LAW 331 LABOUR LAW LL.B III

WHAT TO BE COVERED

1. HISTORICAL OVERVIEW OF LABOUR LAWS AND POLICY IN TANZANIA.

- DURING COLONIAL PERIOD
- POST COLONIAL PERIOD

2. The nature of Employment contract

Types of contract of Employment

Contract for service and contract of service.

Contents of standard contract of Employment.

3. Protection of certain person under the ELRA

- Protection against children
- Prohibition of forced labour
- Prohibition of Discrimination in a place of work.

Cont….

4. Rights and Duties of parties in contract of Employment.

   Rights and Duties of Employees.

   Rights and Duties of Employers.

Cont…

5. The law and policy in Tanzania on Hours of work and Remuneration to employees.

What are the maximum hours of work in Tanzania.

Legal implications of over time in a place of work.

6. Leave under ELRA

- Categories of leave under the laws in Tanzania.
- Annual leave
- Sick leave
- Maternity leave
- Paternity leave

7. Termination of contract of Employment

- Forms of lawful termination of contract of Employment and procedures.
- Fair reasons and fair procedures for termination of contract of employment.
- Unfair termination of contract of Employment.
- Remedies for unfair Termination of contract of Employment.

8. Litigating Labour disputes in Tanzania: The Law and Practice

- Disputes before the Commission for Mediation and Arbitration (CMA)

. The Law and Practice before CMA.

- Institution of proceedings before CMA
- Mediation process and procedure at CMA
- Arbitration process and procedure at CMA
- Stages of Arbitration before CMA
- Rights of parties aggrieved by the decision of Arbitrator
- Proceedings before the Labour Court

. Laws and Procedures

9. Other Selected Labour Institutions under the Labour Institution Act

- Labour, Economic and Social Council

Establishment and Roles of LESC

- Essential services committee

Establishment and Roles of ESC

- Wage Boards

Establishment and Roles of WB

10. List of Statutes

- The Constitution of the United Republic of Tanzania.
- The Employment Labour Relation Act, 2004 (Act NO.6 of 2004)
- The Labour Institution Act, 2004 (Act NO.7 of 2004)
- The Labour Court Rules, 2007
- Labour Institutions (Mediation and Arbitration Guidelines) Rules 2007
- The Employment and Labour Relations (Code of Good Practice) Rules, 2007.
- The Civil Procedure Code Act [Cap 33 R.E 2002)
- The Law of the Child Act, NO.21 of 2009

- The written Laws (Miscellaneous Amendment) (No.3) Act 2016
- The Employment and Labour Relations (General) Regulation,2017. GN NO.47.
- The Labour Institutions (General) Regulations, 2017.

Selected International Instruments:

- ILO Convention 29 (Forced Labour Convention,1930)
- ILO Convention 105 (Abolition of Forced Labour Convention, 1957)
- Convention 182 (Worst Forms of Child Labour Convention,1999)
- Convention 138 (Minimum Age Convention, 1973).

LECTURE ONE
HISTORICAL OVERVIEW OF LABOUR LAW IN TANZANIA

- **Labour Law and Policy in Colonial Tanzania.**

> Based on political and economic history

> Labour legislation and policy enacted during colonial Tanzania aimed at fostering economic policies.

> Germans- enacted Labour legislation to foster settler economy.

Cont…

The settler economy demanded high forced labour.

To ensure availability of labour force in the Germany introduced a Poll Tax as a method of recruiting labour force. The Poll Tax was regulated by the Poll Tax Ordinance of 1912.

Cont…

The Poll Tax Ordinance forced the Africans natives to pay tax. Thus, in order to get money for payment of tax they were obliged to work in the Germans farms.

In recruitment systems the Germans used the following legislation:

The Labour Recruiting Ordinance and

The Legal status of Natives Labourers Ordinance.

> The British Labour Law System

Was defacto-Similar with that of the German.

The Labour laws fostered the establishment of settler plantations.

The British labour laws encouraged

- Forced labour
- Taxation
- Land alienation, etc

Legislation under British rule.

Involuntary Servitude Abolition Ordinance of 1922.

