

IN THE HIGH COURT FOR ZANZIBAR

HELD AT VUGA
INDUSTRIAL DIVISION
CIVIL CASE NO. 1 OF 2016

**MOHAMED ALI MOHAMED
AND 228 OTHERS ----- PLAINTIFFS
VERSUS**

**MANAGING DIRECTOR AGROTEX LTD
AND 2 OTHERS ----- DEFENDANTS**

JUDGMENT

HON. MKUSA J

All plaintiff before this court are represented by advocate Isaack Msengi who has instituted this labour deputed against defendant. In brief the matter that all plaintiffs were employees of defendant for about 12 years. And during all that time none of them had been on public holidays, leave, waged. As well working without written contract and contribution to ZSSF all this has caused hardship and mental torture. Now they claim before this court sum of 671,420,000/- Tshs. for being unsettled salaries, sum of 569,913,000/- Tshs. being unpaid public holidays, sum of 402,852,00/- Tsh. Being unpaid annual leaves, sum of 300,000,000/- Tsh to be ascertained by the court being punitive damages for causing plaintiffs to work 14 years without written contract and contribution to ZSSF and sum of 500,000,000/- Tsh to be ascertain by the court being general damages for severe suffering, mental and physiological torture to all plaintiffs. Together with all that for defendant to complete and submit to ZSSF plaintiff contributions.

This matter was heard was heard ex parte as all defendants failed to appear before the court after being served. Therefore on 15/06/2016 hearing commenced and PW1 was Shaaban Othman Suleiman who worked as watchmen at Defendants Company. PW1 employment commenced in 2004

with monthly salary of 150,000/- Tsh and holds ID of ZSSF he has not been paid as from March 2014 till May 2014 as well August 2014 till January 2015 it is total of 23 months. To this regard PW1 reported to Second Vice President (VP 2) who promised to handle the matter but all in vain at the same time their advocate issued a demand letter to defendants. Therefore he has prayed for this court to help him get his rights from defendant and to be paid all his salaries, leave, ZSSF, disturbance as per filed plaint. Both assessors had no question to ask PW1.

Second witness PW2 is Riziki Abdalla Omar who has worked for defendant since 2004 with monthly salary of 150,000,000/- Tsh. And has not been paid from March 2014 till May 2015 as well from January 2015 till 2016. PW2 has a written contract with defendant signed by both parties and before coming to court they went to VP 2 to report their complain who promised to get back to them but all in vain. As well they went to District Authority where they were promised to be help to be paid ZSSF, leave and salaries . After not been called they decided to report to labour commission where no help was given to them upon such turn plaintiffs met and instructed their advocate to issue a demand letter to defendants. No reply was received from defendants therefore decided to institute this case before the court. At the end PW2 prayed for this court to order defendants to pay them all their claims and rights as listed in filled plaint. Assessors had no question to impose to PW2.

On same day PW3 Helena Charles Kantori took witness stand and said she had been working to defendant as from 2007 with monthly salary of 135,000/- Tsh. PW3 has writters contract ID, ZSSF membership card and she had not been paid for 20 months as well had never been on leave. At the same time before coming to court they went to labour commission met with commissioner, District Authority of Kaskazini "A" at Mahonda. As well defendants were ordered by VP 2 to pray plaintiff during his (VP2) visit. After that hired lawyer who wrote demand letter to defendants who kept silence and there from instituted this case before this court claiming to be paid all their rights. PW3 prayed for this court to help them get their right in accordance with prays contain in the plaint. Being questioned by both

assessors PW3 said on 13/04/2015 they were suspended from work. And from here awareness defendants company still operate. And up to date their boss in not on the country.

PW4 is Amir Shawaji Kumbulogo who started to work for defendants with monthly salary of 135,000/- Tsh. Since March 2014 till May 2014 as well August 2014 till December 2015 as well from January 2015 till 2016 he was not paid salary, ZSSF, leave. Upon such outcome they reported the matter to VP2 and other authorities but with no success. From there on their advocate wrote a demand letter to defendants but with no respond therefore instituted this case against all three defendants. PW4 prayed for this court to order defendants to pray plaintiffs all their rights and claims as per the filled plaint before this court. While case was still on plaintiffs side advocate Isaack called upon Moh'd Ali Moh'd being PW5 testified and said he was employed by defendant with monthly salary of 135,000/- Tsh. As well being a member of ZSSF has got ID, as well pointed out that he has not being on leave for 11 years. During their claim went to office of VP2 but with no success and there from hired advocate to represent them before this court. But before plaintiff came to court their advocate issued a letter of demand to defendants but they did not respondent based on all that PW5 prayed for this court to grant their prays as per filed plaint.

On same date Khamis Juma Denge took witness stand as PW6 testified and said that he live with his family and 8 children and sometime in 2004 he started to work for defendant company with monthly salary of 155,000/- Tsh. PW6 has got ID of work and ZSSF card as well employment contract which bears his signature, photo of his and other documents as seen in filed plaint. Furthermore since 2013 he has not being paid salary, leave and before coming to court they went to Labour Commission, District Authorities met with VP2 who premised to handle the matter but all in vain.

From there all of them met and agreed to hire lawyer and institute suit before the court. Their lawyer issued demand notice to defendants but they did not attend meeting. At the end PW6 prayed for this court to make

orders as per their filed plaint. Both assessors had no question to PW6 therefore PW7 one Moh'd Said Lipala who resident at Kitope took witness stand and said since 2007 has been working for defendants with monthly salary of 150,000/- Tsh. PW7 has contract which bears his signature, signature of Labour Officer and ZSSF which contains his signature and name, ID if work.

