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## AN ASSESSMENT ON EFFECTIVENESS OF THE LAWS GOVERNING REMEDY OF TERMINATED EMPLOYEES IN PUBLIC SERVICE IN TANZANIA

By

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### Abstract

This article assesses on the effectiveness of the laws and practices governing remedy of terminated employees in public services in Tanzania. The article portrays that the procedures for remedy of terminated employees in a public service created many legal challenges on its effectiveness. Hence, a comprehensive reform of the procedures and policies surrounding public service employees concerning termination and remedies is needed to ensure transparent, fair and guarantee to such remedies.

Then, the article concluded that the existing laws and practices are not effective due to the legal controversy and also uncertainty of procedures, unchallenged power of the president, no forum to claim for the interests or rights, the uncertainty of laws governing public servants and the legal requirement of joining attorney general in the government proceedings are the challenges facing employees seeking remedies in the country. Hence the article recommends on legislature, government, judiciary, employees and other stakeholders amendment should be done in order to minimize the risk of legal challenges arising from those contradictions.

**KEY TERMS:** Public Service, Employee, Termination of Employment, Remedy and Effectiveness of the Laws.

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## 1.0 General Overview

### 1.1 Introduction

In Tanzania, employees in public service exercise their right to work, according to article 22 of The Constitution of the United Republic of Tanzania of 1977<sup>1</sup> that entitled individuals to work as a citizen of Tanzania. The Public Service Act,<sup>2</sup> Public Service Regulation<sup>3</sup> governs public servants, while The Employment and Labour Relations Act<sup>4</sup> and Labour Institutions Act<sup>5</sup> together with their Regulations for Public and Private Servants enabled any qualified Tanzanian to work in Public Service as a Public (civil) Servant and Private Servant.

Section 32A of the *Public Service Act*,<sup>6</sup> provides a public servant before seeking remedies under labour laws, have to exhaust all remedies under the Act. Section 25 of the Act<sup>7</sup> stipulates that a terminated employee may pursue remedies such as salary claims, or reversion and if dissatisfied with the disciplinary authority's decision, may appeal to the Public Service Commission, if remains aggrieved by the Commission's decision appeal to the chief secretary, and if not satisfied with the decision of the chief secretary he may appeal to the President whose decision shall be final. Under labour laws, Section 40 (1) of the Act<sup>8</sup> lays out the remedies such as reinstatement, re-engagement or pay compensation. According to section 91 of the Act,<sup>9</sup> if an employee

<sup>1</sup> Cap. 2 of 1977.

<sup>2</sup> Act No 8 of 2002.

<sup>3</sup> G.N No 444 of 2022.

<sup>4</sup> Act No 6 of 2004.

<sup>5</sup> Act No 7 of 2004.

<sup>6</sup> Cap. 298 [R.E 2019].

<sup>7</sup> Cap.298 [R.E 2019].

<sup>8</sup> Cap.366 [R.E 2019].

<sup>9</sup> Cap.366 [R.E 2019].



aggrieved with such remedies may file a revision to the High Court Labour Division and if still aggrieved with the division's decision appeal to the Court of Appeal of Tanzania.<sup>10</sup> Despite of having those provisions of laws governing remedy of terminated employees, still there is a legal contradiction on its implementations and practices, hence to this article.

## 1.2 Key Terms

### 1.2.1 Public Service

This refers to the system or organization that is tasked with managing the delivery of services to the general public from their government or any other institution on behalf of the government as permitted by law. Therefore, a public service is a resource provided by a company, either a commercial enterprise or a government agency, with the goal of assisting community members.<sup>11</sup> Section 3 of the Public Service Act<sup>12</sup> provides that public service is a public office charged with formulation of government policy and delivery of public service. This pertains to the roles and responsibilities that are facilitated or compensated by a governmental body, particularly through the civil service framework.<sup>13</sup>

In general, public service refers to work performed in a public office where employees give direct services to residents under their authority or finance the provision of services via their employer. Certain services should be made accessible to everyone, regardless of financial status.<sup>14</sup> Thus, the remedy available to terminated employees in public service involved individuals who employed to work on the public office.

### 1.2.1 Employee

Employee as an individual entered into a contract of employment or any other contract under which the individual undertakes to work personally for the other party to the contract.<sup>15</sup> An employee, as a public servant, has signed into an employment contract or any other agreement whereby the individual commits to do work directly for the other contracting party.<sup>16</sup> Generally, the term employee refers to an individual hired by an employer to perform specific duties or services under the employer's direction and control, typically in exchange for wages or salary. According to Regulation 3 of the Public Service Regulations<sup>17</sup> provides the term employee that any person termed by the Act as a Public Servant. In the case of Employment Division V. Smith<sup>18</sup> The Supreme Court

influenced interpretations of employment and workers' rights. Also, in the case of Ready Mixed Concrete (South East) Ltd V. Minister of Pensions and National Insurance<sup>19</sup> whereby the court identified factors such as control, integration and economic reality to distinguish between employees and independent contractors.

