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LEGAL CHALLENGES FACING TRANSFERABILITY OF SOCIAL SECURITY BENEFITS AS EMPLOYEES RIGHTS BETWEEN SCHEMES IN TANZANIA

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Abstract

The transferability of social security benefits between schemes in Tanzania remain a contentious legal issue, undermining the realization of employees rights to social protection. Despite the existence of multiple statutory schemes such as National Social Security Fund (NSSF) and the Public Services Social Security Fund (PSSSF). This article examine the legal barriers impeding the transferability of social security benefits including long term benefits and short term benefits across schemes in Tanzania such as fragmentations of legislation, limited and lack of inter- scheme coordination and harmonization, Constitutional gaps, Lack of legal binding and legal consequence under these schemes, Insufficient enforcement mechanism and others. It critically examines the legal framework governing social security benefits in Tanzania. Through a comparative analysis with international practices, this study identifies best practices that could enhance the efficiency of transferability of social security benefits. This article concludes with the actionable recommendations to strengthen the benefits transferred provision mandate, suggesting legislative reforms, unification and coordination between schemes, removing the fragmentation of legal framework. Therefore, by addressing these areas, Tanzania can optimize the transferability of social security benefits as employees' rights to be effective, thereby promoting fairness, transparency, and social protection ensuring that employee's rights are preserved regardless of their career trajectories.

Keywords: Social security, portability/transferability, benefits, social security schemes.

INTRODUCTION

In Tanzania, the right to social security is recognized as a fundamental human entitlement, enshrined in both national legislations and International conventions to which the country is a member. But, the practical realization of this right particularly in the context of benefits transferability between social security schemes remains fraught with legal and institutional challenges. As the labour market becomes increasingly dynamic, with employees frequently transitioning between public to private or vice versa the rigidity and fragmentations within social security in Tanzania exposed critical challenge and gap in portability of benefits between schemes.ⁱ

The Existence of Multiple statutory schemes including the National Social Security Fund (NSSF), the Public Services Social Security Fund (PSSSF) and others, has created a complex and hard for the

employees where they faces uncertainty, delays, or outright loss of subscribed benefits when changing employment sectors.

BACKGROUND

Once a country have multiple schemes means people may be able to change from one scheme to another.ⁱⁱ The transferability of social security benefits in Tanzania it started during the period of colonial era, where workers might be able to transfer his/her contributions accrued during the former scheme to the new scheme, and this is being evidenced under the law which called *Pension Ordinance of 1954* which provide such mechanism for the transferability of benefits that when workers make transition of jobs or move from one pension plan to another he can carry his contribution which he accrued former to the latter one.ⁱⁱⁱ

Despite having Pension Ordinance of 1954 which provide for the framework on the transferability of social security benefits, there are other laws which support such portability of pension benefits



which are *Provident Fund (Local Authorities) Ordinance of 1944* this law provide the framework when the local employee wants to switch job to the government he/she is being transferred with his/her accrued contributions from the Local scheme authority to the latter one of the government scheme and such employee of the government are be regulated by the law called *Provident Fund (Government Employees) Ordinance of 1942* were also this law provide for the framework which facilitate the transferability of benefits within government sectors.

Later on Tanzania social security system is being regulated by the different numbers of laws where such laws establishes different schemes such as NSSF, LAPF, PSPF, but these scheme does not provide any mechanism to support what started from the colonial which is transferability of pension benefits but this scheme operate independently which make very difficult to enhance such portability of benefits. As I said before this social security in Tanzania is regulated by a number of different laws which are *Social Security (Regulatory Authority) Act*,^{iv} *Social Security Laws (Amendments) Act*,^v *National Social Security Fund Act*,^{vi} *Public Service Social Security Fund Act*,^{vii} *Workers Compensation Fund Act*,^{viii} *Social Security Schemes (Benefits) (Amendment) Regulation*^{ix} all these laws does not provide for the such portability of benefits as employees right between schemes. ^xDespite the National Social Security Policy acknowledge the issue of portability of benefits as employee's right to be transferred still there is no any legal move to allow such aspect and there is no any provision of the law to mandate the mechanism applied by the schemes to make sure there is transferability of social security benefits herein Tanzania.^{xi}