At the same time Pw 7 informed this court that since 2007 he has never gone on leave neither has been paid money for leave. And he has been contributes to ZSSF as his employer deduct the same from his salary while one day they went to ZSSF office and got to know that since 2013 no contribution has been by their employer. Since 2013 they stopped being paid salaries and Pw 7 and never received any letter or whatsoever from defendant showing that he is no longer their employee or that he will no longer receive salary from them. It is mistreatment against him and Pw7 and gone to local government who failed to resolve the matter therefore they were instructed to go to VP 2 who never succeeded as well. All plaintiff conducted meeting and it was agreed to go to Labour Commissioner who later visited them but yet all in vain. All failed to resolve their claim for Salaries, leave, holidays and compensation therefore all plaintiffs decided to hire a lawyer and to institute suit before the court to claim their rights. At the end Pw 7 prayed for this court to look at this case and to order defendants to pay all plaintiffs their rights as per the filed plaint. Both assessors had no question to ask Pw 7.

Advocate Isaack Msengi called upon last witness from plaintiffs side one Amina Ali Ramadhan who resident at Mbuzini married being Pw 8 said as from 2011 started to work for defendants as collector with monthly salary of 150,000/= Tsh. As well Pw 8 contributes to ZSSF and she had never been on leave or paid for such leave and defendant have not sent contributions to ZSSF since 2013. While following up on this matter they went to local authorities, labour commission to VP 2 but all in vain. And up to date they have not received any answer thereafter they hired lawyer to institute suit before this court. In order for this Court to handle their claim and to be given their rights like to be paid salaries, leave, ZSSF and compensation for illness. Pw 8 pointed out that they have never been off even during public holidays and their salaries are the same never being increased. Pw 8 prayed for this court to order defendants to pay them all their claims as per the filed plaint. And once again both assessors had no question to Pw 8

therefore at this stage of proceedings advocate Isaack Msengi closed their case.

On this note assessor Ally Salum Ally said in this case main issue is unfair termination therefore plaintiffs are to be paid six (6) months salaries in accordance with section 120 Employment Act 11 of 2005 (Act 11 of 2005). On his part second assessor Ally Yapanda Ibaraja totally join hands with plaintiff as defendant failed to conduct his responsibly, as well for this court to order defendants to pay plaintiffs all their rights in accordance with Act 11 of 2005 together with costs.

From adduced evidence it is clearly seen that all plaintiffs had a written contract with defendant therefore if defendant wished to terminated such contract they were required to comply with requirements of section 52 (1) (e) (f), (g) and (h) of Act 11 of 2005 which states as:

52 (1) A written contract of service shall be terminated in the following instance.

(e) Where the employee is dismissed from work following, or as a consequences of, grossly unreasonable conduct on the part of the employee towards the employer or due to incompetency;

(f) Where the employee refuses to be transferred from one employer to another;

(g) Where the enterprises ceases to operate for a period exceeding three months;

(h) Where the employer or company is bankrupt or winding up and the enterprises ceases to operate for a period of one month from the date of the occurrence of the employer's bankruptcy or winding up.

Nowhere in adduced evidence shows that defendants were at any staged so mentioned above therefore this reviles that act done by is defendant is contrary with requirements of the law. Furthermore since defendants stopped praying all plaintiffs their salaries, leave public holidays and act for so many years without any information given to them this amount to unfair

termination. And if so than plaintiffs are entitled to be paid compensation in accordance with section 119 (1) (c) and 120 both of Act 11 of 2005 which direct that:-

119 (1) Where Industrial Court decides that an employee's complaint of unfair termination under the Act is well founded, the Court shall, subject to subsection (2) and (3) of this section grant the employee any of the following remedies;

(c) An award or awards of compensation

120. The compensation awarded to an employee whose dismissal is found to be unfair either because the employer did not prove that the reason for dismissal was a fair reason relating to the employee's conduct or capacity or the employer's operational requirements or the employer did not allow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be less than the equivalent of six months remuneration calculated at the employee's rate of remuneration of the date of dismissal.

On the other hand I in totality join hands with both assessors in this case and to depart there from defendant has been deducting some percent from employee's salaries in order to send it to ZSSF together with his (employers) contributions but yet he did not submit the same the same to ZSSF. This was found when plaintiffs went to office of ZSSF to cross check and found that there had been deposited for years. This act of defendants is violation of section 17 (1), (2) and (3) of the Zanzibar Social Security Fund Act 2 of 2005 (Act 2 of 2005) which is mandatory and direct that :-

17 (1) Every member shall contribute to the Fund part or his or her monthly salary at the rate prescribed in the first schedule and the employer of such employee shall deduct such contributions from the employee's monthly basic salary. (the underline is mine).

(2) Every employer shall pay to the Fund the amount prescribed in the first schedule of this Act calculated on the

salary paid to the employee during that month. (the underline is mine).

(3) Both members and the employer's contributions shall be paid in a prescribed manner to the Fund by the employer within fifteen days after the date of payment of salary to which such contribution relate. (the underline is mine).

Therefore after seeing that defendants have violated so many provisions of the law as seen above it follows therefore that plaintiffs have managed to prove their case before this court. And therefore this court do hereby order all defendants jointly to pay all plaintiff as per relieves (a), (b), (c), (d), (e), (f), (g) and (h) of the plaint.

It is so ordered.

Sgd: Mkusa I. Sepetu – J

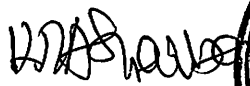
Date: 27/02/2017

Delivered in chamber this 1st day of March 2017 before the plaintiffs and their advocated legal officer are Lidya from Dimoso Company advocate but is the absence of the defendant.

Sgd: Yessaya Kayange – DR

Date: 1/03/2017

I certify this is a true copy from original.


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REGISTRAR
HIGH COURT
ZANZIBAR