### 1.2.3 Termination of Employment

Termination denotes an action that concludes the relationship between employer and employee.<sup>20</sup> It is considered fair when actions are conducted in accordance with the law, and unfair when they deviate from legal requirements.<sup>21</sup> Termination of an employment contract may be initiated by either party, either voluntarily or as a result of an employer's decision due to various factors such as downsizing, inadequate job performance, or redundancies.<sup>22</sup> The act concludes the employer-employee relationship, allowing either party to terminate the employment contract without penalty, provided they adhere to legal termination requirements. The employer terminating the contract must demonstrate justifiable reasons for the termination and ensure compliance with the prescribed procedures.<sup>23</sup>

According to Section 36 (a) (i) (ii) (iii) (iv) (v) and (b)<sup>24</sup> Termination of employment includes common law terminations that are lawful, terminations that are employee-initiated because of the employer's intolerable working conditions, non-renewals of fixed-term contracts when there was a reasonable expectation of renewal, refusing to allow an employee to return from maternity leave, and refusing to rehire an employee when several have been fired for similar reasons but some have been offered positions elsewhere. Section 37(1)<sup>25</sup> outlines the grounds for termination and the corresponding procedures to be adhered to for each ground. The grounds for termination by the employer dictate the procedures that must be adhered to. In Dew Drop Co. Ltd v. Ibrahim Simwanza,<sup>26</sup> it was determined that the employer bears the burden of proof to demonstrate that a valid and fair reason existed for the employee's termination and that due process was followed in the termination procedure. In the case of Tanzania Revenue Authority v. Andrew Mapunda,<sup>27</sup> it was determined that for the termination of employment to be deemed fair, it must be founded on valid reasons and adhere to a fair procedure. Substantive and procedural fairness must be ensured in the termination of employment, as stipulated in Section 37(2) of the Act.<sup>28</sup> The legislature's intention is to mandate that employers terminate

<sup>10</sup> Cap. 366 [R.E. 2019].

<sup>11</sup> <https://www.indeed.com/career-advice/finding-a-job/what-are-public-service> accessed on July, 2024.

<sup>12</sup> Cap. 298 [R.E. 2019].

<sup>13</sup> <https://www.indeed.com/career-advice/finding-a-job/what-are-public-services> accessed on June, 2024.

<sup>14</sup> United Nations Development Program Global Centre for Public Service Excellence (2016) Political settlements and public service performance. Conference report. Retrieved from: [https://issuu.com/undppublicserv/docs/politicalsettlements\\_report\\_final](https://issuu.com/undppublicserv/docs/politicalsettlements_report_final). Accessed on June, 2024.

<sup>15</sup> Section 4 (a), (b), (i), (ii) and (c) of Cap. 366 [R.E. 2019]

<sup>16</sup> <https://www.lra.org.uk/starting-out/who-employee> accessed on June, 2024.

<sup>17</sup> [GN.NO.444 OF 2022].

<sup>18</sup> (1990) (US), 494 U.S.872.

<sup>19</sup> [1968] 2 QB 497 (UK).

<sup>20</sup> <https://dictionary.cambridge.org/dictionary/english/termination> accessed on June, 2024.

<sup>21</sup> <https://www.ardeanattorneys.co.tz/termination-of-employment-contract-in-tanzania> accessed on June, 2024

<sup>22</sup> <https://www.investopedia.com/terms/t/termination-employment.asp>.

<sup>23</sup> <https://www.ardeanattorneys.co.tz/termination-of-employment-contract-in-tanzania> accessed on June, 2024.

<sup>24</sup> Cap.366 [R.E. 2019].

<sup>25</sup> Cap.366 [R.E. 2019].

<sup>26</sup> [2020] Civil Appeal No.244.

<sup>27</sup> [2014] Labour Revision No.104

<sup>28</sup> Cap.366 [R.E. 2019].



employees solely based on valid reasons, rather than personal whims or preferences. As it was seen in the case of Mtambua Shamte and 64 others V. Care Sanitation and Suppliers<sup>29</sup>, that unfair termination under the Act do not apply to specific task or fixed term contract which come to an end on the specific time or completion of a specific task. Also, in case of Sinohydro Corporation Limited V. Mulidi Mputo Omary,<sup>30</sup> where the Court held that the respondent was unfairly terminated from employment, the Arbitrator was right to award him 12 month's salaries as compensation. The respondent would have been entitled to specific remedies if there was a certain end of employment.

