

**IN THE HIGH COURT OF ZANZIBAR  
HELD AT VUGA**

**INDUSTRIAL DIVISION**

**CIVIL CASE NUMBER 9 OF 2010**

**KHADIJA ALI MAKAME ..... PLAINTIFF**

**VERSUS**

**MENEJA SHIRIKA LA  
UMEME ZANZIBAR ..... DEFENDANT**

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**JUDGMENT**

**HON. MKUSA J**

Plaintiff in this case is one Khadija Ali Makame who is suing her employer Meneja Shirika la Umeme Zanzibar hereinafter referred to as defendant. in brief overview of this matter at hand is that since 1976 plaintiff has been working for defendant through different departments for about 29 years. And on 30<sup>th</sup> day of May 2005 plaintiff received a letter from defendant of suspension and thereafter redundancy took place as from 1/6/2005. Since there has been no warning letters issued and plaintiff has never been called and heard she has been put under impression of a person with bad corrector before the society therefore plaintiff is claiming some 12,000,000/= Tsh as compensation. As well for defendant to pay plaintiff her salaries as from that redundancy date till judgment day as she has been illegally remover from her employment.

During hearing of this case plaintiff was first and only witness to testify before the court and being Pw 1 one Khadija Ali

Makame said since 1976 till 2004 used to work for defendant at customer care department for 28 years. And in 2004 till 2005 Pw 1 had been transferred to administration department but in 2003 till 2005 their corporation had shortage of equipments and one Bakari and Mwatum were stationed at Sateni at the same time they used to buy them from Dar Es Salaam (DSM).

Pw 1 further said they tried level best to help their customers and in September 2004 her father got ill and she had about five people there work had not been completed by her. Due to illness of her father Pw 1 took three weeks leave being on leave received letter from defendant which required her to give explanations due to disturbance caused by her to customers. Pw 1 with help of one Omar Salum wrote a letter to defendant as required but after one week received another letter to attend management meeting.

Pw 1 went as requested and waited as from 8:00 am till 13:00 pm she had an excuse as her father's condition was worsen up he was latter taken to Muhimbili hospital where he passed away. In January Pw 1 went back to work had no problem and returned the money which she took for connection from their customers.

In may 2005 Pw 1 received her redundancy letter was paid 500,000/= Tsh and later on she was paid by installments. Furthermore said she was only 48 years old when all that occurred while in accordance with the law she could work up to 60 years of age. Therefore for being disrespected and caused of disturbance Pw 1 claims to be paid 12,000,000/= Tsh.

During cross-examination said she is not agent of defendant and five people had their work pending and gave money to her. And it was part of her duties to help customers but she was not authorized by any one. Being in critical condition Pw 1 apologues

in her letter and accepted those payments. And she had never seen any letter of Juma Rajab.

At the same time assessors as well c=questioned Pw 1 and said she had a contract with monthly salary of 170,000/= Tsh. Before going on leave she did not handover her responsibilities to anyone. After leave Pw 1 continued to work and received monthly salary as usual. At the end said she had been paid sum of 8,000,000/= Tsh with no explanation.

Plaintiff had no witnesses to call before the court therefore on 19/3/2014 defence case commenced and Dw 1 is Moh'd Haji Nassor who is acting personal officer for defendant and deal with all staff. Dw 1 was employed in January or February 2005 further said Pw 1 is known to him as former employee of defendant at customer care department with duties to remained customers about their debts and where to pay them as well received complains.

That department had no authorization to receive any kind of money rather just dealt with complains as per their regulations no one is allowed to deal with responsibilities and duties of another department and failure to that writer warning is issued to person who has disobeyed such order. These regulations which deal with misconducts done by stall had been passed by Board of defendant.

Pw 1 had been redundant because she had committed an offence and she was supposed to be dismissed but management decided to act on redundancy after considering time plaintiff had worked for defendant. It was so decided in order as well for plaintiff to be paid her rights for redundancy. Dw 1 said they acted upon receiving complain from one of their customers that plaintiff took some money for electricity connection.

Upon such turn a letter issued to plaintiff to give explanation which she did and admitted being given sum money from customer. From there the issue taken to management from there forwarded to Board of Directors whereby it was decided for plaintiff to be paid all her rights and entitlements.

Plaintiff as well took liberty and cross-examined Dw 1 whereby he said that customer did not get electricity connection. And being questioned by assessors said plaintiff were paid remunerations as well it was personal complaining of customer. Furthermore plaintiff is not entitled to any pension after redundancy.

Defence side had no more witnesses to call therefore as well at this note closed their case and as I peruses the file and done through evidence adduced before me from both side respectively the following is view of this court. To begin with both assessors have submitted their opinion in writing whereby Mr. Salahi submitted that plaintiff had been dismissed from work after she had taken money from customers without complying with laid procedure set by the company. At the same time plaintiff after being informed in writing of her act she denied and being dissatisfied with plaintiff's explanation defendant decided to terminate her employment and paid her pension and other benefits. Therefore act and action done by defendant are correct so plaintiff has no further claim against defendant. The same had been joint by second assessor Bi Rihi Haji Ali.

