ya kuwa na muundo mpya katika kampuni.

Mshauri Bw. Pazi nami tumeona ya kuwa ni kweli kwenye nafasi ya mapokezi ambayo ni nafasi aliyoajiriwa na kupunguzwa hapana mtu aliyeajiriwa badala yake. Ni kweli mlalamikaji wakati akipunguzwa kazi alikuwa Receptionist cheo hicho alikipata tarehe 3/2/1997.

Pia ni kweli mlalamikaji alihudhuria mafunzo ya Telephone Operator, lakini alishindwa kuleta kielelezo cha kuonyesha kuwa alibadilishwa toka Receptionist kuwa Telephone Operator. Kwa mtazamo wa kawaida kazi hizi mbili ziko tofauti ingawa zinaweza kufanywa na mtu mmoja. Barua ya Bi. Magreth Chagula aliyoleta ya tarehe 4/11/98 aliajiriwa kwa mkataba wa mwaka (1) kama Telephone Operator. Ndowo alipunguzwa kazi tarehe 31/5/98 hivyo ni miezi sita (6) baadaye. Margreth hakuajiriwa kama Receptionist.

Kwa hiyo pamoja na hayo yote tuliyosema hapo juu ni wazi kabisa kulikuwa na sababu za msingi za kumpunguza kazi mlalamikaji.

Jambo la tatu linalotakiwa kujadiliwa na kuamuliwa ni je utendaji wake wa kazi ulikuwaje.

Katika kujadili suala hili mshauri Bw. Pazi nami tumeona kuwa utendaji wake wa kazi mlalamikaji ulikuwa mzuri. Mlalamikaji aliwahi kuzawadiwa zawadi ya cheti cha mfanyakazi bora wakati wa sherehe mojawapo za wafanyakazi ulimwenguni kielelezo P.3.

Jambo la mwisho la kujadili kama masuala mengine ya kisheria ambayo yataiwezesha mahakama kutoa uamuzi na

TUZO. Katika kujadili suala hili zima na nikiungana na maoni ya ushauri wa muungwana **Bw. Pazi** tumelichunguza na kuona kuwa utaratibu mzima haukufuata makubaliano yaliyofikiwa ya mkataba wao. Kwa sababu Ndowo aliajiriwa kazi sehemu ya mapokezi (Receptionist) na wakati akiwa kazini alipelekwa mafunzo ya Telephone Operator/Receptionist na kupata vyeti, hivyo kwa mfanyakazi bora uajiri ungemhamishia kwenye nafasi ya Telephone Operator nafasi ambayo walimwajiri Margreth Chagula badala ya kumpunguza kazi mlalamikaji. Hii inaonyesha wazi kuwa walikiuka makubaliano ya mkataba. Vile vile hakuna ubishi hata kwenye maelekezo yake mwajiri alikubali kumwajiri Telephone Operator. Kwa hakika uajiri ulikuwa hauna sababu ya kumpunguza mfanyakazi huyu licha ya kampuni kuwa na sababu zao za kiuchumi ndani ya kiwanda hicho.

Tukirudi nyuma Bi. Ndowo hakuwahi kupewa onyo lolote la utendaji wake wa kazi kama ni hivyo mahakama haikuwahi kuelezwa hivyo juu ya tabia mbaya ya mdai huyu.

Hivyo basi kupunguzwa kazi kwake siyo halali. Ingawa mshauri Mr. Pazi anaona ni vema kumrejsha kazini, mimi naona kuwa itakuwa si vema kumrejsha kazini kwani toka Mei, 1998 alipopunguzwa kazi ni miaka mitatu (3) na si vema kuamuru arejeshwe kazini kwa vile atalipwa kwa kazi ambayo hakumfanyia mwajiri. Kwa maoni yangu naamuru mwajiri amlipe fidia ya miezi (18) kumi na nane kwa kupoteza ajira.

Kuhusu malipo ya posho ya kujikimu nakubaliana na Bw. Pazi haiwezekani kwa vile mwajiri alishamlipa mafao yake yote.