Therefore, in public service termination of employment of an employee may be done through age of retirement, termination of appointment of non-pensionable public servant and termination upon contesting constitutional leadership or elective political post.<sup>31</sup> Termination of other permanent and pensionable public servants occurs due to disciplinary proceedings of the disciplinary authorities.<sup>32</sup>

The provision of section 25(1) of the Act,<sup>33</sup> provides on the right to appeal of the public servant once terminated to the employment and seek remedy such as reversion, claim of the salary or be reinstated to the work. The procedures laid down under section 25 is a mandatory procedure, since the wording under section 32A of the Act emphasizes that a public servant exhaust all the remedies stipulated under section 25 before resorting into the labour laws. Despite having these mandatory procedures under the Act, public servant does not resort into labour laws but rather they file for judicial review. This is evidenced in the case of Tanzania Posts Corporation v. Salehe Komba and Revocatus Rukonge,<sup>34</sup> from the case it was held that the CMA which is a product of the labour laws has no jurisdiction over public servants. That public servant has the rights to file an application for judicial review in the High Court of Tanzania.

#### 1.2.4 Remedy

Remedy refers to the enforcing a right or redressing a wrong<sup>35</sup>, is usually sought when an employer or employee has breached an employment contract or violated a labour statute. The remedies available under Section 40 of ELRA<sup>36</sup> includes reinstatement, re-engagement and compensation while in fixed term contract an employee is awarded salaries for the remaining period of the contract. In a different sense, a remedy, also called judicial relief of which a court upholds a right, charges a sentence, or makes another court order to do what it wants, usually by giving money to make up for loss or harm.<sup>37</sup> In employment law, a legal solution is

a way for someone who has been mistreated to get justice and be paid for their injuries. This might come in the form of money, property, or some other kind of help.<sup>38</sup>

In labour law, people usually go to court to get justice when a boss or worker breaks a job contract or a labour law. These options include getting money for firing someone without a good reason or being put back on the job if you were fired unfairly. This has to do with the phrase "unfair dismissal or termination."<sup>39</sup> A big part of work rules is unfair layoff or termination, which means firing an employee without a good reason or against the terms of the contract.

Whereas equitable remedies include forcing someone to do action, legal remedies entail courts awarding money as compensation. For instance, if a home has construction issues that were concealed, the seller may be responsible for covering the costs of repairs.<sup>40</sup> In the case of Azama Rajabu Mbilanga V. Shield Security Services Limited<sup>41</sup> demonstrate how legal remedies may help bring workplace disagreements back into harmony, ensure equity, protect workers' rights, bring about justice, set standards, and keep everyone on the same page which held that the principles of unfair termination apply to both types of contracts and the only difference between the said contracts will be on the reliefs awarded to the affected employee. The logical remedy to an unlawful discharge, refusal to hire or denial of promotion will be the reinstatement, instatement or promotion of the complainant.

## 2.0 The Legal Framework Governing Remedy of Terminated Employees in Public Service in Tanzania

### 2.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania<sup>42</sup> provided for principles of liberty, equity, brotherhood, and harmony as the foundation of this Constitution, which is upheld by the Executive, Legislature, and Judiciary to ensure that all human rights are preserved and protected and that each person's obligations are dutifully fulfilled.<sup>43</sup> Article 22<sup>44</sup> of the Constitution guarantees the right to work, ensuring that every citizen of the United Republic is entitled to the opportunity and right to hold any office and perform any function under state authority on equal terms. This right is safeguarded for every individual, and when it is infringed upon, one has the ability to assert their rights and initiate legal proceedings against the transgressor before a court of law or any other legally constituted body entrusted with the responsibility of

<sup>29</sup> [2010] Revision No.154.

<sup>30</sup> [2023] Revision No.144.

<sup>31</sup> G.N No 444 of 2022.

<sup>32</sup> G.N 444 of 2022.

<sup>33</sup> Cap. 298 [R.E 2019].

<sup>34</sup> [2020] Civil Appeal No.128

<sup>35</sup> <https://www.dictionary.com/browse/remedy>.

<sup>36</sup> Act No. 6 of 2004

<sup>37</sup> <https://www.studysmarter.co.uk/explanations/law/labour-law/legal-remedy> accessed on August 2024.

<sup>38</sup> Loc-cit.

<sup>39</sup> Loc-cit

<sup>40</sup> <https://www.studysmarter.co.uk/explanations/law/labour-law/legal-remedy> accessed on August 2024.

<sup>41</sup> [2019] Labour Revision No.113

<sup>42</sup> Cap. 2 of 1977.

<sup>43</sup> Preamble of Cap 2 of 1977.

<sup>44</sup> Cap. 2 of 1977.



adjudicating and resolving disputes in Tanzania.<sup>45</sup> The court, in adjudicating the rights of employees, must uphold the principle of equality before the law. It is imperative that state authorities implement procedures that are suitable and that adhere to the principles of fair hearing, as well as ensuring the right to appeal or seek other legal remedies against the decisions rendered by the court or relevant agencies.<sup>46</sup>

Furthermore, the President, as stipulated in Article 36 (3),<sup>47</sup> possesses the power to appoint individuals who do not hold leadership or chief executive roles to various positions within the Government's service. This authority extends to the promotion of these individuals, their removal from office, the termination of their employment, and the regulation of their discipline, which is entrusted to the Service Commissions. It is evident that the constitution empowers the President of the United Republic of Tanzania to establish, delegate, uphold discipline within the public service, and impose penalties on any public servant who contravenes the code of good practice and conduct.