Master and Natives Servants Ordinance, 1926

Hut and Poll Tax Ordinance, 1922

House Tax Ordinance, 1926

Employment of Women Ordinance, 1938

Read: Shivji I, state and the working class in Tanzania (James Currey, London, 1986)

> Post Labour Law and Policy in Tanzania

After Independence significant and tremendous changes and improvement were made to both employment standards and collective labour law in Tanzania.

These changes were:

Improvement of industrial democracy

Improvement of working conditions

Improvement of benefits of individual employees.

> The above improvements were possible through three statutes namely:

The Security of Employment Act, NO.62 of 1964.

The Severance Allowance Act, NO.57 of 1962.

National Provident Fund Act, NO.34 of 1964.

Cont..

- The Security of Employment Act (SEA) as a principal legislation aimed at enhancing job security to workers.
- The Act tempered with the common law Principle of ***Hire and Fire***. The security of Employment, Act, limited the employer to exercise the right to discipline or discharge employees at will.

Cont…

One of the unique features under the SEA it establishes offences. These were:

Indiscipline

Dishonesty

Insubordination

Failure to at the place of work

Immorality and

Endangering safety of persons and property

Cont…

The commission of each of the above offences by an employee could attracted severe written warning, severe reprimand, fine or summary dismissal depending on the nature of the offence.

Cont…

It is important to note that, the commission of certain offences under the Security of Employment Act attracted a directly summary dismissal.

Cont.

Section 21 of the SEA clearly provided for procedure to be followed before employer could impose severe reprimand to an employee.

The Act established a Conciliatory Board in each District. The Board was composed by a chairman and two other members.

Therefore, before imposing reprimand to employee an employer had to notify the chairman of the Board on the alleged commission.

Cont…

After hearing complain from employer against employee the Board has also powers to order reinstatement or re-engagement and reimbursement of fine imposed. In the circumstance of alleged termination the Board had powers to order statutory compensation.

Cont..

The Severance Allowance Act was a special legislation which dealt with payment of Severance Allowance.

The Act imposes a duty to employer to pay severance to an employee who have been in continuous employment for at least three months before employment contract has expired or terminated.

Under the Act, severance allowance was payable at the rate of 15 days per each year that an employee had been in continuous employment.

Cont…

Again the National Provident Fund Act establishes social security fund where employer and employee were duty bound to remit compulsory contribution to the fund.

While the employer contributed 15% the employee contribute 5% which later were payable to employees as terminal benefits.

Disputes settlement in 1961-1967

During this period labour disputes were settled through compulsory arbitration.

The compulsory disputes settlement were regulated by the Civil Service(Negotiating Machinery) Act no.52 of 1962 and the Trade Disputes (Settlement) Act no. 53 of 1962.

The Civil Service (Negotiating Machinery) established Joint Staff Council to negotiate terms and conditions of junior staff in a place of work.

Cont…

According to the 1962 Acts on disputes settlement, every labour disputes was supposed to be referred to the labour commissioner in witting.

Therefore if the commissioner satisfied that parties have failed to resolve the disputes by negotiation machinery would appoint a conciliator (labour officer) to resolve the disputes.

Dispute Settlement after 1967:

This was the period where Tanzania adopted the Arusha Declaration (5 February 1967). Through Arusha Declaration the country shifted from capitalist to socialist economy.

During this period the labour dispute were resolved through two phases.

Cont…

- The first phase was regulated by the National Union of Tanzanian Workers Act (NUTA) and the second phase was regulated by the JUWATA Act.
- Assignment 1: Read the procedure for dispute settlement under NUTA AND JUWATA ACTS.

Nature of Employment Contract

- The nature of Employment contract is categorized into two:

- Contract of Service
- Contract for Service

Contact for service is an employment relationship between an employer and an independent contractor.

For example: Mzumbe University engages MIHAYO CO.LTD to contract a new lecture theatre, their relationship will be a contact for service.

Cont…

- Contract of service is an employment relationship involving a principal on one hand and an agent on another hand.

- Tests for Determining Contract of Service and Contract for Service:

- Control Test;

Cont…

The yardstick is the extent to which the employer controls the employee. Under the contract for employment there is remoteness in control by the employer.

But contract of service the employer is always close and control the performance of the employee.

Organization Test;

The test is whether an employee has been employed as part of the organization. Question to ask is whether the employee is an integral part of the organization?