Uamuzi huu umesomwa leo tarehe 25/7/2001 mbele ya Mlalamikaji na unakuwa TUZO ya Mahakama ya Kazi.

(Sgd)

C. E. R. WILLIAM
Naibu Mwenyekiti
25/7/2001

Certified true copy of the original

1 Agosti, 2001

B. E. NYAMUBI,
Registrar

TAARIFA YA KAWAIDA NA. 130

MAOMBI YA MAREJEO NA. 13 MWAKA 1999 9
(Katika Mahakama ya Kazi ya Tanzania, Dar es Salaam)

baina ya

TANGANYIKA PACKERS LTD., DAR ES SALAAM
na

PETER M. ITINDE, DAR ES SALAAM

SHAYO, D/C;

Haya ni maombi ya marejesho ya kupinga uamuzi uliotolewa na Mh. Mlelwa, Naibu Mwenyekiti (kama alivyokuwa) katika shauri la uchunguzi wa Mgogoro wa

Kikazi Na. 54/97 baina ya Peter M. Itinde na Tanganyika Packers Ltd., Dar es Salaam. katika shauri hilo mlalamikiwa Tanganyika Packers Ltd., ambaye alikuwa anawakilishwa na Wakili msomi Bw. Kariwa, alitoa pingamizi la awali kuwa shauri hilo halikuwepo Mahakamani kihalali kwa vile lililetwa nje ya muda uliowekwa kisheria, hivyo kuifanya Mahakama hii ya kimwanzo kutokuwa na mamlaka/uwezo kisheria kuchunguza mgogoro huo. Ilielezwa mbele ya mahakama hii ya kimwanzo, na mlalamikaji, Peter Itinde hakuwa na ubishi, kuwa mlalamikaji alikuwa amefukuzwa kazi tarehe 30/4/91 na alifikisha malalamiko yake kwa Kamishna wa Kazi tarehe 23/4/97 naye Kamishna wa Kazi aliwasilisha mgogoro huu wa uchunguzi Mahakamani tarehe 14/8/97. Kwa hali hiyo muda ulishapita kwa miaka saba na miezi minne tangia ufukuzwe kazi mpaka mgogoro kufikishwa Mahakamani, kinyume na Sheria ya Ukombo wa Muda (Law of Limitation Act 1971) jedwali la kwanza, ibara ya saba. Akitoa Uamuzi wake, Mh. Mlelwa (DC) alisema kuwa mlalamikaji alifikisha lamamiko lake kwa Kamishna wa Kazi ndani ya miaka sita (30/4/91 — 23/4/97), na kama Kamishna wa Kazi hakupeleka Mahakamani mgogoro huo muda unaotakiwa, hilo siyo kosa la mlalamikaji. Kwa hivyo pingamizi la awali la mlalamikiwa likatupiliwa mbali.

Akiwa hakuridhishwa na Uamuzi huo, msomi Kariwa kwa niaba ya muomba marejeo — Tanganyika Packers Ltd., Dar es Salaam ameleta maombi ya marejeo ya uamuzi huo dhidi ya majibu marejeo Peter Itinde. Katika tamko lake la marejeo (statement of revision) msomi Kariwa ametoa sababu nne, nazo ni zifuatazo:—

1. That the learned Deputy Chairman erred in law and fact for failing to decide the matter before him basing on the facts as pleaded by the respondent in the complaint (kumbukumbu za madai) and for resorting into other extraneous sources of information not disclosed to the Applicant thus denying the applicant the right to contest the validity of the sources and the contents thereof.
2. The learned Deputy Chairman erred in law far advocating for Respondent's cause without being invited by any party thus failing to act impartially.
3. The learned Deputy Chairman erred in law and facts for holding that the limitation time to file a dispute in the Industrial Court of Tanzania ceases to run once a complaint is lodged with the commissioner for Labour no matter how long it takes the Commissioner to report the dispute in the Industrial Court.
4. The learned Deputy Chairman erred in facts and law in failing to hold that the Dispute was filed in Court after the limitation of time had expired and the Respondent was even time barred at the time the complaint was lodged with the Commissioner for Labour