### 2.2 The Public Service Act, Cap. 298

The Public Service Act under Section 23<sup>48</sup> states the authority to terminate public servants upon the presentation of a disciplinary charge, ensuring that the individual is given a sufficient time to respond to the accusation and to conduct an investigation on their behalf. According to Section 23 of the Act<sup>49</sup> upon the end of the inquiry or subsequent to a conviction on a criminal charge, the public worker must be dismissed effective from the date of their conviction. Furthermore, Section 24 of the Act<sup>50</sup> empowers the President to dismiss any public worker from their position if deemed necessary for the public good. Section 25 of the Act<sup>51</sup> stipulates that a terminated employee has the right to appeal for remedies such as reinstatement, salary claims, or reversion. The employee has the right to file an appeal with the Public Service Commission if they are aggrieved with the disciplinary authority's decision.

In addition, a public employee may file an appeal with the President whose decision will be final. Section 32A of the Act governs the options accessible to dismissed public service personnel. It stipulates that employees must first pursue all remedies under the Public Service Act before pursuing remedies under labor laws.

The Public Service Regulations,<sup>52</sup> this is another important rules which were made under Section 34 (1) of the Public Services Act<sup>53</sup> which provide on general regulations which governs the conducts, and code of ethics, disciplinary proceedings and appeals by the

<sup>45</sup> Cap. 2 of 1977.

<sup>46</sup> Cap. 2 of 1977.

<sup>47</sup> Cap. 2 of 1977.

<sup>48</sup> Cap 298 [R.E 2019].

<sup>49</sup> Cap 298 [R.E 2019].

<sup>50</sup> Cap 298 [R.E 2019].

<sup>51</sup> Cap.298 [R.E 2019].

<sup>52</sup> [GN No. 444 of 2022].

<sup>53</sup> Ibid.

public servants in Tanzania. Under Regulations 29<sup>54</sup> provides for the removal in public interest as chief secretary by involving the powers of the President refer the matter back to the respective appointing authority for implementation. Also, under Regulation 32<sup>55</sup> provide for the termination by age of retirement as public servant upon attaining the age of fifty five years may retire voluntarily and age of sixty years compulsory retire. Regulation 60<sup>56</sup> states that Public Servant may the appeal to the President against the decision of the disciplinary authority for the remedy of confirm, vary or rescind the decision of that authority.

### 2.3 The Public Service Regulations, 2022

The Public Service Regulations this is another important rules which were made under Section 35 (1) of the Public Services Act<sup>57</sup> which provide on general regulations which governs the conducts and code of ethics, disciplinary proceedings and appeals by the public servants in Tanzania. Under Regulations 2<sup>58</sup> provides that all public servants include those in the Civil services, the local government services, the teachers service, Immigration services and fire and rescue services, health services, executive agencies, the judicial service, the Parliamentary service and public institutions services.

The regulation provided circumstances for termination on non disciplinary grounds such as retirement on medical grounds, abolition of office or re-organization of department, termination by age of retirement, termination of appointment of non pensionable public servants and termination upon contesting constitutional leadership or elective political post.<sup>59</sup> Disciplinary proceeding includes formal or summary<sup>60</sup> and appeal of the public servants.<sup>61</sup>

### 2.4 The Employment and Labour Relations Act, 2019.

This Act applies after the public employee exhausted all local remedies which are set under the Public Service Act.<sup>62</sup> Section 37 of the Act provides for unfair termination that it is unlawful for an employer to terminate the employment of an employee.<sup>63</sup> This includes termination done unfairly without prove the valid reason for termination and the fair reason for termination includes employees conduct, capacity, compatibility and operational requirement in accordance with fair procedure.<sup>64</sup>

The Employment and Labour Relations Act being a parent law on labour issue, under Section 40 (1) of the Act provides for the remedies available while terminated unfairly which includes reinstatement, re-engagement or be payment of compensation not

<sup>54</sup> [GN.NO.444 OF 2022].

<sup>55</sup> [GN.NO.444 OF 2022].

<sup>56</sup> [GN.NO.444 OF 2022].

<sup>57</sup> Cap 298 [R.E 2019].

<sup>58</sup> GN No. 444 of 2022.

<sup>59</sup> Part IV of G.N. No. 444 of 2022

<sup>60</sup> Part V of G.N. No. 444 of 2022

<sup>61</sup> Part VI of G.N. No. 444 of 2022

<sup>62</sup> Cap. 298 [R.E 2019].

<sup>63</sup> Cap.366 [R.E 2019].

