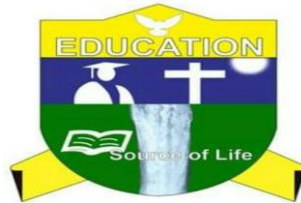


**RUAHA CATHOLIC UNIVERSITY**

**(RUCU)**



**FACULTY OF LAW**

**LEGAL ASSESSMENT OF LABOUR LAWS PERTINENT TO INVESTIGATION PROCESS  
ON TERMINATION OF EMPLOYMENT CONTRACT IN TANZANIA  
RESEARCH PAPER SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR  
THE AWARD OF BACHELOR OF LAW DEGREE (LL.B) AT RUAHA CATHOLIC  
UNIVERSITY**

**Prepared By:**

**NELSON EZEKIEL KOMBA**

**RU/LLB/2020/034**

**Under Supervision of**

**MS. ELIZABETH LUKELELWA**

**JULY, 2024**

## CERTIFICATION

The undersigned certifies that, she has read and recommend for acceptance by Ruaha Catholic University, research dissertation titled: **LEGAL ASSESSMENT OF LABOUR LAWS PERTINENT TO INVESTIGATION PROCESS ON TERMINATION OF EMPLOYMENT CONTRACT IN TANZANIA**. In partial fulfillment of the requirement for an awards of Bachelor of the Laws( LL.B) degree at Ruaha Catholic University.

.....

MS. ELIZABETH LUKELELWA

SUPERVISOR.

DATE.....

## DECLARATION

I Nelson Ezekiel Komba hereby declared that this research dissertation is my origin work and it has not been submitted for a similar or any degree in other University.

Signature.....

Nelson Ezekiel Komba

Researcher

Date.....

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I further express my sincerely gratitude to my colleagues Savius Kaijage, Sedrick Komba, Living Masuki, Catherine Fabian, and others to which i am deeply touched by their inspiration and efforts all to ensure the completion of this study.

## DEDICATION

I would like to dedicate this work to my Parents Mr. Ezekiel Komba & Mrs. Secilia Komba as they have blessed with a lot of hope, and love to this child simply their support is remarkable and surprised me to the extent of being active and rechargeable in all the time while doing this work.

## LISTS OF ABBREVIATIONS

CMA	Commission for Mediation and Arbitration
CAP	Chapter
CURT	Constitution of the United Republic of Tanzania
DSM	Dar es salaam
EFD	Electronic Fiscal Machine
ELRA	Employment and Labour Relation Act
GN	Government Notice
NGO's	Non-Governmental Organisations
No	Number
R.E	Revised Edition
T.L.R	Tanganyika Law Report
TRA	Tanzania Revenue Authority
UDHR	Universal Declaration of Human Right

## LIST OF LEGAL INSTRUMENTS

Employment and Labour Relation (Code of Good Practice) GN 42 of 2007

Employment and Labour Relation (General) Regulation GN 47 of 2017

Labour Institution (Mediation and Arbitration Guidelines) Rules GN 67 of 2007.

Termination of Employment Convention No. 158 of 1982

The Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

The Employment and Labour Relation Act [CAP 366 R.E 2019]

The Labour Institution Act [CAP 300 R.E 2019]

Universal Declaration of Human Rights of 1948

Workers Compensation Act [CAP 263 R.E 2019]



## LIST OF CASES

Republic vs Standifola Mjina(1920-1927) T.L.R 04

Bati Services Company Limited Vs Victor Israel Urio (2019) High Court Labour Revision no 720 (Unreported).

Arnolac Company Limited Vs Issa Lambert Mugeni (2013) High Court Labour Revision no 14 (Unreported).

Moshi Leather Industries Limited Vs Salim Said Ajali (2019) High Court Labour Revision no 28 ( Unreported).

AFREXA Vs Ramadhani Bakari (2016) High Court Labour Revision no 94 ( Unreported)

MIC Tanzania Limited Vs Yakobo J Masanja (2021) High Court Labour Revision no 107 (Unreported).

MIC Tanzania Plc Vs Sinai Mwakisisile (2022) High Court Labour Revision no 387 (Unreported).

Attorney General Vs Patel Farmer (1957) Criminal Appeal no 108 (Unreported)

Mussa Andrea Mtunga Vs Tanzania Electric Supply Company LTD (2015) Labour Revision no 06 ( Unreported)

## **ABSTRACT**

This research is centred from the employment and labour laws specific under rule 13(1) of the Employment and Labour Relation (Code of Good Practice) Rules GN 41 of 2007 upon which the researcher is making assessment on the provisions of the law pertinent to investigation process in Tanzania in course of termination of employment contract.