Mjibu marejeo alipelekwa substituted service kwenye Gazeti la Majira. Alitoa nakala ya gazeti hilo la tarehe 1/7/

2001 kama kielelezo R 1, na pia risiti ya kutangaza kwenye gazeti hilo — kielelezo R 2 ya tarehe 1/7/2001. Baada ya kuridhika na maelezo hayo, Mahakama hii ya Marejeo ilikubali kusikiliza marejeo haya upande mmoja — exparte kwa vile mjibu marejeo alipelekwa taarifa kwenye gazeti na hakumudu kufika kujitetea kwenye marejeo haya.

Katika kutoa maelezo yake, Msomi Ngudungi aliamua kuachana na hoja ya kwanza na ya pili na kuzungumzia kwa pamoja hoja ya tatu na ya nne ya sababu zake za marejeo. Alisema kuwa Uamuzi wa Mh. Mlelwa (DC) haukuwa sahihi kwani ulikwenda kinyume na matakwa ya Sheria. Akifafanua alisema Uamuzi ulisema kuwa mjibu marejeo alifukuzwa kazi tarehe 30/4/91 na akapeleka taarifa kwa Katibu wa Juwata tarehe 15/5/91, na kwamba sio kweli alifukuzwa kazi tarehe 30/4/90. Kwa hiyo, alisema Mh. Mlelwa tokea tarehe 30/4/97 lalamiko lilipelekwa kwa Kamishna wa Kazi ni miaka mitano na siku 23, ndani ya muda wa miaka sita.

Msomi Ngudungi anadai kuwa msimamo huo wa Mh. Mlelwa (DC) ni kinyume na taratibu za kisheria kuhesabu muda tangu lalamiko lifikishwe kwa Kamishna wa Kazi. Anaendelea kusema kwa kishindo kuwa mjibu marejeo alifukuzwa kazi tarehe 30/4/91 na kwa mtazamo wa Mh. Mlelwa (DC) kipindi cha kuchukua hatua (cause of action) kitaanza pale alipopeleka kwa Kamishna wa Kazi. Lakini anasema, barua ya Kamishna kuleta mgogoro Mahakama ya Kazi ni tarehe 14/8/97, ndiyo kusema Mahakama hii ya kimwanzo ilisikiliza shauri baada ya miaka 6 na miezi 4 kinyume na Sheria ya Ukomo wa muda ambao ni miaka 6 kwa mikataba ya ajira, na kwamba muda unatakiwa kuhesabiwa tangu pale Kamishna wa Kazi alipofikisha mgogoro Mahakamani. Aliitaka mahakama hii ya marejeo kurejea maamuzi katika *Uchunguzi wa Mgogoro wa Kikazi Na. 20/2000 kati ya Wafanyakazi 184 wa A.T.C. Vs A.T.C. na Misc. CC 14/94 N.M.C. Vs Hamisi Juma & Others* (zote hazijaripotiwa), ambazo zilisitiza kuwa lazima Mgogoro wa Uchunguzi ufikishwe Mahakama ya kazi ndani ya miaka 6 kwa mujibu wa Sheria ya Ukomo wa muda 1971, maana ni madai yanayotokana na mikataba ya ajira. Kwa hivyo basi, Msomi Ngudungi anatoa rai kuwa maombi ya marejeo yakubaliwe na mahakama hii ya marejeo.