Well on first issue whether the plaintiff was illegally dismissed or not? Defence side relied on **section 4 (2) (b) of the Public Investment Act 4 of 2002 (Act 4 of 2002)** which provides that:-

**4 (2) The Chief Executive Officer shall be responsible to the Board:**

**(b) For enforcement of staff and financial regulation made by the Board.**

**This provision of the law is irrelevant in this case, at the same time defendant has not produced before this court any disciplinary regulation or staff regulation. It is undisputed that Board is vested with powers to employ, dismiss, terminate, promote or do any other act in relation to their employees but such act shall be in accordance with staff regulation. Which means there must be staff regulation as section 11 (2) (5) of Act 4 of 2002 provide that:-**

**11 (2) Promotion and other disciplinary measures relating to the staff of a public corporation shall be in the hands of the Board and shall be exercised in accordance with staff regulation of the public corporation. (the underline is mine)**

**11 (5) For avoidance of doubt it is expressly provided that the Board shall have power to employ, terminate, dismiss and suspend staff of a public corporation in accordance with staff regulation of such public corporation. (the underline is mine)**

On other hand Dw 1 could not rely on exhibit P 1 as the person who had written it or alleged to have been the complainant has never been called before this court to testify. Therefore this court cannot be left out on fishing exhibition by assuming the legality of such document. As it is contrary to **section 60 of the**

**Evidence Decree Chapter 5 (Cap 5) of the Laws of Zanzibar which provide that:-**

**Oral evidence must, in all cases whatever, be direct: that is to say-**

- a) If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;**
- b) If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;**
- c) If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;**
- d) If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:**

**Provided that the opinion of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable:**

**Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it think fit, require the production of such material thing for its inspection.**

From adduced evidenced it has been observed that defendant herein based his decision on hearsay information of act alleged to have been done by plaintiff. But defendant failed to call upon any witnesses before this court to prove that indeed Pw 1 took money and caused disturbance to their customers. At the same time defendant failed to comply with requirements of section 55 of **Act Employment Act 11 of 2005 (Act 11 of 2005)** which provide that:-

**When an employer conducts an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee on half pay.**

**Any suspension under this section shall not exceed three months or the duration of the inquiry, whichever is the shorter.**

**If the enquiry conducted by the employer in accordance with subsection (1) of this section proves that the employee has committed an offence, the employer may dismiss the employee.**

**If the enquiry conducted under subsection (1) of this section proves that an employer did not commit an offence, the employer shall restate the employee and pay all the payments deferred during his/her suspension, or shall terminate the employee from employment and pay all payments deferred during suspension plus other entitled terminal benefits.**

However section 112 (1) (a)(b) of Act 11 of 2005 clearly laid out procedure which employer has to follow during termination or dismissal and apparently defendant has failed to comply with the same. As it direct that:-

**Any employee shall not be dismissed, whether adequate notice is not given or not unless there is a valid reason for termination of employment, which reason is-**

**a) Connected with the capacity of employees to do the work the employee is employed to do;**

**b) Connected with the conduct of the employee at the workplace;**

Now, from everything hereinabove mentioned it's crystal clear that defendant has failed to comply with so many mandatory requirements of the law during termination of plaintiff. Therefore if this is the case than first issue is answered in affirmation to plaintiff.

On second issue of "whether the plaintiff is entitled to be paid sum 12,000,000/= Tsh?" from adduced evidence before this court it has been seen that plaintiff had been paid pension and kiinua mgongo. And defendant upon such termination was supposed to pay plaintiff her terminal benefits in accordance with section 53 (1) (c) & (d) of Act 11 of 2005 which direct that:-

**53 (1) The following procedure shall be applicable in terminating an employee on a permanent contract of service who attains the normal retirement age.**



**(c) The employer shall upon retiring the said employee pay all terminal benefits due under this Act except gratuity and pension which shall be dealt with under and by the relevant social security or pension fund authority.**

**(d) The employer shall contact the nearest labour officer and the relevant trade union branch office in carrying out the retirement exercise.**

And after seen violation of above mentioned provisions of the law this court is pleased to sustain second issue as plaintiff is entitled to be paid sum of 12,000,000/- Tsh.

From evidence at hand it has been observed that plaintiff has never been given her certificate of service in accordance with section 79 of Act 11 of 2005 which mandatory direct that:-

**79 (1) Where a contract of service is terminated an employee shall be entitled to receive from the employer a certificate of service with following particulars of employment-**

- a) The name and addresses of the employer and employee;**
- b) The length of employee's period of continuous employment with the employer;**
- c) The capacity in which the employee was employed prior to termination;**
- d) Employee's working capacity;**
- e) The effective date of contract of service;**
- f) The reason or reasons for the termination of the employee's employment.**

**(2) The certificate of service issued under subsection (1) of this section shall be written in English or Kiswahili and shall be signed and sealed by the employer. (the underline is mine)**

At this note defendant to issue certificate of service to employee in accordance with above mentioned provision of the law as well to pay all other due in accordance with all plaintiff prays as per the filled plaint before this court.

**It is so ordered.**

Sgd: Mkusa I. Sepetu – J

Date: 11/12/2015.

*I certify that this is a true copy of the original.*

  
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**REGISTRAR**  
**HIGH COURT OF ZANZIBAR.**

