EDWIN WILLIAM SHETTO *v.* MANAGING DIRECTOR OF ARUSHA INTERNATIONAL CONFERENCE CENTRE

HIGH COURT OF TANZANIA AT ARUSHA

(Mroso, J.)

CIVIL CASE No. 3 OF 1997

Civil Practice and Procedure – Declaratory judgment – When a declaratory judgment may be given.

Civil Practice and Procedure – Pleadings – Pleading stating a specific amount of general damages prayed for – Whether proper.

Labour Law – Abolition of post by employer – Legal basis thereof.

Labour Law – Abolition of post by employer – Whether such abolition terminates contract of service with the incumbent of the post abolished.

Natural Justice – Principles of natural justice – The right to be heard – Effect of breach of principles of natural justice on a decision taken.

Damages – General damages – Pleading stating specific amount as general damages prayed for – Whether proper.

Tort – Defamation – Newspaper article originating from the defendant mentioning the plaintiff by name as a director who lost his job, and stating that he was negligent and a party to a financial loss suffered by the defendant – Whether defamatory.

The Board of Directors of the Arusha International Conference Centre (the "AICC") decided to abolish certain posts, including that of "*Director of Management Services,*" to which the plaintiff was its incumbent. Subsequent to the abolition of the post of director, the plaintiff's employment with AICC was terminated without giving him a right to be heard. The plaintiff filed this suit challenging the legal basis for abolishing the post of Director of Management Services; praying for a declaratory judgment on

the legality of his termination and praying for general damages mentioning a specific sum of TZS. 50 million. The court considered the legality of abolition of the plaintiff's post and his termination; the issue of declaratory judgment; whether or not the plaintiff was defamed; and the propriety of specifying an amount in the prayer for general damages.

Held: (i) The Board of Directors of the defendant Centre had power under paragraph 9(c) of the Arusha International Conference Centre (Establishment) Order 1978 to abolish any post including that of director; therefore the abolition of post of director was neither illegal nor null and void;

(ii) After abolition of the post of Director of Management Services, although the plaintiff would not have validly asked the defendant to keep him on employment on the same terms and conditions in view of the Board direction that fringe benefits would not be paid, yet his contract of service with the defendant subsisted and he could only be terminated for good cause;

(iii) Since the plaintiff could only be terminated for good cause the plaintiff should have been heard before the decision to terminate him could be taken;

(iv) It is wrong pleading to put a specific amount in a claim for general damages; the quantum of general damages, where awardable, is assessed by the court;

(v) The news article in the Uhuru newspaper originating from the defendant's Managing Director to the effect that the plaintiff, who was mentioned by name as a director who lost his job, was a negligent officer and party to the loss of TZS 173 million which the defendant had suffered, was defamatory.

Orders accordingly

Cases referred to:

(1) *Matalinga and another v. Attorney General* [1972] EA 518

(2) *Kyobe v. East African Airways Corportation* [1972] EA 403

(3) *Ridge v. Baldwin* [1963] 2 W.L.R. 935

(4) *General Medical Council v. Spackman* [1943] AC 627

(5) *Director of Public Prosecutions v. Sabinis Inyasi Tesha and another,* [1996] T.L.R. 156

(6) *Mahona v. University of Dar es Salaam* [1981] T.L.R. 55

Mr Loomu-Ojare, for the Plaintiff

Mr Makange, for the Defendant

JUDGMENT

(Delivered 17 June 1998)

MROSO, J.: The plaintiff, Edwin William Shetto, was employed as Director of Manpower Development and Administration in September 1990 by the defendant, The Arusha International Conference Centre. Later his designation apparently changed to Director of Management Services. He said that his appointment which was on permanent and pensionable terms was also confirmed after a successful completion of a 12 months probation period. On 23 October 1996 a letter was written to him by the Managing Director of the defendant, Major General (Retired) H.C. Lupogo informing him that his employment had been terminated by way of abolition of office with effect from 31 October 96. He was to get a total of TZS. 4 058 402 as his terminal benefits. He took those benefits. Even so, on 21 January 1997 he brought a suit against the defendant in this court seeking the following reliefs among others;

(a) (The) court be pleased to declare plaintiff's termination illegal, null and void and that plaintiff's posts *(sic)* of Director of Management and Administration still subsists and not phased out.