An independent contract is not part of the organization, e.g. A lecturer is a part of the University.

Cont…

- Multiple Test;

This is a test normally used by the court depending on the facts and circumstances of the case.

- Read the following cases:

- ✓ *Market Investigations LTD V. Minister of social security [1969]2 WLR1*

Cont…

- ✓ DPP V.Eliatosha Mosha & another [1984] TLR 28
- ➢ Nature and Types of employment contract under ELRA, 2004:

Generally the employment contract can be oral or written.

Where the contract involve an employee who intends to work-

Cont…

Outside the United Republic of Tanzania the contract must be in writing. See s.14(2) of the ELRA.

- Types of Employment contract under the ELRA:
  - Contract for an unspecified period of time
  - Contract for a specified period

Cont…

- Contract for a specific task. See s. 14(1) ELRA.

✓ Read: *Kundah Singh Construction LTD V.Festo Mbwilo, Revision No.230 of 2009, High Court Mbeya (unreported).*

Cont..

THANKS FOR PAYING ATTENTION

ARBITRATION

- What is the procedure after the mediator has failed to resolve a dispute seems not to be clear under the ILRA. S.86(7) and 88(2) of the ELRA provides two contradictory positions.

S.86(7) is to the effect that if mediator fails to resolve the dispute, a party to the dispute may, if the dispute is of interest, give notice of intention to commence strikes or a lockout

And if complaint, refers the matter to arbitration or labour Court. From the wording of the provisions above, where the dispute amounts to complaint, parties are at liberty to either go for arbitration or adjudication.

But s.88(2) with marginal note “resolving dispute by compulsory arbitration” appear to be the position that after failure to resolve the dispute, CMA shall forthwith appoint an arbitrator and define time for arbitration. Here arbitration is not option but compulsory.

- Which between the two provisions prevails, and whether the same can be harmonized, requires a critical analysis of the Act. Case: *Beno Christopher&4 others v. NBC, Complaint No.21/2009*

Institution of Arbitration proceedings

- The ELRA does not prescribe specific format on how arbitration proceedings can be conducted.
- The law requires the arbitrator to determine the disputes fairly and speedily. S.88(4) ELRA

- Will also determine the time, date and place of arbitration hearing. S.88(2) ELRA.

- Arbitration Procedure (Hearing)

Will involve the following steps

- Opening statements by parties and other preliminary matters

- Presentation by each party of its case by calling witnesses to testify under oath or affirmation
- The cross-examination of witnesses by opposing parties
- And closing arguments by the parties. S.88(5) ELRA and LIMA rule 22

- The arbitrator is also required to comply with the Code of conduct stipulated in the Labour Institutions (Ethics and Code of Conduct for Mediators and Arbitrators) Rules 2007.

- To expedite dispute resolution, the law requires the arbitrator to pronounce award within 30 days from the date of completion of the arbitration. Rule 12(2) of the arbitrators &mediators code of Good Conduct

Cases: *Bidco Oil and Soap v. Abdu Said and 3 others*, Revision No.11 of 2008.

Dar es Salaam City Council v. Rafael Ruvakubusa, Revision No.149 of 2008

- AWARD

An arbitrator may make any appropriate award.

- An arbitrator may not make an order for costs unless the party or a person representing a party

acted in a frivolous or vexatious manner. S.88(8) ELRA

Case; *Power Roads (T) Ltd v. Haji Omari Ngomero*, Revision No.36 of 2007.

- The award must be issued 30 days of the conclusion of the arbitration hearing and must be reasoned, definite, certain and concise. See Rule 8 of the Labour Institutions (Ethics &

The case of ***Tanzania Breweries Limited v. Leo Kobelo***, Lab. Div. DSM, Rev.no.2011/2014 the court explain the effect on the award delivered after the expiry of the statutory 30 days.

Quoting the decision in ***2000 Industries Ltd v. Halima Z.Giteta and 7 others***, Rev.no.9/2009, Hcrt DSM stated that: the award delivered outside of the required 30 days but the same did not cause any-

Miscarriage of justice to the applicants as they failed to adduce any facts to show that they were unduly prejudiced as a result of non-delivery of the award within 30 days.