<sup>64</sup> Respondent: Human Resource officer from Nyamagana District Mwanza , on August, 2024





less than twelve months remuneration by the Commission for Mediation and Arbitration (CMA).<sup>65</sup> That is to say the Act recognizes the remedies and CMA but is silent on the legal mechanism to implement these remedies so that the procedures can be followed. This resulted into a legal lacuna which leads to utilization of other procedures not the product of the employment and labour relations Act.<sup>66</sup>

The Employment and Labour Relations Act is applicable after the public employee has exhausted all local remedies established under the Public Service Act.<sup>67</sup> Section 37 of the Act<sup>68</sup> prohibits employers from terminating the employment of an employee without a valid reason. A fair reason for termination is defined as the employee's conduct, capacity, compatibility, and operational requirement in accordance with the fair procedure outlined in Rule 13 of the Employment and Labour Relations (Code of Good Practice).<sup>69</sup> This procedure ensures the fairness of the termination process, including the conduct of an investigation to determine whether there are sufficient.

The applicant has six weeks from the date of service of the arbitration award to apply to the Labour Court for a judgment to set aside the award if any party to the award claims a fault in any proceedings under the auspices of the Commission.<sup>70</sup>

### 2.5 The Labour Institutions Act, 2019

This Act<sup>71</sup> was passed in order to create labor institutions and outline the roles, responsibilities, and other relevant information. A Council for Labour, Economic, and Social Affairs was established under the Act. The council's job is to advise the government via the Ministry on any labor-related issues that are brought to its attention and that are seen to be helpful in accomplishing the goals of the labor laws.<sup>72</sup> In order to resolve conflicts in compliance with applicable labor regulations, the Commission for Mediation and Arbitration (CMA) was founded as an independent government agency with the authority to choose a director, mediators, and arbitrators.<sup>73</sup> The CMA is tasked with the responsibility to mediate and arbitrate labour disputes, providing a process through which parties can seek remedies following the termination of employment.<sup>74</sup>

The Act creates the High Court's Labour Division, which has exclusive jurisdiction over cases referred to it under labor legislation.<sup>75</sup> It may look at how the Commission for Mediation and

Arbitration applied, interpreted, and implemented its rulings.<sup>76</sup> In addition, the Labour Court has exclusive civil jurisdiction over matters designated by labor laws for its adjudication with the goal of preserving and improving employment levels.<sup>77</sup> The Labour Court's judgment may be appealed to the Tanzanian Court of Appeal on a purely legal basis by any party to the proceedings that is dissatisfied with it.<sup>78</sup>

This Act recognized CMA to entertain the labour matters arising from the employment after exhaust all remedies which is provided under section 32A of the Public Service Act.<sup>79</sup> When a public servant is dissatisfied with the CMA's decision, the affected party may submit a revision application to the High Court Labour Division. If there remains dissatisfaction with the ruling of the High Court Labour Division, an appeal may be made to the Court of Appeal of Tanzania as a final recourse, in accordance with section 91 of the Employment and Labour Relations Act.<sup>80</sup>

However, the practical aspect for the Labour Institutions Act does not bar an aggrieved person from public services to file for other alternatives such as judicial review.<sup>81</sup> This practical aspect shows that the Labour Institutions Act is not effective on implementation of these procedures as far as the issue remedy of the terminated employees under public services is concerned.<sup>82</sup> This is evidenced in the case of *Stomin Hudson Masaka v Attorney General*<sup>83</sup> where it was held that the application is granted for the applicant to apply for judicial review contrary to the labour laws remedies which are reinstatement, re-engagement or compensation.

### 2.6 The Employment and Labour Relations (Code of Good) Practices, 2007

This provides for a set of principles and guidelines that are used to foster fair and productive labour relations in Tanzania. Rule 13 of the Employment and Labour Relations (Code of Good Practice) provide for the fairness of the procedure before terminating the employee.<sup>84</sup> This includes conducting an investigation to ascertain whether there are grounds for a hearing to be held and to notify an employee allegation before hearing.

The remedies available if the employer terminate the employee unfairly includes reinstatement to his employment, re-engagement or to be paid compensation of not less than twelve months remuneration.<sup>85</sup> This is done through mediation and arbitration methods of dispute resolution process.<sup>86</sup> The Code of Good

<sup>65</sup> Cap.366 [R.E 2019].

<sup>66</sup> Respondent: *Practicing Advocate of the High Court of Tanzania from Droit Law Chamber in Nyamagana District, on August, 2024.*

<sup>67</sup> Section 32A of Cap. 298 [R.E 2019].

<sup>68</sup> Cap.366 [R.E 2019].

<sup>69</sup> G.N NO.42 OF 2007.

<sup>70</sup> Cap. 366[ R.E 2019].

<sup>71</sup> Cap. 300 [R.E 2019].

<sup>72</sup> Cap. 300 [R.E 2019].

<sup>73</sup> Cap. 300 [R.E 2019].