(b) (The) court be pleased to order re-instatement of the plaintiff.

(c) (The) court be pleased to order in the alternative to (b) compensation of TZS. 30 393 460 to cover period between termination and retirement age.

(d) (The) court be pleased to order damages for defamation in the sum of TZS. 50 million

The defendant denies that the termination of appointment was illegal. It contends that it was lawful for the Board of Directors of the defendant

organization to abolish the plaintiff's post for the reasons on which the Board acted. The plaintiff had averred that the defendant defamed him in two publications in the Daily News and the Uhuru Newspapers respectively. The defendant disputed the allegations contending that the publications were not defamatory of the plaintiff. The defendant also disputes the claims for any damages.

The defendant through its advocates – Makange Chambers raised in the amended written statement of Defence four preliminary points of objection to the suit. Two were argued as preliminary points of objection and the remaining two were argued by Mr Makange in his final written submissions.

The two preliminary points which were argued before the trial commenced related to misjoinder of causes of action, that is action on contract and also action on tort; and, in the alternative, that there was a non-joinder of necessary parties to the suit. The court has already given a ruling on those two points and it was ordered that the suit proceed to hearing.

At the commencement of the trial the following agreed issues were framed:

(1) Whether the abolition of the post held by the plaintiff was illegal and, therefore, null and void.

(2) If the answer to issue number 1 is in the affirmative, whether the plaintiff is entitled to special and general damages.

(3) Whether the press statements which the defendant's agents made to the press as reported in the Daily News and the Uhuru Newspapers respectively were defamatory of the plaintiff and if so, whether the plaintiff is entitled to damages.

(4) To what reliefs the parties are entitled.

In view of the allegation by the plaintiff that the defendant was party to defamatory stories which were published in newspapers, the court selected and appointed three assessors to sit in the trial. The three assessors sat throughout the trial and participated in asking witnesses questions on any aspect of the case. Mr Makange in his final Written Submissions has challenged the propriety of the court allowing the assessors to sit throughout the trial arguing that the part of the case relating to termination of employment does not require the court to sit with assessors and that, presumably, the assessors ought to have been excluded until the court started to hear evidence relating to the publication in the newspapers of the alleged defamatory statements.

On the face of it the complaint is valid but the truth of the matter is that it was impracticable not to sit with the assessors throughout the trial. In the first place, only one witness for the plaintiff (the plaintiff himself) and one witness for the defence testified in the case. In the second place, the evidence on defamation was so interrelated to the evidence relating to the plainfiff's employment with the defendant and his subsequent termination that it was not practicable to compartmentalize it for purposes of deciding when and when not the assessors were to sit during the trial. It was also not practicable to prevent the assessors from asking the witnesses questions on issues other than those related to the allegations of defamation of character. It is my opinion that the questions as asked by the assessors and answered by the witnesses helped the assessors to appreciate the significance of the complaint by the plainfiff that the defendant defamed him in the press and the reason he was asking for damages for the alleged defamation. The participation of the assessors in the whole of the trial was, therefore, in the circumstances, unavoidable. For the above reasons I must overrule the defence submission that the trial was rendered a nullity.

In his final Written Submissions, Mr Makange also urged that because part of the suit is for a declaratory judgment then it ought to be dismissed because such a remedy is theoretical in the circumstances of the case. The particular circumstance which the learned advocate has in mind is that the plaintiff said in his evidence that he is now working with the Chamber of Commerce in Arusha.

This ground, with due respect to the learned advocate, is new, had not been pleaded and the advocate for the plaintiff had no prior

notice of it and, therefore, did not advert to it in his submissions. To dismiss the case on that ground as prayed would, therefore, in my view, amount to condemning the plaintiff unheard. Even so, the ground as raised is not valid in the circumstances.