This research purposely dealing with cases upon an employer is under the obligation imposed by the laws to investigate the employee for the alleged violation of labour laws and guidelines of the company justifying the procedure adherence and the interpretation of the rule.

The researcher is mindful with inadequacy of the labour laws to prescribe the proper manner of conducting investigation upon making reference to the laws that are insufficient and inadequacy specifically to prescribe the proper manner upon employer to reflect in course of preparing and executing the obligation.

Henceforth this research assessed the weakness of the labour laws and posed a recommendation that are effective to control the process and makes the employer build his or her case in respect to burden of proof on fair termination of employment contract.

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# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1 BACKGROUND OF THE PROBLEM

The history of labour law in Tanzania it can be traced back during several phases such as Colonial phase,<sup>1</sup> Post-Colonial phase and Reformation phase.

#### **Colonial Phase of Labour Laws.**

The phase of colonial period started with German from 1884-1918 upon during this phase there was no established laws to regulate colonial manpower rather it uses force labour which was based on lack employment relation between colonial master and the servants, another phase of colonial period in Tanganyika was British phase which marked the significance change in employment field where by it begun 1919-1961 where the colony was under the governor Sir Donald Cameron who objected the labour system of Germany and thereby in 1922 established Hut and Poll Tax Ordinance which it was based on tax system of labour force<sup>2</sup>. The law required everyone with a hut and an adult person were obliged to pay tax whereby there were no other means to get money to pay tax rather than leaving their home to go seek for working for colonial master in consideration of money or labour in kind. Hence the system started to established friendly relation between taxpayer and colonial government.

Later in 1923 there was change of law and established Master and Native Servants Ordinance<sup>3</sup> it was established to encourage employment relation due to increase in

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<sup>1</sup> Alphonse Urio & janeth Furaha Urio. *The law on Employment and Labour Relation in Tanzania*. 2011,01.

<sup>2</sup> Idem, 02.

<sup>3</sup> I.G Shivji, *Law, State and The Working Class in Tanzania*.1986, 120.

demand of raw materials but the ordinance was too discriminatory on racial bases. The law became comprehensive since it criminalize some act that constituted to cause decrease in production such as no person was required to leave his or her master in default were to pay fine or imprisonment of three months or fine of 50Tsh or induce another person to quit the services such it was held in the case of *Republic vs Standifola Mjina*<sup>4</sup>. The respondent was charged and convicted for inducement to another person to quit the labour service. The ordinance in its nature was discriminatory as it favoured European or employer most Africans were mistreated. The Master and Native Servants Ordinance of 1923 it became amended in 1928 to make breach of contract punishable by fine only and there were no rights stipulated to employee, no protection was given either to labourers and so forth making the law insufficient.

In 1955 there was establishment of new law which was called Employment Ordinance which it came into force in 1957,<sup>5</sup> under this ordinance came up with substantial change such recognition of written and oral contract, employee to have right to be provided work and failure of employer to give work to his employee was required to pay wages in respect of employment regardless of work services being not performed, it given out the termination of employment upon death of employee and not employer. This ordinance contained substantive right of parties to the contract such recognized tickets contract which was operated in 30 days bases later changed to operate on monthly base<sup>6</sup> and other laws such as Minimum Wage Ordinance of 1939, Accident and Occupational Diseases(Notification)Ordinance, Workmen's Compensation Ordinance of 1948, Trade

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<sup>4</sup> Tanganyika Law Report(1921-1928).page 04

<sup>5</sup> I.G Shivji, Idem.120-121.

<sup>6</sup> I.G Shivji. *The Law, State and the Working class in Tanzania*. 1986,121-122.



Union Ordinance of 1956 and the Factories Ordinance<sup>7</sup> which was based on 1937 UK Act in some case became part such *Attorney General Vs Patel Farmer*<sup>8</sup> were laws that applied during the British colonial rule to comply with international principles and thereby several changes were made.<sup>9</sup>

### **Post Colonial Period or After Independence Phase of Labour Laws.**

During this phase most colonial laws were repealed and several laws was enacted to protect employment and labour matters. The laws enacted to improve the relationship between employer and employee by intensifying rights and duties to the employment contract such as Terms of Employment Act, the Security of Employment Act, and the Industrial Court of Tanganyika Act and others. During this phase some of colonial laws were maintained with some change and make applicable to the territory.