Code of Good Practice for Mediators and Arbitrators), Rules Gn No. 66 of 2007

Award made under ELRA is binding on the parties and is executed before Hcrt Labour

Division as if it were a decree of the Court of Law.

Any part may apply to the Hcrt within six weeks to set aside award improperly procured. S. 91(1)(3) ELRA.

See the case of *Stamili M. Emmanuel v. Omega Nitro (T)Ltd*. Lab.Div., Revision No.213/2014. Where the court answered the issue whether the award was properly procured.

- A party who apply to set aside an award improperly procured may also apply for stay of execution pending hearing of his application

APPLICATION FOR EXTENSION OF TIME TO FILE LABOUR DISPUTE

Remember we said the time limitation to file labour dispute before CMA is 30 days. But on good cause a party may apply for extension of time to file a case out of time.

In the case of *Oscar Mbwambo and another* v. *M/S Tanga Cement Co. Ltd*, *Lab. Div.*,*Tanga*, Misc. Lab.App. No.12 of 2014, where it was held that: It is established principle in law that, sufficient reason is a pre-condition for the court to grant extension of time.

What constitute sufficient reason or good cause has been defined by the Court of Appeal in the case of ***John Mosses and 3 others v. R*****,** Criminal Appeal no. 145 of 2006 which quoted the case of ***Elias Msonde v.R*****,** Cr.Appeal no. 93 of 2005.

As a matter of procedure the application for extension of time is made through the “condonation form” which is form no.7. Condonation form is made under s.98(2) (r) of the ELRA.

Also Rule 31 of the Labour Institutions (Mediation and Arbitration) GN.No.64/2007 gives powers to the commission to condone any failure to comply with the time frame in the rules on good cause.

Remedies under Labour Laws by public servants

Following the 2016 amendment a public servant is prohibited to enjoy remedies provided under the labour laws unless he/she has exhausted all remedies under the Public Services Act.

This position is inline with the Written Laws (Miscellaneous Amendment)(No.3)Act, 2016. The Act has amended the Public Services Act by adding s.32A to s.32 which reads as follows:

“ A public servant shall, prior to seeking remedies provided for in labour laws, exhaust all remedies as provided for under this Act.”

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END OF THE SHOW.

"CHEERS"

Dr.Tasco Luambano, Advocate& Managing Director at TSK Law Chambers

Ph.D, LL.M(UDSM), LL.B(MU),

ADJUDICATION

- This is a formal procedure for dispute settlement involving a hearing by a Judge in a court of competent jurisdiction.
- The Labour Court is the institution charged with adjudication.

S.50 of the LIA No. 7 of 2004 establishes the Labour Court.

The Labour Court Rules,2007, GN No.106 of 18 May 2007 provides procedures for litigating cases before the Labour Court.

In terms of Jurisdiction, the Labour Court has exclusive jurisdiction over the application, interpretation and implementation of the ELRA, and any other labour matter reserved for its decision.

The Court has Appeallete powers to determine appeals from the Registrar of organizations or organizatioanal rights.

Can also review and hear revision of Award.

The Labour Court may refuse to hear a complaint if the complaint has not been referred to mediation by the commission, or the provisions of the law regarding mediation have not been complied with.

Initiating Proceedings

- Proceedings before the labour court is initiated by filing a statement of complaint as prescribed in Form No 1 of the schedule to the Labour Court Rules, 2007. Rule 6(1).

- Where the matter is a referral by the Director of the CMA, then a party referring the dispute to the Director must file a statement of complaint within 15 days from the date on which

the Director notified the party of the referral of the dispute to the Court. Rule 6(2).

The statement must be accompanied with a copy of the application for the referral. Rule 6(2)(b)

A respondent is required to file a response within 15 days from when he was served with complaint and a copy be served to the adverse parties.

Pre-trial Conference (PTC)

Where pleadings are completed, the parties will conduct PTC before the registrar of the labour Court or a mediator attached to the Court.

PTC must take place within 15days from the response.

The following will be done during PTC:

- ✓ Attempt to settle dispute amicably

- ✓ Exchange of documents
- ✓ Agreeing on issues
- ✓ Ascertaining evidence by affidavit
- ✓ Securing the presence of witnesses at crt
- ✓ Means of which dispute may be shortened. Rule 10(2)

- If parties reaches a settlement, the Registrar or mediator must draw a consent settlement order. Rule 10(3)
- Where settlement failed…….