Tumepata fursa ya kupitia kwa kina mwenendo na uamuzi wa Mahakama hii ya kimwanzo (Mh. Mlelwa (DC) katika Uchunguzi wa Mgogoro wa Kikazi Na. 54/97, na pia tamko/kumbukumbu la marejeo na maelezo ya Msomi Kariwa akishikiliwa mkoba na msomi Ngudungi, kwa niaba ya muomba marejeo — Tanganyika Packers Ltd. Kwa pamoja na kwa kauli moja, Jopo zima la marejeo tumeridhika kuwa kulingana na kumbukumbu na maelezo yaliyotolewa mbele ya Mahakama hii ya kimwanzo kwenye pingamizi la awali, ni ukweli ulio wazi na usioweza kupingika kwamba mjibu marejeo alifukuzwa kazi tarehe 30/4/91 na ndipo kisheria chanzo cha kuchukua hatua (cause of action) kilianza. Ni ukweli pia kwamba mjibu marejeo alipeleka lalamiko lake kwenye mamlaka inayohusika — Kamishna wa Kazi, tarehe 23/4/97. Baada ya Kamishna wa Kazi kulifanyia kazi lalamiko hilo, alibaini kuwa kuna mgogoro unaofaa

kufanyiwa uchunguzi na Mahakama ya kazi, kwa hiyo akauleta kwa Mwenyekiti wa mahakama ya kazi tarehe 14/8/97 takriban baada ya miezi minne tangu alipopokea lalamiko toka kwa mjibu marejeo.

Ni ukweli pia kwamba, migogoro ya uchunguzi ni ya aina ya madai yanayoangukia kwenye mkondo wa mikataba, yenyewe yakiwa yametokana na mikataba ya ajira. Chini ya Sheria ya ukomo wa muda (Law of Limitation Act 71) jedwali la kwanza aya ya 7, ukomo wa muda wa kufungua madai yatokanayo na mikataba ni miaka sita. Kama huo ndio msimamo wa kisheria, ndiyo kusema basi Kamishna wa Kazi alipouleta mgogoro Mahakamani kwa uchunguzi tarehe 14/8/97, ndiyo tarehe muafaka ya kuanza kupima muda wa mgogoro kama uko ndani ya miaka 6, na sio tarehe 23/4/97 siku ambapo mjibu marejeo alipofikisha lalamiko lake kwa Kamishna wa Kazi kama alivyoamua Mh. Mlelwa (DC), jambo ambalo tunadhani alipotoka kisheria. Kwa hesabu za karibu basi, tukianza tarehe hiyo 14/8/97 mpaka tarehe 30/4/91 siku ambayo mjibu marejeo alifukuzwa kazi, tunapata miaka 7 na miezi 3½. Ndiyo kusema, kama msomi Ngudungi anavyodai, uchunguzi wa mgogoro huo ulipoletwa Mahakamani tayari ulishapitwa na wakati (time barred), na hivyo kuufanya usiwepo mbele ya mahakama hii ya kimwanzo kihalali.

Hata hivyo, ni vema tukaliweka wazi kuwa, chanzo cha ucheleweshaji huo kinatokana hasa na mjibu marejeo mwenyewe. Alilalia haki yake ya kudai tangu tarehe 30/4/91 alipofukuzwa kazi hadi tarehe 23/4/97 alipoamka usingizini na kukimbilia kwa Kamishna wa Kazi kulalamika. Tunadhani hata tarehe hiyo 23/4/97 alipopeleka barua ya malalamiko kwa Kamishna wa Kazi, tayari muda ulishapita wa Kamishna kuleta shauri Mahakamani, maana kama hatua zingechukuliwa mapema, basi Kamishna wa Kazi alipashwa awe ameleta mgogoro Mahakamani kwa Uchunguzi siyo baada ya tarehe 29/4/96. Kwa hiyo mjibu marejeo hana budi kujilaumu kwa kulalia haki yake muda wote huo, hata kusababisha Kamishna wa Kazi kuleta mgogoro Mahakamani ukiwa tayari nje ya muda. Kama Mh. Mlelwa (DC) angejielekeza vema juu ya hali hiyo, bila shaka asingelikia uamuzi huo wa makosa kuwa mlalamikaji/mjibu marejeo alifikisha lalamiko lake kwa Kamishna wa Kazi ndani ya miaka sita, na kama Kamishna huyo hakupeleka mahakamani shauri hilo kwa muda unaotakiwa, hilo sio kosa la mlalamikaji.