### **Reformation Phase of Labour Laws.**

This phase marked change of labour laws in it's entirety simply because it took an overall reform of labour laws through various overlook to international laws such as international labour conventions<sup>10</sup>. This phase started from 1986-2004 as the government took steps towards achieving international standard of protection of parties to the employment contract.<sup>11</sup> Several laws were enacted as a result of government efforts to amend labour laws such as Employment and Labour Relation Act no 5 of 2004, Labour Institution Act of 2004, Workers Compensation Act just few to mentioned.

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<sup>7</sup> Idem 134-145

<sup>8</sup> (1957)Criminal appeal no 108 before justice Abernathy.

<sup>9</sup> A.M Urio & J.F Urio, The law on Employment and Labour Relation in Tanzania.2011,06.

<sup>10</sup> The Law Reform Commission of Tanzania, Report on Labour Laws. Minister for Justice and Constitutional Affair. 2001 pg 9-10.

<sup>11</sup> Idem viii-xi of the Report

In Tanzania nowadays there are plenty of laws governing matter pertaining to employment contract as Employment and Labour Relation Act CAP 366 of 2004 R.E 2019, Employment and Labour Relation (General) Regulation GN 47 of 2017, Employment and Labour Relation (Code of Good Practice) Rules GN 42 of 2007, Labour Institution Act CAP 300 R.E 2019, and Labour Institution (Mediation and Arbitration Guidelines) Rules GN 67 of 2007.

The laws above aforementioned specific deals with providing rights and duties of the parties to the employment contract, procedure of disputes resolution having established various labour institutional framework, setting forth basic employment standard meeting international labour standard of protection towards employer and employee.

Investigation process in among the said laws is regulated by Employment and Labour Relation Act<sup>12</sup>( ELRA), Employment and Labour Relation( Code of Good Practice) Rules GN 42 of 2007 and Employment and Labour Relation (General) Regulation<sup>13</sup> specific under provisions of section 37(3) of ELRA require to observe laws specific Code of Good Practice, Rule 13 of Code of Good Practice GN 42 which stipulate fairness procedure for the conduct of investigation by employer and party III of General Regulation providing employment standard.

## **1.2 STATEMENT OF THE PROBLEM.**

Despite of the laws governing labour matters specific on investigation process by employer but they are still inadequacy on prescribing proper manner to conduct investigation process.

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<sup>12</sup> CAP 366 R.E 2019

<sup>13</sup> GN 47 of 2007

Referring to provision of rule 13 of Employment and Relation (Code of Good Practice)<sup>14</sup> it only give power to employer to conduct investigation to ascertain ground for hearing before disciplinary committee for the employee conduct but provision itself is inadequate without further prescription of the manner to conduct investigation especially requirement of written investigation report, format it required to be drafted, content to be disposed thereof as the same discussed in the case of *Bati Services Company Limited Vs Victor Israel Urio* <sup>15</sup>. In this case the judge agreed to the effect that our laws are still inadequate on stipulating the manner to conduct investigation process by employer. By so weakness of the laws render an employer lack potential evidence before the court on proof of procedural adherence to fair termination associated with no manner to refer when conducting investigation to the employee.

### 1. 3 LITERATURE REVIEW

Various scholarly wrote on the concept of investigation process under the employment field specifically on matter pertaining to how employee can be subjected to investigation. Thompson,<sup>16</sup> he argued among the point that when there is issues coming to the organization taking attention therein, then it must be investigated simply because the law gives the needs for an organization to conduct an investigation in other word it known as legal obligation or duty where upon failure to do so attract the liability of the organization to the issue at hand. And he added that investigation always arises due to violation to law or organization policy to which the correction of the problem must

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<sup>14</sup> GN 42 of 2007

<sup>15</sup> (2019) *Labour Revision no 720* (Unreported) before Judge S.M. Maghimbi specific under page 11 paragraph 2

<sup>16</sup> J.D. Thompson, *Compliance Response to Misconduct Allegation*.2013,04

always not be ignored so as to protect the further occurrence or violation by other person. However this research will have to go beyond on the basis of Tanzania labour law as on how the said legal obligation needs to be dispensed or carried out and put mandatory requirement of investigation report be in writing serves for admissible evidence before the court when the matter comes for proof of investigation process undertaken.

Guerin,<sup>17</sup> she discussed the idea of workplace investigation to be crucial as it protect the company's reputation from being destroyed due to the character that a company is not being able to enforce and respect laws and its policy, so there must be prompt investigation to the problem arises in the company serve for the purpose to figure out what happened, to deal with problem early before it become more worse, to protect the company from lawsuit and enforce the company policy from being disregarded by employee. However in the book the author did not given the explanation for the needs of investigation report being in writing so as to be taken as evidence in court when so require the company to prove the investigation process has been undertaken in standard and organized manner.