<sup>74</sup> Cap. 300 [R.E 2019].

<sup>75</sup> Cap. 300 [R.E 2019].

<sup>76</sup> Cap. 300 [R.E 2019].

<sup>77</sup> Cap. 300 [R.E 2019].

<sup>78</sup> Cap. 300 [R.E 2019].

<sup>79</sup> Respondent: *Hon. Mediator from the CMA in Mwanza, on August, 2024.*

<sup>80</sup> Cap. 366 [R.E. 2019].

<sup>81</sup> Respondent: *Hon. Judge of the High Court of Tanzania-Mwanza, on August, 2024.*

<sup>82</sup> Respondent: *Hon. Judge of the High Court of Tanzania-Mwanza, on August, 2024.*

<sup>83</sup> [2022] TZHC 10261.

<sup>84</sup> G.N NO.42 OF 2007.

<sup>85</sup> Cap.366 [R.E 2019].

<sup>86</sup> Cap. 366 [R.E 2019].



Practice is not effective since it lacks enforcement mechanism of the procedures to be followed and the remedies available to unfair termination. This legal lacuna resulted into use of other procedural remedies not provided by the code of good practices, that is to state the code of good practice is not effective as well.

### 2.7 The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, 2019

This Act<sup>87</sup> was enacted to implement various reforms in the law concerning civil actions and related matters. Section 17 of the Act<sup>88</sup> allows the High Court, in its civil or criminal jurisdiction, to issue prerogative writs of mandamus, prohibition, and certiorari. Mandamus compels the performance of a duty, prohibition prevents certain proceedings, and certiorari transfers matters to the High Court. No return or pleadings in prohibition are permitted, rendering the order final. Consequently, individuals aggrieved by such orders may appeal to the Court of Appeal.<sup>89</sup>

The Act grants the Chief Justice authority under section 19<sup>90</sup> to establish court rules that outline procedures, applicable fees, and required documents for cases. The Chief Justice established the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules of 2014,<sup>91</sup> which outline the rules and procedures for applying prerogative orders in Tanzania. Rule 4 stipulates that any individual whose interests have been or are believed to be adversely affected by any act, omission, proceeding, or matter is eligible to apply for judicial review. Any individual dissatisfied with a High Court order may file an appeal to the Court of Appeal.<sup>92</sup>

This law clearly delineates the procedures for seeking remedies, specifying the channels for instituting disputes and the appropriate avenues for appeal in cases of grievance.<sup>93</sup> To avoid legal contradiction the Law Reforms (Fatal Accidents and Miscellaneous Provisions) Act is silent on its applicability towards labour disputes, specifically on the remedies of terminated employees in public service.<sup>94</sup>

Thus the practice from the High Court precedents show that when a public servant is aggrieved with the decision of the President which dismissed him or her from his employment then he may embark into the road of inviting the court to look on its illegality, irrationality, proportionality or procedural impropriety and the court will either provide an order for mandamus, certiorari or prohibition on either to return to public servant and continuing his work.<sup>95</sup> This is evidenced from the case of Tanzania Posts

<sup>87</sup> Cap 310 [R.E 2019].

<sup>88</sup> Cap 310 [R.E 2019].

<sup>89</sup> Cap 310 [R.E 2019].

<sup>90</sup> Cap 310 [R.E 2019].

<sup>91</sup> G.N No. 324 of 2014

<sup>92</sup> Cap. 310 [R.E. 2019].

<sup>93</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Jaye Law Chambers, on August, 2024.

<sup>94</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Droit Law Chambers, on August, 2024.

<sup>95</sup> Respondent: Hon. Arbitrator from CMA-Mwanza, on August, 2024.

Corporation v. Salehe Komba and Revocatus Rukonge<sup>96</sup> where by judicial review was applied instead of labour laws.

This practice indicates that there is a legal contradiction on which law should be applied as far as the remedy of terminated employees under public services are concerned. The important thing to be noted is the application of labour laws gained its legality from the public service Act under section 32A. Meanwhile the Law Reforms (Fatal Accidents and Miscellaneous Provisions) Act is silent on its application towards labour disputes.<sup>97</sup>

## 3.0 The legal challenges facing terminated employees in public service in Tanzania

### 3.1 Uncertainty of Procedures after Exhaustion of Remedies under the Public Services Act

The laws remains silent on what is the forum that the public servant has to resort on and whether to institute claims before the (CMA) or before the High Court of the United Republic of Tanzania by way of judicial review.<sup>98</sup>

This has been a controversial issue when the matter is brought before the court for a determination. There is decision which supports that the CMA has jurisdiction over disputes between the government and the public servant. This is especially after the exhaustion of remedies before the Public Service Act. This is evidenced in the case of Stomin Hudson Masaka Vs. Attorney General<sup>99</sup> where a leave is granted for the applicant to apply for prerogative orders of certiorari and mandamus contrary to the labour laws remedies which are reinstatement of his employment, re-engagement or be paid compensation. On the other hand, there are other decisions which reject the idea of challenging the decision of the President before CMA. This is evidenced in the case of Tanzania Posts Corporation VS. Salehe Komba and Revocatus Rukonge<sup>100</sup>, the court had the view that CMA had no jurisdiction to entertain a dispute between the respondents who are public servants. Thus, this situation can be cured by amending the labour laws, specifically section 32 A of the Public Service Act on the implementation mechanism.