SOCIAL SECURITY BENEFITS

Social security benefits refer to the different payments in terms of cash and other manners incentives where a member of a particular social security scheme (NSSF, PSSSF) is provided with. It's through where a member is qualified pending on the determination by a number of contributions made and the membership duration the same member has during the application made to his social security schemes.^{xii} Social security benefits here in Tanzania are dived into two which are long term benefits and short term benefits^{xiii}

a. Long term social security benefits

Long term social security benefits are mostly paid under the circumstances where by a contributors are no longer be subjected to the social security contributions upon which its payment, and it is paid at the end for the purpose of a member's subscription to his social security scheme was made during his/her working days and times. Therefore those long term social security benefits include; the old age retirements benefits invalidity benefits, survivors benefits.

b. Short term social security benefits

Short term social security benefits are paid to the contributors who as far as the nature of his/her contingency and duration of his membership to the scheme, may still be assumed proceeding contributing to his social security scheme. Therefore, short term

social security benefits are Unemployment benefits, sickness benefits Collateral for home mortgage benefits, maternity benefits and health insurance benefits all these are provided under different laws including National Social Security Fund Act,^{xiv} Public Services Social Security Fund Act,^{xv} Social Security Schemes (Benefits) Regulation,^{xvi} Social Security Regulatory Authority Act,^{xvii} National Health Insurance Fund Act,^{xviii} and other legislations.

LEGAL FRAMEWORK GOVERNING SOCIAL SECURITY BENEFITS IN TANZANIA

Tanzania social security system is governed by a constellation of laws and regulations that aim to provide protections to employees across various sectors. However, when it comes to transferring benefits between schemes, the legal framework reveals significant gaps and inconsistencies. The following are the laws governing social security benefits as follows;

A. The Constitution United Republic Of Tanzania of 1977.

The Constitution of the United Republic of Tanzania is basic law of the nation, which all human right and power of the officials are granted. It is a mother law of the country where any laws contravene with it shall be declared null and void.^{xix} Under Article 11 of the constitution recognizes the right of social welfare and security, by obligating the state to ensure access to social protection. The Constitution guarantees social security provision in the legally limited parameters as a way of reflecting Progressive Realization principle in respect of provision and administration of social security in Tanzania. This is a legal position cemented by the legal language and message extracted from Article 7(2) of the Constitution which outlaw's enforcement of this constitutional right before the court of law, means this Constitutional guarantee lacks specific enforcement mechanisms for portability between schemes.^{xx}

B. Social Security (Regulatory Authority) Act, 2008

Social security regulatory Authority Act establishes the Social security Regulatory Authority (SSRA) to regulate and harmonize all operation concerning social security schemes.^{xxi} This law stands as the parent law when it comes to regulations of social security in Tanzania. Social Security Regulatory Authority (SSRA) is empowered by the Act to facilitate the transferability but its mandate and lacks provision to support the portability of benefits between schemes when an individual making transition of job from private to public or vice versa is still limited by weak enforcement and lack of binding regulations.

C. Social Security Schemes (Benefits) Regulations, 2018

This regulation made under section 25A of the Social Security (Regulatory Authority) Act, these regulations provide and recognizes different types of benefits provided here in Tanzania particularly under PART II and PART III of the GN No. 467 of 2018 to include long term benefits and short term benefits.^{xxii} But also through eligibility criteria under various schemes, notably, they do not provide a clear mechanism for the transferability of

social security benefits when an employee moves from one scheme to another.