Mr Makange's argument is that a declaratory judgment should not be granted where it is useless or embarrassing; that there must be a real and not a theoretical question. Among the cases he cited in support of that submission is *Matalinga and another (sic) (others) v. Attorney General* (1). In that case the High Court of Kenya said that before a declaration can be granted there must be a real and not a theoretical question in which the person raising it must have a real interest and there must be someone with a present interest in opposing it. Furthermore, the request must be for the court to pronounce on a legal right. That decision, with respect, seems to me to support the plaintiff's prayer for a declaratory judgment on the legality of his termination and the legality or otherwise of such termination is not rendered theoretical or embarrassing merely because subsequent to the termination he managed to secure some kind of employment. If this court grants the plaintiff the declaration he is seeking that could significantly affect both his legal rights and those of the defendant. I must, therefore, dismiss the advocate's argument. Let me now proceed to discuss the evidence with a view to answering the agreed issues in this case.

The Board of Directors of the defendant, at its 61st meeting on 30 September 1996, considered the need to restructure the management of the Centre. One of the resolutions reached was to abolish the post of director with the exception of that of the Managing Director. The resolutions were to take effect from 1 November 1996. Following from that resolution, the Managing Director wrote to the plaintiff to inform him that his post had been abolished and consequently he had been terminated. The first question here to consider is whether the Board of Directors was competent to abolish the post of Director which existed in the Centre.

In his written submissions to court Mr Loomu-Ojare, learned advocate for the plaintiff, does not seem to dispute the power of

A the Board to abolish the post of director. I think, indeed, that the Board of Directors of the defendant Centre in whom the Management of the Centre is vested (see Paragraph 7 of GN. Number 115 of 1998) has such power. According to the powers of the defendant
B Centre as contained in paragraph 9 (c) of the Arusha International Conference Centre (Establishment) Order, 1978 as published in Government Notice Number 115 of 25 August 1978, it is provided that it has power:

C (c) to do anything which in the opinion of the Board, is necessary to facilitate the proper and efficient carrying on of the activities of the Centre and the proper performance of the functions of the Centre.

In the absence of a more specific provision I consider that the power
D cited above is broad enough to cover the abolition of offices in the employment of the defendant centre.

What Mr Loomu-Ojare contends is that the Board did not really
E abolish the plaintiff's office but merely downgraded it to managerial level. With respect, that is not correct. Item 10 of the Minutes of the 61st Board Meeting which were tendered in evidence at the trial reads at the relevant place:

F 10.7.4. Kwa kuzingatia hayo, Bodi iliagiza kwamba:

(a) Cheo cha Ukurugenzi kifutwe; abaki Mkurugenzi Mwendeshaji akiwa na mameneja chini yake.

G It seems to me clear that the post of director was abolished and that from thence there would be only the Managing Director who would have managers under him.

It is true that the duties and functions that were done by the erstwhile
H directors were re-assigned to managers. But while there had been five directorates, after the abolition of directorates only three managerial positions were to be created plus the office of the Hospital Superintendent in place of the office of the Director of Hospital Services. It cannot be validly said, therefore, that the directors were simply re-classified
I as managers.

Once it is accepted, as I have done, that the Board of Directors A
was competent to abolish any post, including that of director, it follows that the abolition was neither illegal nor null and void. The first issue is answered in the negative.

There is still the question whether the plaintiff's employment B
with the defendant was terminated at the instance of the abolition of the office or post of director.

I do not read in the minutes of the 61st Board Meeting any direction C
that the plaintiff be terminated. It was, however, envisaged that some employees would lose their employment as a result of the restructuring of the management of the Centre. It is obvious that if there were more than three managers before the Board decision that there be only three managerial positions it meant that a manager who could D
not be retained might lose his job.