Statts et al,<sup>18</sup> they argued that investigation is not in every case must be full employed simply because there must be consideration to the issue at hand as to find out to what extend it may cause disruption to the company and extend to which attention must be given, but added that it must be understood that in every matter comes at hand of the company for an answer then investigation is inevitable but the assessment of situation

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<sup>17</sup> L. Guerin, *Essential Guide to Workplace Investigations*.2022,04-08.

<sup>18</sup> J. Statts et al, *HR How to Internal Investigation*. 2003, 02-6.

must be observed as early as possible. They also added that investigation must express the root cause triggered investigation, the measure to be taken towards the problem and even give reason for the incident to occur. However the authors did not stipulate the means of drafting a legal investigation report and put mandatory requirement of it being in writing as this research will be covering in details.

Pfadenhauer,<sup>19</sup> the dominant idea in her work is all about the need for immediate investigation by employer towards misconduct especially one based on discrimination character and sexual abuse behavior and in such misconduct the author tried to give the hints especially on how to handle such kind of incident where she believe that the need for outside counsel is utmost importance for handling such investigation for the sake of impartiality when dealing with the matter. She added that there are several approaches mostly applicable when making workplace investigation first is investigation conducted by internal human resource department where upon after finding the report will be submitted to management for final decision, second approach is investigation by counsel as it can be inside or outside counsel it is most applicable when there is potential to litigation involving organisation interest or business in general in some cases this approach termed to be biased because employer is one who bear the cost and therefore presume some favouritism to one party of employer rather than employee and last approach is outside counsel oversee the investigation conducted by internal officers of the organisation probably for the sake to balance the other two approach. However under this research it will base more on the legal requirement of standard investigation

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<sup>19</sup> D.M. Pfadenhauer, *Workplace Investigation: Discrimination and Harassment.*" 2009,03-08.

and mandatory written report be issued after the process of investigation something that is not discussed by author.

Ferraro<sup>20</sup> In his work the idea of investigation is critical and involves a lot of mechanism, he pointed most relevant aspect when making investigation. The most idea given in his work is all about the definition of investigation to mean "logical and intelligent collection of information through inquiry and examination for the purpose of developing evidence so as to solve the problem"<sup>21</sup>. He also given the base of workplace investigation includes consideration on management commitment, meaningful objective, a well-conceived strategy, properly pooled resource and experts and last is lawful execution as best elements for successful investigation process. However in this research it concern of legal requirement of written investigation report being drafted in standard manner so as to be evidence for process being carried out legally and in ordered manner.

Therefore from all above authors it's well asserted that investigation process needs to be carried out in standard and proper manner to ensure that litigation are subdued leading employment field successful and more productive.

#### **1.4 HYPOTHESIS**

It seems that labour laws in Tanzania pertaining to investigation process are inadequate to prescribe the proper manner of conducting investigation process under employment contract field.

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<sup>20</sup> E.F. Ferraro, *Investigation in the Workplace*. second edition.2012,02

<sup>21</sup> Ibid pg 01.

## **1.5 OBJECTIVE OF THE STUDY**

### **1.5.1 General Objective**

The main objective of this research is to make legal assessment on labour laws in Tanzania pertinent to investigation process of employment contract.

### **1.5.2 Specific Objective**

- Assessing rule 13 of Employment and Labour Relation (Code of Good Practice).
- Making analysis of laws in relation to the inadequacy on investigation process.
- Making legal assessment on the requirement of written form of investigation

## **1.6 SIGNIFICANCE OF THE STUDY**

- This study will be taken as reference for further advantages.
- This research will be pass way for a researcher to be awarded a degree bachelor of law.
- This research will be giving justification on basis of investigation process under labour laws.

## **1.7 RESEARCH METHODOLOGY**

The researcher to this study applied both primary and secondary source of data collection as

### **1.7.1 Primary Source of data.**

The researcher applied Questionnaire methodology in collection of data especially to the Public offices, NGO's together with Interview methodology to the list of employee to ascertain on mechanism which the employer is most likely to choose while making investigation process in their respective workplace and suitability of the means in access to right and justice.

### **1.7.2 Secondary Source of Data**

The researcher in conducting this research consulted variously source especially online books, journals, website, case laws, statutes including international instruments and municipal laws, and the recommendation of various international organ. Such the above mentioned source researcher furnished to get them at Ruaha Catholic Library, Google books, tanzlii case judgment, and the Google website.