D. National Social Security Fund Act (NSSF), 1997

The National Social Security Fund Act is the parent law when it comes to private employee; this law establishes the institution called National Social Security Fund (NSSF). This law covers the workers employed under private sectors and informal workers are being regulated and supervised under NSSF. This Act recognizes different benefits provided by their schemes both long term and short term benefits, it provide different ways on how a member can contributes, manner on the procedure for a member to be registered and insured person, but this law lacks provision clauses on the transferability of social security benefits on inter-schemes, when a member change job from private to public all contributions accrued cannot carried by him/her when change scheme and this is evidenced when such law have no such mechanism and provision mandate to allow transferability of social security benefits.

E. Public Services Social Security Fund Act (PSSSF), 2018

Public Services Social Security Fund Act is the parent law when it comes to the public servants or employees employed by the government are governed under this Act. The Act establishes the institution which is PSSSF to facilitate the registration, contributions, and payments.^{xxiii} The Act provides also the benefits under such scheme for both long term and short term social security benefits.^{xxiv} Despites the Act provide different benefits but its seems look alike NSSF Act where by it does not explicitly allow for the transferability of social security benefits to or from other scheme when an individual switch job from public to private there is no any mechanism, although the National Social Security Policy acknowledge the portability of benefits.^{xxv}

CURRENT CHALLENGES FACING TRANSFERABILITY OF BENEFITS BETWEEN SCHEMES IN TANZANIA

The legal challenges for non-transferability of benefits between schemes in Tanzania, social security benefits were not well articulated when it comes to the portability of benefits when an individual make transition or switch job from one schemes to another this is to say from public to private or vice versa, despite the National Social Security Policy acknowledge still there is no any legal move to allow this transfer. There are different legal factor that poses this challenges as herein below elaborated as follows;

A. Fragmentation of Legislation

Social security benefits and social security schemes in Tanzania are regulated by the different kind of legislation each schemes is being regulated by its own laws as elaborated herein above. This fragmentation first it create different modes of regulating, contributions rates is differ, benefits structure same is designed separate this making it very difficult to allow the portability of benefits across schemes. Because these schemes are operated different and independently while there is no standardization

mechanism for such portability of benefits. Therefore, the absence of a unified legal instrument governing portability of social security benefits across schemes lead to inconsistent interpretations and administrative bottlenecks.

B. Lack and Limited inter-schemes Coordination and Harmonization

Social security schemes in Tanzania established by the law yet it differ in gaps, lack of uniformity. There is no harmonious legislation governing social security in Tanzania. This led to multiplicity of social security schemes and later seems to be no any partnership for discharging their duties and this revealed that different social security schemes are regimented and are therefore not integrated. Most of the laws governing these funds are silence, when it comes to transferability of social security benefits due to both of them they are not cooperated because each fund are regulated by its laws there is no any unified and codified framework to regulated them. The coming of Social Security Regulatory Authority Act and its body SSRA seems to very interesting where it has no any power to enforce rather it regulate theoretically.

C. Constitutional Gaps

The Constitution of the United Republic of Tanzania while the right to social security is enshrined in Tanzania,^{xxvi} but the same its limit for such right^{xxvii} and its practical enforcement across schemes is weak, where raising questions about the states commitment to equitable protection. This to mean that when one want to claim concerning social security herein Tanzania is very limited under the Constitution of Tanzania see Article 7 (2) which limit to access the social security protection and once any schemes failed to transfer or allow to transfer there is no any court can entertain under such matters.

D. Statutory Provision for the Transferability of Benefits

Social schemes in Tanzania are regulated by the different law includes Social Security (Regulatory Authority) Act, Social Security Laws (Amendments) Act, National Social Security Fund Act, Public Service Social Security Fund Act, Workers Compensation Fund Act, Social Security Schemes (Benefits) (Amendment) Regulation, all this law are regulated the benefits in Tanzania together regulating schemes (NSSF, PSSSF), but interesting to note here is there is no any provision among those laws mentioned above which provide for the transferability of social security benefits. Despites, the National Social Security Policy acknowledge the portability of benefits but still there is no any legal move to allow this transferability of accrued contributions when an individual switch job or change schemes.