It was apparently left to the Managing Director to decide on who was to remain in employment and who was to be terminated and how. E

It appears, however, that the Managing Director thought that the abolition of the post of director automatically meant a person who had been holding that post had to be terminated. I read this erroneous meaning from the wording of the letter with reference Number ICC/ F
C/PERS/1106 of 23 November 1996 which the Managing Director wrote to the plaintiff and by which he terminated his employment. It reads in part as follows:

The 61 Board Meeting unanimously authorized an organization structure G
which abolished the posts of Directors. *Following the abolition of your post*, your services with this organization will cease effective from 31 October 1996. [emphasis supplied]

The words which I have underlined clearly show that the Managing H
Director believed the plaintiff had to be terminated. But that consequence needed not to follow. Given an option the plaintiff might have accepted a lesser job and there is some indication that the Board envisaged such a possibility. That was why, I think, it said in minute 10.7.4(i) as follows: I

> (i) Wale watakaoondoka kwenye wadhifa walio nao *nao kuendelea na kazi katika muundo mpya* watabaki na *mishahara yao wenyewe lakini bila marupurupu yaliyoambatana na wadhifa wa zamani.* [emphasis supplied]

Surely, the Board must have had in mind a person like the plaintiff and the Hospital Superitendent who were in office as directors but who could no longer continue as such following the abolition of the offence of director. I would agree with the learned advocate for the plaintiff that while the post of Director of Management Services was abolished in respect of the plaintiff the duties and functions under the post were not abolished even though they may have been re-distributed to other officers.

In the case of *Kyobe v. East African Airways Corporation* (2) which was an appeal to the Court of Appeal for Eastern African from the High Court of Kenya, the appellant was employed as general manager of East African Airways Corporation under a statutory provision in the 1963 legislation that established the East African Airways Corporation. The post was in 1967 abolished by the East African Airways Corporation Act 1967 which repealed and replaced the 1963 Act. A new post of Director General was created in place of General Manager. The appellant was not given the new post of Director General. He was dismissed and was paid a gratuity based on his total salary. He received the pay and then sued in court contending that he had been wrongfully terminated.

The Court of Appeal by a majority held that the repeal of the statutory post held by the appellant did not bring his service contract to an end. The new Act had a deeming clause that the persons who were in the service of the previous Corporation were deemed to have been appointed to the service of the new Corporation. The argument that the appellant's post of General Manager being statutory had been abolished by the new legislation and, therefore that he had been thereby terminated was not accepted by the court. Mustafa, J.A. who shared the opinion of the majority of the court said at page 412:

> In my opinion, although the post of general manager was abolished the contract of service between the Corporation and the appellant remained valid and effective. If, for instance, the appellant had asked to be given other duties in the Corporation on the same terms and salary as he was getting, I would have thought the corporation could have lawfully done so. There was nothing to indicate that the contract of service was linked exclusively to the post of General Manager to the exclusion of other, or that no variation can subsequently be made.

In our case, although the plaintiff would not have validly asked the defendant to keep him on employment on the same terms and conditions in view of the Board direction that fringe benefits would not be paid, yet his contract of service with the defendant subsisted and he could only have been terminated for good cause.

Since the plaintiff could only be terminated for good cause, he should have been heard before the decision to terminate him could be taken. The right to be heard is basic and breach of it renders the decision arising from the breach null and void. In *Ridge v. Baldwin* (3) Lord Reid speaking about rules of natural justice said:

> Time and again ... It has been stated that a decision given without regard to the principles of natural justice is void ... I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case.

Also, Lord Wright had this to say regarding rules of natural justice in the case of *General Medical Council v. Spackman* (4):

> If principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. That decision must be declared to be no decision.

That reasoning was cited with approval in a decision of the Court of Appeal of Tanzania in *DPP v. Sabinis Inyasi Tesha and another* (5). Similarly in *Mahona v. University of Dar es Salaam* (6) the

High Court (Kisanga, J. as he then was) quashed a decision of the Minister of Labour because the Minister and decided an appeal made to him without hearing one of the parties. I must, therefore, declare the decision of the Managing Director of the defendant Centre void and set it aside. In effect, the plaintiff has not been terminated he is still in employment although not as a director. This decision does not mean that the defendant cannot now initiate termination proceedings if it considers such a course of action necessary and appropriate.

Arising from the decision that the plaintiff's contract of service with the defendant still subsist it follows that to this day he is entitled to his monthly salary. Since the court is not aware of any other benefits the plaintiff was getting, nothing beyond the salary can be granted. Furthermore, since the plaintiff at sometime after termination secured employment with the Arusha Chamber of Commerce to mitigate his loss of earnings from his employment with the defendant, he will be paid by the defendant only the difference between his salary and the salary which he has been getting from the Chamber of Commerce, assuming his salary from the Chamber of Commerce is less than the salary from the defendant. The claim for TZS. 30 393 460 has no basis in view of the decision I have just taken and I need not discuss it. The amount already paid and received by the plaintiff as terminal benefits will be discounted.