## **1.8 SCOPE AND LIMITATION OF THE STUDY**

### **1.8.1 Scope of the Study**

The area of coverage to this study is Tanzania per se, simply the researcher aimed to make an assessment of labour laws and employment regulation applicable in Tanzania, to the effect that giving out the room for justification upon labour laws on the protection and ensuring employing proper mechanism in workplace investigation.

### **1.8.2 Limitation of the Study**

The researcher to this study faced with financial barrier simply because to reach a number of personnel or office for data collection it is costful and so make a researcher to reach a few limited number of person, also another difficult was based on domestic source of data limitation that is there is little number of books from Tanzania scholarly on the concept of investigation process of employment contract resulting the researcher to use more external source in order to give clarity on the concept suitable for understanding.



## CHAPTER TWO

### CONCEPTUAL FRAMEWORK OF THE STUDY

#### 2.1 INTRODUCTION

This chapter is made up of terminologies respective for the purpose of giving nature and a base of the study focused on making analysis of all concepts in relation to this study. The concept to deal includes Contract, Employment Contract, and Parties to the Employment Contract, Employee Misconduct, fair procedure, workplace investigation and termination of employment contract.

#### 2.2 CONCEPT OF CONTRACT

Contract is defined as "writing containing terms on which the parties have agreed"<sup>22</sup>. It entails several concept are essential when defining contract as written agreement, and consist of terms or promise by parties. The point of consideration to say there is contract there must be written agreement to which the parties agreed in dealing with each other. In such definition the oral contract is not party to a contract.

Contract it can also be defined as " promise or set of promises for breach of which the law gives remedy or performance of which the law in some way recognize as duty"<sup>23</sup>. This means to be termed contract it might be promise between the parties creating legal liability where there is any breach of terms and the relief available to innocent party.

In Tanzania perspective of law it defined contract as "an agreement enforceable by law".<sup>24</sup> That means the law it recognize only contract if there was agreement between the parties to the extent of creating legal relation making it enforceable. So both written

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<sup>22</sup> A.E. Farnsworth, *Contract*.4 Edition. Aspen Publishers 2004,03.

<sup>23</sup> J. Greider & W. Teadles, *Law and Life Insurance Contract*. 1974,37-38.

<sup>24</sup> Under section 2(1)(h) of the Law of Contract Act CAP 345 R.E 2019.

and oral agreement is recognized subject to the provisions of the law. And as per section 10 of the same act<sup>25</sup> it prescribed the elements of contract includes that there must be free consent, intention to create legal relation, capacity of parties, legality of object, lawful consideration and offer and acceptance.

Therefore contract from its meaning gives room for employment services between employer and employee to enter into contract which is now known as employment contract containing elements of contract discussed above for the purpose of giving legal effect in determining rights and obligation of parties to the employment contract.

### **2.3 EMPLOYMENT CONTRACT**

In other words it is known as contract of employment which is defined as "contract entered by employer in one party and employee in another party".<sup>26</sup> It renders the meaning that employment contract is all about the employer and employee meeting their terms of services by creating a contract that governs their relation. After the contract is construed then individuals become bound to honour the contract as stipulated by law and subject to rights and protection to the parties in case of default.

A Contract of Employment also referred to as "is an agreement between an employer and an employee which sets out their employment rights, responsibilities and duties. These are called the 'terms' of the contract."<sup>27</sup> From this meaning it still gives the views that parties mainly employer and employee are the basis for the agreement to complete and in their agreement they meet the terms of the services to be rendered containing wages, mode of payment, collective bargaining, rights and duties to each party, working hours,

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<sup>25</sup> Idem section 10

<sup>26</sup> A. Urrio and J.F. Urrio, *The Law on Employment and Labour Relation in Tanzania*. 2011,08.

<sup>27</sup> <https://www.nidirect.gov.uk/articles> retrieved on Wednesday 12 March 2024 at 12:35

and benefits that are to be given during the work in accordance with condition of the laws.

An Employment Contract also defined as " a legally binding agreement between an employer and an employee used to define the working relationship." <sup>28</sup> Herein there is now additional information to the meaning of the terms by having a legal binding agreement these words makes the term having the same effect in law as by stating that employment contract is legal binding agreement means both parties that is employer and employee when creating it become bound to honour and perform what agreed in the contract when either default means it gives legal rights to another to claim for damages. With this sense still makes the definition to be similar to the other above discussed having the main theme that parties who are employer and employee are the base for employment contract and they create a contract by agreement to terms that cause them to establish close relation of work.