END SHOW.

"CHEERS"

Tasco Luambano, Advocate& Managing Director at TSK Law Chambers

LL.M(UDSM), LL.B(MU),

PhD candidate, UDSM

QUESTION FOR GROUP ONE

A constitution is a mirror reflectong the national soul,the identification of ideas and aspiration of a nation, the articulation of the values binding its people and disciplining its Government.[Source: State v. Acheson 1991(2) SA 805 at p.813].

In the light of the above case examine the extent to which the new Labour Laws underscore human rights protection in Tanzania.

QUESTION FOR GROUP TWO

Among others Article 2(4) of the Protocol on Establishment of the East African Community (EAC)Common Market of 20th November, 2009 which entered into force on 1st July, 2010 stipulates fot free movement of labour and services for EAC Partner States.

How far does Tanzanian labour laws embraces these rights?

COLLECTIVE BARGAINING

- What is Collective bargaining?

CB is defined to mean all negotiations which take place between an employer, a group of employers or one or more employers organizations and one or more worker's organizations.

- Why CB?

- Determine working conditions &terms of employment
- Regulating relations btn employers and workers
- Regulating relationship btn employer’s organisations and worker’s organisations.

CB has its origin fro English labour law.

Right to engage in CB

The question who may engage in CB is answered under S.2(1) of the ELRA

Procedure for CB

1.Parties to recognize each other for that purpose.

The general purpose of recognizing a trade union or bargaining agent is that:

- ✓To represent employees in their dealings with the employer
- ✓To negotiate and conclude CAs

- ✓ And to prevent and resolve labour dispute

- A registered trade union that represents the majority of employees in an appropriate bargaining unit shall be entitled to be as the exclusive bargaining agent in that unit.

See s.67(1) ELRA.

Thus, for a trade union to qualify as a bargaining agent must meet the two conditions:

i. Must be registered

ii. Must represent majority of employees

- Under s.67(2) ELRA, an employer may refuse to recognize a trade union as a bargaining unit if it does not meet the above conditions.

If a trade union is not registered but represent majority of employees, then the employer may recognize a registered trade union without representing majority of employees.

- To be recognized as an exclusive bargaining agent the registered trade unions are required to notify the employer in a prescribed form. S.67(3) ELRA and Rule 51(1) of the Code of Good Practice.

Read: In the matter of the complaint Between *COTWU(T) and TTCL & TEWUTA*, Complaint No. 1 of 2007, Hcrt Labour Division Dar.

CB can only function effectively if it is conducted in good faith. S.68(1)&(2) ELRA.

- ✓The principle of good faith obligates parties to carry genuine and constructive negotiations, avoid delays, make efforts to reach an agreement etc. Rule 54(1) Code of Good Practice

- ✓Employer has a duty to disclose relevant information during bargaining. S.70 ELRA. Rule 56(1) Code of Good Practice.

- ✓S. 70(2) ELRA provides circumstances where an employer is not oblidged to disclose information.

- These are:

✓ legally previledged (e.g consultations btn a lawyer and a client

✓ the employer cannot disclose without contravening the law

✓ It is confidential

✓ Is a private person information

COLLECTIVE AGREEMENT

CA is a written agreement concluded by registered trade union and an employer or a registered employer association on any labour matter. S.4 ELRA.

CA is binding to:

- ✓ Parties to the agreement

- ✓ Any member of the parties to the agreement
- ✓ Any employee who are not members of a trade union party to the agreement; if the trade union is recognized as the exclusive bargaining agent of those employees. S.71 ELRA.

Settlement of Disputes concerning Collective Agreement

According to S.74 ELRA any dispute concerning the application, interpretation, or implementation of a CA shall, unless the parties agree otherwise, be referred to CMA for mediation.

If the mediation fails, any party may refer the dispute to the High Court for decision

Strike and Lockout

Strike is a total or partial stoppage of work by empoloyee if the stoppage is to compel their employer, any other employer or employer's association which the employer belongs, to accept, modify or abandon any demand that may form a subject of dispute.s4 ELRA