The plaintiff also claims damages for defamation of character by the defendant. He claims TZS. 50 million. As rightly pointed out by Mr Makange, this class of damages is of the general type as distinguished from special damages. It is wrong pleading to put a specific amount in a claim for general damages. The quantum for general damages where awardable is assessed by the court.

Although the plaintiff erroneously asked for a specific sum of general damages it does not follow, as Mr Makange suggests, that the court will summarily dismiss the claim for damages. If the court considers that the plaintiff should get damages, it will assess them and award the plaintiff.

As mentioned earlier, the Board of Directors of the defendant resolved on 30 September 96 to abolish the post of Director and that there were to be only three managerial positions. On 23 October 1996, the Managing Director wrote to the plaintiff two letters, one informing him that the post of director had been abolished and that he had been terminated with effect from 31 October 1996. The second letter was a testimonial. It is entitled "To whom it may concern – Re: Mr Edwin William Shetto." It said that during the employment of the plaintiff with the defendant he was found to be "a person of mature thinking, diligent, resourceful, hardworking and honest". He was dependable and trustworthy. He was one who would not let down his employer. But before those letters were written there had been two publications in the newspaper which the plaintiff says were defamatory of him.

On 17 October, 1996 there was a news item on page 5 of the Daily News with a title which ran as follows:

> AICC suffers TZS. 173 million loss

The source of the news was shown to be Mr Mkulo, the Chairman of the Board of Directors of the defendant Centre. It said that the Centre had suffered a loss of shillings TZS. 173 million shillings over a period of past five years. The loss prompted the Board to adopt structural changes to enhance efficiency. The changes included "the phasing out (of) 16 managerial positions, one directorate and trimming several workers of the parastatal".

The news item further said that although the Centre had five directorates the Board Chairman did not hint which directorate was being phased out. Regarding the loss of TZS. 173 million the Board Chairman is alleged to have said "most managers were busy with their private businesses, neglecting official duties.

> Mr Mkulo said it was the negligence of duties which resulted in the loss and even spoiling the reputation of the Centre.

On 19 October 1996 there another publication in the press, this time in the Uhuru Newspaper. The source of the news which was

High Court (Kisanga, J. as he then was) quashed a decision of the Minister of Labour because the Minister and decided an appeal made to him without hearing one of the parties. I must, therefore, declare the decision of the Managing Director of the defendant Centre void and set it aside. In effect, the plaintiff has not been terminated he is still in employment although not as a director. This decision does not mean that the defendant cannot now initiate termination proceedings if it considers such a course of action necessary and appropriate.

Arising from the decision that the plaintiff's contract of service with the defendant still subsist it follows that to this day he is entitled to his monthly salary. Since the court is not aware of any other benefits the plaintiff was getting, nothing beyond the salary can be granted. Furthermore, since the plaintiff at sometime after termination secured employment with the Arusha Chamber of Commerce to mitigate his loss of earnings from his employment with the defendant, he will be paid by the defendant only the difference between his salary and the salary which he has been getting from the Chamber of Commerce, assuming his salary from the Chamber of Commerce is less than the salary from the defendant. The claim for TZS. 30 393 460 has no basis in view of the decision I have just taken and I need not discuss it. The amount already paid and received by the plaintiff as terminal benefits will be discounted.

The plaintiff also claims damages for defamation of character by the defendant. He claims TZS. 50 million. As rightly pointed out by Mr Makange, this class of damages is of the general type as distinguished from special damages. It is wrong pleading to put a specific amount in a claim for general damages. The quantum for general damages where awardable is assessed by the court.

Although the plaintiff erroneously asked for a specific sum of general damages it does not follow, as Mr Makange suggests, that the court will summarily dismiss the claim for damages. If the court considers that the plaintiff should get damages, it will assess them and award the plaintiff.