BEST PRACTICE FROM OTHER JURISDICTION

The reason why we choose the following countries its' because they have legal framework which allow the transferability of social security benefits as employees' rights.

A. United Kingdoms

In the United Kingdoms, portability of social security benefits is effectively facilitated through a centralized and unified system anchored by National Insurance (NI). Every worker in the United Kingdoms is assigned a unique National Insurance Number, which serve as a lifelong identifier linking all contributions across different jobs sector and employment type. This centralized tracking ensures that individuals retain their entitlements such as state provisions, unemployment benefits and maternity pay regardless of employment transition.

The legal framework is primarily governed social security contributions and benefits Act,^{xxviii} applies uniformly across the public and private sectors, while eliminating fragmentation and legal inconsistencies. Moreover, they have institution like HM Revenue and Customs (HMRC) and the Department for Work and Pension (DWP) they operated in a coordinated manner sharing data and managing claims easily, while workers can access their contributions records and benefits forecast through digital platforms, enhancing transparency and empowering individuals to image their social protection. Unlike system with multiple competing schemes like United Kingdom's model ensure that benefits are cumulative and transferable without administrative hurdles.

B. India

Social security in India started in the year of 1952, whereby this social security was established in term of limited form. Social security in India was established by the *Employees State Insurance Act*^{xxix} the Act provide benefits like sickness benefits, employment injury benefits, maternity benefits^{xxx} and other benefits the Social security framework in India is governed by multiple legislations with the *Employees Provident Fund and Miscellaneous Provision Act*^{xxxi} which serve as parent law or cornerstone. Whereas under this Act, workers contribute to the employee provident fund which is managed by employee provident fund organization. In India portability is facilitated through the Universal Account Number (UAN) a unique system and stands as identifier that remain constant throughout a worker career regardless of charges in employer or location. This system allows workers to carry their EPF and pension contributions across jobs without withdrawing them, preserving long-term savings and pension eligibility.^{xxxii} Therefore this system allows employees when changing jobs or make transition of scheme all contributions subscribed being transferable and this is evidenced under the Act, particularly Section 17A (1-2) of the Act.^{xxxiii}

C. South Africa

South Africa Social Security system is structured to support the portability of benefits across employment sectors. The country operates several statutory schemes, including the unemployment Insurance fund (UIF), the compensation fund, and various occupational retirement funds, all regulated under a unified legal framework. Workers contribute to these schemes through payroll deductions, and their entitlement are tracked centrally by institutions such as the south African social security Agency (SASSA) and the department of employment and labour, when

employees change job or move between sectors their contributions record remain intact, allowing them to retain access to benefits like unemployment insurance disability compensation and retirement savings.^{xxxiv}

This continuity is supported by digital system and national identifications Numbers, which link individual to their social security profiles regardless of employer. South Africa has taken regional leadership role through the Southern Africa Development Community (SADC) Guidelines on the Portability of social security benefits. These guidelines aim to ensure that migrant workers and their families receive equal treatment and can transfer benefits across border within the region.

Then lessons to Tanzania should invest and establish different system which centralized data of the employees herein Tanzania and harmonizing legal provision and engaging in regional agreements to allow this transferability of social security benefits.

CONCLUSION AND RECOMMENDATIONS

By concluding the Social Security system in Tanzania reveals there are a number of problems, starting from the fragmentation of the legislation governing these schemes, lack of the provision of the law which allows transferability of benefits between schemes. Despite policy recognition of portability as a fundamental employee right, the absence of a unified legal framework and administrative coordination has left the employee especially those transitioning between public and private sectors vulnerable to benefits loss and the legal uncertainty. The consolidation of schemes under the PSSSF and NSSF and the establishment of Social security regulatory authority marked as an important step, but without enforceable mechanisms for inter-scheme transfer, or portability of benefits remains more aspirational than operational.