With the meaning above stipulated there is a case which cemented on features of employment contract which is *Arnolac Company Limited Vs Issa Lambert Mugeni*<sup>29</sup> where upon the court given out the hints that show the existence of employment contract such as must be an agreement between the employer and employee in comply with provision of section 14 of ELRA<sup>30</sup> which require the contract being written stating it nature as of specified period of time, unspecified period of time of time and specific task contract. Also another hints is remuneration mode as it can monthly, weekly or hours base, it must contain concept of work meaning the position of work and place of work,

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<sup>28</sup> <https://www.adobe.com>hub> retrieved on Wednesday 12 march 2024 at 12:41

<sup>29</sup> (2013)High Court Labour Revision no 14 at Kigoma ( Unreported case)

<sup>30</sup> Employment and Labour Relation Act CAP 366 R.E 2019

there must be exchange of promise that is what to do in which way of consideration to it.<sup>31</sup>

## 2.4 PARTIES TO THE EMPLOYMENT CONTRACT

The parties to an employment contract are employer and employee simply because they are the one who entered into an agreement of work services.<sup>32</sup> From that concept then it must be clear that on how the parties are defined in legal context.

Employer means "any person, including the Government and an executive agency, who employs an employee".<sup>33</sup> Also employer "means a person or a company that has people who do work for a wages or a salary a person or company that has an employee."<sup>34</sup>

Employer is "natural or legal person who receive reliant or dependent services from an employee".<sup>35</sup> It gives the effect that a person who takes another to work for consideration of payment in terms agreed is an employer.

In context of this study an employer play a great role in process of investigation simply the law gives to him an opportunity to oversee and arrange the whole process of workplace investigation of an employee.

On other party to the employment contract who is Employee is defined as " means an individual who has entered into a contract of employment, or has entered into any other contract under which the individual undertakes to work personally for the other party to the contract and the other party is not a client or customer of any profession, business, or undertaking carried on by the individual, or is deemed to be an employee by the

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<sup>31</sup> A.M. Urio & J. F. Urio., *Digest of Labour Law Cases* 2008-2014. 2016, pg 55.

<sup>32</sup> <https://vlex.es>>vid. Retrieved on 14 march 2024 at 08:06 am

<sup>33</sup> As per section 4 of the employment and labour relation act CAP 366 R.E 2019

<sup>34</sup> <https://www.britannica.com> retrieved on Thursday 14 march 2024 at 08:20 am.

<sup>35</sup> <https://vlex.es> retrieved on Thursday 14 march 2024 at 08:27

Minister under section 98(3) of ELRA. From this definition it recognized an employee even by such category as minister deemed reasonably to be an employee.<sup>36</sup>

Also other source defined an employee " is a natural person providing a reliant and dependent service to a natural or legal person called the employer."<sup>37</sup> Subject to this study the employee is one who works for an employer and thereby he or she becomes party to which investigation held to. Therefore there is no investigation to an employee if there is no employee and so by such fact of existence where any allegation of misconduct arise then investigation towards such an employee is inevitable unless there no justifiable reason for not conducting investigation.

## **2.5 EMPLOYEE MISCONDUCT**

Means "doing something against the law or which is contrary to the employer policy and code of conduct."<sup>38</sup> Also misconduct means unacceptable and improper behavior in a workplace.<sup>39</sup> It can generally be said the employee misconduct involves deliberately violation of standard code and policy of an employer and the laws in whole. Where such kind of action so alleged to happen it there for investigation process will be conducted.

In reference to provision of rule 12(3) of Code of Good Practice Rules <sup>40</sup> it provide for the acts that constitute misconduct such as gross dishonesty, gross negligence, willful damages to property, willful endangering the safety of other, gross insubordination and assault on co-employee, customer, employer, member of family or a person associated with. It must be understood that misconduct involves both violation of above mentioned

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<sup>36</sup> Section 98(3) of the Employment and Labour Relation Act CAP 366 R.E 2019

<sup>37</sup> Ibid

<sup>38</sup> <https://ardeanattorneys.co.tz> retrieved on march 2024 at 09:00

<sup>39</sup> <https://www.gabrielco.legal> retrieved on 14 march 2024 at 09:01

<sup>40</sup> Employment and Labour Relation( code of good practice) GN 42 of 2007

ground or other the employer outlined in their policy and code of conduct which there are many act others included.