Kama tulivyobainisha hapo juu, kisheria mwenye mamlaka ya kufungua migogoro ya uchunguzi wa kikazi Mahakama ya Kazi ni Kamishna wa Kazi peke yake na si mtu mwingine yeyote. Hiyo ni kwa mujibu wa Sheria ya Mahakama ya Kazi Na. 41/67 kama ilivyorekebishwa na Sheria Na. 3/90 na Na. 2/93. Na Kamishna wa Kazi huwa anafungua mgogoro kwa uchunguzi Mahakama ya Kazi, baada ya kupokea lalamiko la mwathirika na kulifanyia kazi na kisha kuridhika kuwa kuna mgogoro unafaa kufanyiwa uchunguzi na Mahakama ya Kazi, kama alivyofanya katika Shauri hili. Sasa kwa vile Kamishna alipopokea lalamiko la mjibu marejeo hiyo tarehe 23/4/97, na tayari muda wa miaka

sita ulishapita, tunadhani asingeliweza kukataa kulileta Mahakama ya Kazi kwa vile yeye ni mtawala tu na hana uwezo wa kimahakama wa kusema suala hilo liko nje ya muda. Jukumu lake kama mtawala lilikuwa kullishughulikia lalamiko hilo na kisha kulifikisha mbele ya mahakama ya Kazi kwa uchunguzi na uamuzi. Kwa hivyo basi, ilikuwa ni jukumu la mahakama hii ya kimwanzo kuona kwamba kilichokuwa kimeletwa Mahakamani kwa uchunguzi kilikuwa ndani ya muda halali au hapana.

Kwa vile basi Mahakama hii ya kimwanzo ilipotoka kisheria katika kuona uhalali wa Mgogoro wa Uchunguzi kutokana na wenyewe kuwa nje ya muda, sawa na pingamizi la awali la muomba marejeo, Mahakama hii ya Marejeo haina budi kutamka kuwa Mgogoro wa Uchunguzi Na. 54/97 ulikuwa umeletwa nje ya muda kama tulivyoelezea hapo juu, na hivyo haukuwa mbele ya Mahakama hii ya kimwanzo kihalali. Kwa hitimisho basi, tunatengua na kuweka kando uamuzi wa Mhe. Mlelwa Naibu, Mwenyekiti (Kama alivyokuwa), na tunaamua kuwa Mgogoro wa Uchunguzi Na. 54/97 utupiliwe mbali kama ulivyoletwa.

Uamuzi huu unakuwa TUZO ya Mahakama ya Kazi na unakuwa na nguvu ya kisheria mara moja.

Umetolewa nasi leo hii tarehe 26 mwezi wa saba mwaka 2001 mbele ya wahusika.

(sgd)

E. L. K. MWIPOPO, J.
Mwenyekiti

(sgd)

A. A. M. Shayo
Naibu Mwenyekiti

(sgd)

C. E. R. WILLIAM
Naibu Mwenyekiti

Certified true copy of the original

8 Agosti, 2001

B. E. NYAMUBI,
Registrar

TAARIFA YA KAWAIDA NA. 131

UTHIBITISHO NA USIMAMIAJI WA MIRATHI

(Katika Mahakama Kuu ya Tanzania, Dar es Salaam)

SHAURI NAMBARI 74 YA MWAKA 2001

Uthibitisho na Usimamiaji wa Mirathi ya
Rajabul Nasser Shariff, Marehemu
na

Shamshudin Jaffer, Mwombaji

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 kama wanaona inafaa kabla ya kutolewa kwa barua za usimamiaji wa Mirathi kwa muombaji aliyetajwa hapo juu.

Mapingamizi yoyote kuhusu maombi haya yawe yameandikishwa mnamo au kabla ya tarehe 20 mwezi wa 6 mwaka wa 2002.

Imewasilishwa Dar es Salaam leo tarehe 20 mwezi wa 3 mwaka 2002.

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Naibu Msajili Mwandamizi