RECOMMENDATIONS

Recommendation to the Legislation

That, the legislature should amend the laws governing social security in Tanzania, under social security benefits transfer from one scheme to another whereby there is no any provision of the laws that allow such portability since the National Social Security Policy of 2003 recognized as the employees right. Therefore there is need to have a particularly legislation or provision of the law that governing or gave mandate for the schemes to allow transferability of social security benefits, also should define standard procedures and the timeline for transfers of benefits not only that but also should guarantee preservation of rights during employment transitions.

Recommendation to the Social Security Schemes

The schemes which are NSSF and the PSSSF should strengthening coordination among them, where by strengthen the mandate of the Social security Regulatory Authority (SSRA) to oversee and enforce portability protocols also to facilitate data integrations across schemes and last to make and resolve disputes and ensure compliance.

Recommendation to the Government

The government should develop a mechanism which could facilitate easily the transferability of social security benefits as employee rights like develop the so called Centralized digital registry of contribution or establish a Employees National/Universal Number which could facilitate them when they switch job to using the same number through that could make all accrued benefits from the former scheme to be easily transferred to the latter scheme through using such number. The importance of having such infrastructure could help to track employment history and contributions across schemes also enable real time verification and benefits calculations.

Recommendation to the Stakeholders

Stakeholders it include the employees, therefore there is need of conducting public awareness campaigns to educate workers on their rights, also to engage employers, trade unions, and the civil society in shaping portability of the benefits mechanism and last to promote cross sectorial dialogues to build consensus on reforms priorities concerning the transferability of those benefits.

End Note

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ⁱⁱⁱ Section 14 (1) of the Pension Ordinance of 1954

^{iv} Act No.8 of 2008.

^v Act No. 9 of 2024.

^{vi} Act No. 28 of 1997.

^{vii} Act No. 2 of 2018.

^{viii} Act No. 20 of 2008.

^{viii} MCHOMVU, Andrew (et al) (2002), *Social Security Systems in Tanzania*, Journal of Social Development in Africa. Vol. 17 No. 2, p. 2.

^{ix} GN No. 357 of 2022

^x Section 11 of the Provident Fund (Government Employees) Ordinance Cap 51

^{xi} National Social Security Policy of 2003, para 3.5, p. 16.

^{xii} JACKSON, Masoud, (2024), *A Legal Discourse of Social Security and Protection in Tanzania*, published by Tridax Africa Company Limited, p. 178- 207.

^{xiii} Social Security (Regulatory Authority) Regulations GN, No. 467 of 2018

^{xiv} National Social Security Fund Act No. 28 of 1997

^{xv} Public Services Social Security Fund Act No. 2 of 2018

^{xvi} Social Security Schemes (Benefits) Regulation GN, No. 357 of 2022

^{xvii} Social Security Regulatory Authority Act No. 8 of 2008

^{xviii} National Health Insurance Fund Act No. 8 of 1999

^{xix} Article 64(5) of the Constitution of United Republic of Tanzania of 1997

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^{xxi} Section 4 of Act No. 8 of 2008.

^{xxii} Regulation 4 – 25 of the Social Security Schemes (Benefits) Regulation GN, No. 467 of 2018

^{xxiii} Section 17- 24 of the Act No. 2 of 2018

^{xxiv} Section 25- 48 of the Act No. 2 of 2018

^{xxv} The National Social Security Policy para 3.5 under p. 16

^{xxvi} Article 11 (2) of the Constitution of United Republic of Tanzania of 1977

^{xxvii} Article 7 (2) of the Constitution of United Republic of Tanzania of 1977

^{xxviii} Social security Contributions and Benefits Act of 1992

^{xxix} The Employee State Insurance Act of 1948

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^{xxxi} Employees Provident Fund and Miscellaneous Provision Act of 1952

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