So in the event an employee is alleged to commits any misconduct above stated will result to an employer make an investigation to justify the allegation.

## **2.6 FAIRNESS OF THE PROCEDURE**

The law in general requires fair treatment to each other and without discrimination everyone have the same protection by law. As per article 13(1),(2) and (6)(a) and (d) of the CURT<sup>41</sup>. Also subject to section 37(1) of ELRA it gives a requirement that an employer to follow fair procedure while dealing with termination of an employee. In cause of workplace relation between an employer and employee consideration of fairness is of paramount to be observed to maintain the peaceful workplace environment. Such it was held in the case of *Moshi Leather Industries Limited Vs Salim Said Ajal*<sup>42</sup> this case was before judge Mutungi where the fact is the respondent was employed by Moshi Leather Industries Ltd from 9th January 2012 as a Sales Officer stationed at Moshi. On 7 July 2018 while at the Sabasaba Exhibition grounds at Dar es Salaam, he was found by the TRA officers selling the applicant's products without issuing EFD receipts resulted the applicant to be penalized and was to pay a penalty to the tune of Tshs. 3,000,000/= which was paid to the Tanzania Revenue Authority. The applicant did inquire from the respondent through Email communication in which the respondent admitted to the offence and duly apologized to the applicant. Following that event, on the 7 September, 2018 the company terminated the respondent from employment on the allegations of

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<sup>41</sup> The Constitution of the United Republic of Tanzania CAP 2 of 1977 as amended from time to time.

<sup>42</sup> (2019) High Court Labour Revision no 28

serious misconduct following the event of failure to issue EFD receipts, in Dar es Salaam but was paid severance allowance. The respondent was dissatisfied with termination and instituted a case at CMA where judgment was given in his favour. In the end judge find that there was no evidence that they held any disciplinary meeting it means there was no fairness in procedure by employer side and judge cemented that even if respondent had admitted to the offence which he did but a fair hearing was to be conducted. And therefore held following of procedure is mandatory requirement regardless of admission to offence.

## 2.7 WORKPLACE INVESTIGATION

The word investigation can be traced from Latin maxim "investigare"<sup>43</sup> meaning that "search into". An author known as Eugene Ferraro in his work define the meaning of investigation to mean "a logical and intelligent collection of information through inquiry and examination for the purpose of developing evidence so as to solve problem."<sup>44</sup> It also investigation defined as examination, study, searching, tracking and gathering factual information that answers questions or solve problem.<sup>45</sup>

Workplace Investigation in general Means "an objective, independent, and systematic process of uncovering facts about a particular incident that occurred at work. It involves carefully discussing a complaint or grievance for specific misconduct, policy violation, or unethical behavior to reach a final decision and determine the appropriate course of action".<sup>46</sup>

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<sup>43</sup> H.H Ørberg, *Latin -English Vocabulary II*. Ron Pullis Publishers. 1998. Pg 20

<sup>44</sup> E.F Ferraro, *Investigations in the Workplace*. Second Edition 2012,02.

<sup>45</sup> Ibid

<sup>46</sup> <https://safetyculture.com>. retrieved on Thursday 14 march 2024 at 18:12.

After the concept of investigation known as above explained now Workplace Investigation is defined as process of uncovering factual and gathering information by the employer so as to solve problem, restore order and prevent reoccurrence of the incidence in the future.<sup>47</sup>

Workplace Investigation also defined as an act of fact finding for the purpose of making decision upon the final report by employer.<sup>48</sup> It entail that workplace investigation is upon the employer in the process of protection the policy and code of conduct from being ignored or violated by employee will be required by law to conduct an investigation to justify the allegation and take a reasonable decision after the completion of investigation.

Workplace Investigation differ depending on the nature and circumstances of an act that is one act in a certain organization can not constitute great or gross misconduct but in other environment or workplace do. So even the mechanism and final decision will differ in dependence with that factor. It's not generally that every allegation must be investigated but rather some only be dealt with by counseling and giving advice to the wrongdoer especially to the act that are less serious or lack credibility of the allegation.<sup>49</sup>

The most acts that attract immediately investigation in any workplace includes sexual harassment, discrimination on any base, criminal allegation, organization policy violation and even potential violent of employee. The reason for above acts to be dealt with immediately investigation is because they generally touch public interest and moral

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<sup>47</sup> E. Ferraro. *Investigations in the Workplace*, Second Edition 2012,02-03.

<sup>48</sup> J. D. Thompson, *Compliance Response to Misconduct Allegation*. 2013,02.