### 3.2 The Unchallenged Power of the President whose decision is final on Dismissal or Removal of any Public Servant

The President of the United Republic of Tanzania is mandated with unlimited powers to dismiss or remove any public servant for the public interests and if thinks that there are elements of corruption and abuse of public office and he can order the public servant to vacate the office until the investigation is completed.<sup>101</sup> The

<sup>96</sup> [2020] Civil Appeal No.128

<sup>97</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Lex Arttoneys, on August, 2024.

<sup>98</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Lex Arttoneys- Mwanza, on August, 2024.

<sup>99</sup> [2022] TZHC 10261

<sup>100</sup> [2020] Civil Appeal No. 128

<sup>101</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Kairu Law Chambers- Mwanza, on August, 2024.



decision of the President is final and cannot be challenged before any court of law as per section 33 of the Public Services Act.<sup>102</sup> In 19th June 2017 the Late President of the United Republic of Tanzania,<sup>103</sup> in one of his Presidential visit in Mwanza region, in one of the public meetings (“*Mikutano ya Hadhara*”), he dismissed the Director of Mwanza Urban Water and Sewage Authority for public embezzlement and use of public office for personal gains.<sup>104</sup>

That is to state, even if the President is the final decision maker after the public servant exhaust all remedies but he has to abide with the law and procedure in order for the determination to be fair.<sup>105</sup>

### 3.3 No Room or Forum to Claim for the Interests or Rights of the Public Servant Once Being Terminated or Dismissed by the President

Once terminated a public servant has the room to file a judicial review before the High Court of Tanzania to seek orders of *Mandamus*, *Certiorari* and *Prohibition*<sup>106</sup> and these orders are mainly focused on the decision of the President to terminate or dismiss the public servant from his or her employment.

The whole application for judicial review rely on either procedural irregularity, irrationality of the decision, or improprieties of the decision but does not rely on the interests and rights which are claimed by the Public Servant under labour laws.<sup>107</sup> The High Court decision does not determine whether the public servant entitled to some rights including salary reductions, overtime payments, and other arrears all these cannot be claimed before the High Court which is the challenge posed to the public servants when claiming for their rights or interests.<sup>108</sup>

The respondent advice that when the remedy of confirmation of dismissal or termination of the public servant fulfilled and all remedies exhaust if the public servant has another claims of right and interests against the government being entertained together.<sup>109</sup>

In the case of *CCBRT Hospital vs Daniel Celestine Kivumbi*,<sup>110</sup> where the Court of Appeal of Tanzania insisted that the CMA does not have jurisdiction to entertain labour disputes against the government. Thus there is the need to exhaust all the remedies and if aggrieved apply for judicial review to the High Court of Tanzania which at large this procedure does not help in

<sup>102</sup> Cap 298 [R.E 2019].

<sup>103</sup> “*TaarifakwaVyombovyaHabari*”, published by the Directory of Presidential Official Communications, of 23rd September 2023.

<sup>104</sup> Respondent: Personal Representative-Mwanza, on August, 2024.

<sup>105</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Droit Law Chambers-Mwanza, on August, 2024.

<sup>106</sup> Cap 310 [R.E 2019].

<sup>107</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Kairu Law Chambers-Mwanza, on August, 2024.

<sup>108</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Kairu Law Chambers-Mwanza, on August, 2024.

<sup>109</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Kairu Law Chambers- Mwanza, on August, 2024.

<sup>110</sup> Civil Appeal No. 437 of 2020, CAT at Dar es Salaam (Unreported).

the determination of rights and interests rather it examines the legality and validity of the procedures and processes used in the termination of the public servant.<sup>111</sup>

### 3.4 The Uncertainty of Laws Governing Public Servants in Operational Services

Following the amendment of the Government Proceedings Act,<sup>112</sup> which inserts a requirement that in all suits against the government or government agencies it is mandatory to join the Attorney General as the necessary party to the suit. Then it brought some changes and uncertainties which at large affects the provision of Section 32 of the Public Service Act,<sup>113</sup> which allows the application of two laws which are Public Services Act and the Employment and Labour Relations Act.<sup>114</sup> The provision allows two laws to apply to the Public Servants in Operational services but does not provide which law exactly will be used when a dispute arises which poses challenge to the implementation of the same and enforcement of the rights of the public servants before the court of law.<sup>115</sup>

Thus, in order for the government and the public servant to be in a good position once termination occur and the remedy to be adhered to, amendment of the law is of important especially section 6 of the Government Proceedings Act which makes it mandatory for all cases against the government to be instituted before the High Court of Tanzania.<sup>116</sup>

### 3.5 The legal Requirement of Joining Attorney General in the Government Proceedings and Executive Agencies

The amendment of section 6 of the Government Proceedings Act<sup>117</sup> which requires all cases against the government and its agencies to join the Attorney General as the necessary party to the case which leaves the provision of Section 31 inapplicable when it comes to the enforcement of the rights and interests when the dispute arose. Thus this also poses a great challenge in the protection and enforcement of the rights and interests of the government workers and thus serious amendment is required for smooth application and implementation.