As mentioned earlier, the Board of Directors of the defendant resolved on 30 September 96 to abolish the post of Director and that there were to be only three managerial positions. On 23 October 1996, the Managing Director wrote to the plaintiff two letters, one informing him that the post of director had been abolished and that he had been terminated with effect from 31 October 1996. The second letter was a testimonial. It is entitled "To whom it may concern – Re: Mr Edwin William Shetto." It said that during the employment of the plaintiff with the defendant he was found to be "a person of mature thinking, diligent, resourceful, hardworking and honest". He was dependable and trustworthy. He was one who would not let down his employer. But before those letters were written there had been two publications in the newspaper which the plaintiff says were defamatory of him.

On 17 October, 1996 there was a news item on page 5 of the Daily News with a title which ran as follows:

> AICC suffers TZS. 173 million loss

The source of the news was shown to be Mr Mkulo, the Chairman of the Board of Directors of the defendant Centre. It said that the Centre had suffered a loss of shillings TZS. 173 million shillings over a period of past five years. The loss prompted the Board to adopt structural changes to enhance efficiency. The changes included "the phasing out (of) 16 managerial positions, one directorate and trimming several workers of the parastatal".

The news item further said that although the Centre had five directorates the Board Chairman did not hint which directorate was being phased out. Regarding the loss of TZS. 173 million the Board Chairman is alleged to have said "most managers were busy with their private businesses, neglecting official duties.

> Mr Mkulo said it was the negligence of duties which resulted in the loss and even spoiling the reputation of the Centre.

On 19 October 1996 there another publication in the press, this time in the Uhuru Newspaper. The source of the news which was published was attributed to the Managing Director of the defendant, Major General (Retired) Lupogo. On page 5 of the newspaper there was a heading in bold letters running thus:

> Mkurugenzi aachwa bila kazi AICC". Then followed the news:
>
> Mabadiliko makubwa ya muundo wa utawala katika Kituo cha Mikutano cha Kimataifa cha Arusha (AICC) yaliyoidhinishwa na bodi ya kituo hicho hivi karibuni yamemwacha mkurugenzi wa utawala wa kituo hicho Ndugu Edwin Shetto bila kazi.
>
> Mkurugenzi Mtendaji wa AICC, Ndugu Herman Lupogo aliwaambia waandishi wa habari jana kuwa katika mabadiliko hayo kiongozi pekee wa ngazi ya juu, Ndugu Shetto amelazimika kupunguzwa ... hivi karibuni bodi ya AICC iliamua kufuta vyeo vya mameneja 16 na kurugenzi moja kufuatia hasara ya TZS.. Milioni 173 kwa uzembe uliokithiri katika utendaji na kuamua mambo nyeti ya shirika hilo bila kumweleza Mkurugenzi Mtendaji ...

The defendant did not dispute the correctness of the publications or that the persons who were said to have been the source of the published information were not in fact the source. What Mr Makange says in his final submissions is that the publications are in reported speech and do not cite the very words which the Board Chairman and the Managing Director used. That is true but in the absence of a repudiation by the sources of the information it must be assumed that the publications were accurate reports of what the press people were told. The defendant, therefore, must bear the consequences in the event the reports are considered defamatory.

The lady and two gentlemen assessors who sat with me have been of the view that the publication in the Daily News of 17 October 1996 was not defamatory of the plaintiff. However, as regards the publication in the Uhuru Newspaper of 19 October 1996 the assessors unanimously considered it defamatory of the plaintiff. With respect, I agree with the opinion of the assessors. The news article in the Uhuru was to the effect that the plaintiff, who was mentioned by name as as the director who lost his job, was a negligent officer and was party to the loss of TZS. 173 million which the defendant suffered.

As was said by one of the assessors, this report which orinated from the Managing Director had the effect (whether or not it was so intended) of clarifying to readers what had not been so clear in the earlier publication in the Daily News. It will be recalled that in the Daily News Article the Chairman of the Board of Directors was said to have explained to the press or the public that it was the negligence of duties which resulted in the loss "and even spoiling the reputation of the Centre." The negligent officials "were busy with their private business, neglecting official duties" It would be naïve to say, as Mr Makange would have the court say, that it was merely a defamation of a class of people from whom you could not identify the plaintiff, when the name of the plaintiff was specifically mentioned. The defendant must be held liable for this serious defamation even though the newspapers were not joined as parties, which they could have been. The only serious question to be considered now is the extent to which the defendant should be held liable in damages.