The provision of Section 31 (1) of the Public Service Act,<sup>118</sup> requires that all the employees from executive agencies and government institutions should be governed by the laws establishing their agencies and not otherwise but the same Act under Section 31 (2) provides that those who fall under the category of public servants will be governed by the Public Service Act and not their respective laws which establishes their agencies. This is one of the contradictions which needs to be addressed by

<sup>111</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Kairu Law Chambers-Mwanza, on August, 2024.

<sup>112</sup> Cap 5 [R.E 2019].

<sup>113</sup> Cap 298 [R.E 2019].

<sup>114</sup> Cap 366 [R.E 2019].

<sup>115</sup> Cap.366 [R.E 2019].

<sup>116</sup> Respondent: Practicing Advocate of the High Court of Tanzania from Adam & Co. Advocates- Mwanza, on August, 2024.

<sup>117</sup> Cap 5 [R.E 2019].

<sup>118</sup> Cap.298 [R.E 2019].



the law either through amendment or through the enactment of another independent law as it was explained by Hon. Matupa J, in Salehe Komba and Revocatus Rukonge vs Tanzania Posts Corporation,<sup>119</sup> who was of the view that government agencies employees should be governed by their respective laws which establishes their agencies.

## 4.0 Conclusion and Recommendations

### 4.1 Conclusion

The article aimed to make an assessment of the laws governing remedy of terminated employees in public services in Tanzania. Despite the recognition of the remedies the laws have fall short on the legal implementation mechanism of what has been provided by the labour laws. That is to state failure to have a legal mechanism to implement the remedies have resulted into applicability of different practices which are not recognized under the labour laws. The existing legal practices governing the remedies of terminated employees in public service are not effective to ensure that, there is implementation of the remedies established under the labour laws.

The procedures on the remedy of terminated employees in public service are not effective since there is a legal controversy on which remedies to be attained and under which procedure legally recognized. Lastly, the legal challenges facing terminated employees in public service in Tanzania includes uncertainty of Procedures after Exhaustion of Remedies under the Public Services Act, the Unchallenged Power of the President whose decision is final on Dismissal or Removal of any Public Servant which contradicts with the spirit of the labour laws and the Challenge Brought by the Amendment of Section 6 of the Government Proceedings Act on the Employee of Executive Agencies.

### 4.2 Recommendations

- It is imperative for the Legislature to either enact new laws or amend existing ones to empower the Commission for Mediation and Arbitration (CMA) to address disputes arising between the government and public servants. This will assist public servants in asserting their rights that may have been infringed upon by the government and require rectification. Empower the CMA with the authority and responsibility to adjudicate all labour matters arising from both the private and public sectors. The amended law must ensure that the CMA has jurisdiction and conduct its duties in a fair and open manner and thus the labour issues must be independent.
- The legislature should enact or amend the laws in order to cure the uncertainties surrounding the public servants to be applicable when determining their rights unlike now where there are uncertainties on which law is to be applicable whether the Public Service Act or the Employment and Labour Relations Act. The provision of the Act allows two laws to be applicable to the Public

Servants but does not provide which law exactly will be used when a dispute arises which poses challenge to the implementation of the same and enforcement of the rights of the public servants before the court of law.

- This article recommended on what will be the better way which including amending the provision and leave the application to the Public Services Act especially after the amendment of section 6 of the Government Proceedings Act which make it mandatory for all cases against the government to be instituted before the High Court of Tanzania.
- The legislature should review the existing labour laws which includes Employment and Labour Relations Act, The Public Service Act and The Labour Institutions Act together with their regulations ensuring that they provide robust protections for public service employees for clarifying the grounds for termination and ensuring that the laws reflect international labour standards.
- The legislature should ensure that there is consistency in the remedies available to public employees across different sectors and levels. This could involve revising laws to harmonize remedies and make them more predictable.
- The public servants are recommended to be familiar with the labour laws and public service disciplinary procedures so as to avoid the misconception brought by the labour laws when their employment are terminated by their employer and wish to seek remedy in the proper forum. Also, recommends that public employment practices align with modern legal and ethical standards.

<sup>119</sup>Labour Revision No. 12/2018, HC at Mwanza (Unreported).