It was surely unnecessary for the Managing Director to mention the plaintiff in such a way that he was associated with the negligence of officers who allegedly caused the large financial less to the defendant. He could have been more responsible and discreet in his statement to the press. The plaintiff could not have been a negligent official and could not have been party to the financial loss to the Centre otherwise the testimonial which the Managing Director gave to the plaintiff four days after the press statement would be hollow, hypocritical and a base joke.

The claim by the plaintiff of TZS. 50 million as damages for the defamation was improper pleading as I already indicated in this judgment and that the error does not disentitle the plaintiff to damages.

In assessing damages to which the plaintiff is entitled I have taken into consideration the fact that he had unblemished character (Courtesy the testimonial); that twice he was made acting Managing Director of the Centre which has been holding international conferences and consequently exposing the plaintiff to a wide international clientele and that the Uhuru newspaper is widely read in the country, if not also outside the country.

The plaintiff complained that he had found difficulty to obtain employment after he was wrongfully terminated despite his senior status. He also complained that his own school going children were getting derisive queries from their friends because of the defamatory publications. But there was no proof that his failure to get a suitable job was directly attributable to the newspaper publications.

All considered I think the plaintiff should be awarded a fair amount of damages, which I assess at TZS. ten million. He will also get his costs and the arrears of salary as well as the damages awarded to earn interest at the court rate until full payment.

GENERAL TYRE (E.A.) LIMITED *v.* PATRON SIAME AND ANOTHER

HIGH COURT OF TANZANIA AT ARUSHA

(Mkwawa, J.)

CIVIL APPEAL No. 29 OF 1997

(From the Court of the Resident Magistrate of Arusha, in Employment Cause No. 10 of 1997)

Labour Law – Security of Employment Act – Order to reinstate an employee given by a competent authority – Whether the employer has option not to reinstate – Options available to the employee – Sections 27(1) and 40A(5)(b) of the Security of Employment Act.

After the Minister's order that the appellant employer should reinstate the respondent employees the employer decided to pay them statutory compensation. The employees referred the matter to court in order to enforce the Minister's decision. The trial court magistrate ordered the employer to pay the statutory compensation and salaries

and allowances that were in arrears. The employer appealed to the High Court challenging the jurisdiction of the trial court. The High Court considered whether or not after a reinstatement order by a competent authority the employer may opt to pay statutory compensation; it also considered the options open to an employee after an order of reinstatement.

Held: (i) An employer cannot, at his own initiative, choose to pay his aggrieved employee statutory compensation and twelve months salary as an alternative to complying with the Minister's or the Board's decision and order of reinstatement;

(ii) Where the Minister or the Board has ordered reinstatement or re-engagement, the complainant employee may opt for one of the two alternatives: he may either apply to the court under section 27(1) of the Security of Employment Act to have the order executed as if it was a decree, or he can claim statutory compensation and twelve months salary as provided under section 40A(5) of the Act;

(iii) Where an employee opts for payment of statutory compensation and twelve months' salary he does not become entitled to allowances and/or other benefits.

Orders accordingly

Editorial Note: With the coming into force of the Employment and Labour Relations Act 2004, Act Number 6 of 2004, an employer has a right to opt to pay statutory compensation and twelve months' salary *in lieu* of reinstating or re-engaging an employee; and an employee is entitled, in addition to statutory compensation and twelve months' salary, to wages due and other benefits from the date of the unfair termination to the date of final payment [section 40(3) of the Labour Relations Act 2004]

Cases referred to:

(1) *Mahona v. University of Dar es Salaam* [1981] T.L.R. 55

(2) *Juma Ally Kaziyabure v. Tanzania Posts and Telecommunications Corporation* [1994] T.L.R. 1

(3) *Obadiah Salehe v. Dodoma Wine Company Ltd,* HC – DOM Civil Case Number 53 of 1990 (unreported)