<sup>49</sup> Ibid page 04.



values and in most society even organization do prioritize protection so as to avoid the company reputation be at stake.

Henceforth workplace investigation it is fundamental base for finding of right and liability of an employee in any workplace and in so doing most organization they do not conduct standard investigation something that bring about miscarriage of justice and even get an employer liable to pay an employee in the end due to failure to comply with procedure to ensure the whole process is legally justifiable.

## **2.8 TERMINATION OF EMPLOYMENT CONTRACT**

Refer to an "act that brings the relationship between an employer and employee to an end"<sup>50</sup>. It means the act of cutting down employment services by employee making each part free from terms and the all agreement formed thereby.

Termination of employment contract also means complete severance of relationship between an employer and employee.<sup>51</sup> The act of terminating employment contract can be voluntary or involuntary depends on the circumstances of the case<sup>52</sup>. In Tanzania termination of employment contract is governed by several laws such as employment and labour relation act<sup>53</sup>, employment and labour relation( Code of Good Practice)<sup>54</sup> and Employment and labour relation( General Regulation)<sup>55</sup>. But most specific provisions on termination under ELRA is stipulated under section 35 to 44 and Rule 3 to 22 of Code of Good Practice.

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<sup>50</sup> <https://www.ardeanattorneys.co.tz> retrieved on 16 March 2024 at 13:24.

<sup>51</sup> A. M. Urio and J.F Urio, *The Law on Employment and Labour Relation in Tanzania*. First Edition 2011, 53.

<sup>52</sup> <https://www.airhr.com> retrieved on 16 March 2024 at 13:35.

<sup>53</sup> CAP 366 R.E 2019

<sup>54</sup> GN 42 of 2007

<sup>55</sup> GN 47 of 2017

Termination of employment contract categorizes into several forms as lawful termination under common law, the employer makes continued employment intolerable for the employee, failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal of the contract, failure to allow an employee to resume work after a maternity or paternity leave and failure to re employ an employee where the employer has terminated the employment of a number o employees for the same or similar reasons and has offered re-employment only to some of those terminated.<sup>56</sup>

The labour laws prescribed reasons that to be applicable in case of termination of employment contract includes termination on cause of misconduct, termination on cause of incapacity, termination on cause of incompatibility, and termination on cause retrenchment.<sup>57</sup> They all justify fair termination of employment contract by an employer while each having its procedural way of dealing as prescribed by law.<sup>58</sup> The justification of termination of employment must be serious in regard to particular of the case and the employer is duty bound to justify that termination of employment contract was fair in absence of such justification then the decision will be dismissed for the lack of merit before the court of law.

**Henceforth** termination of employment contract requires critical observation of justifiable reasons and procedure substance to the alleged reason for termination. It occur in some cases the employer had a justifiable reason for termination but he failed to observe the procedure as per the requirement of law rendering the decision of termination being

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<sup>56</sup> As per section 36 of employment and labour relation act together with rule 3 of code of good practice.

<sup>57</sup> As per section 37(2)(b) of the Employment and Labour Relation Act CAP 366 R.E 2019

<sup>58</sup> Under rule 9(1)&(4) of Code of Good Practice GN 42 OF 2007

unfair and resulting to be struck out. In reference to decision of the High Court Labour Division between *Moshi Leather Industrial Limited Vs Salim Said Ajali*<sup>59</sup> where the applicant prayer were dismissed for the reasons that there was unfair termination to the respondent by fact of failure of an employer to follow procedure of termination on ground of gross negligence which later found that the decision for termination was invalid.

Generally the above concept is giving the clue on understanding this study upon referring to laws and various scholarly work to which their views pose a great clarification in support of how the matter is, also together with decided cases justify the hints in this discussion.

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<sup>59</sup> (2019) Labour Revision no 28

## **CHAPTER THREE**

### **LEGAL BASIS OF INVESTIGATION PROCESS ON TERMINATION OF EMPLOYMENT CONTRACT.**

#### **3.1 INTRODUCTION.**

This chapter examines the legal basis of labour laws showing on how it protect the workplace investigation process and how it is inadequate towards achieving proper manner and justification under workplace investigation in Tanzania. In examining the legal base in respect to this study, the researcher applied both international laws and domestic laws respectively showing on how the laws prescribe the workplace investigation.

#### **3.2 INTERNATIONAL LEGAL INSTRUMENTS IN RELATION TO INVESTIGATION PROCESS.**

The international legal instruments subject to this study in examination includes Universal Declaration of Human Right of 1948, and Convention Concerning Termination of Employment No. 158 of 1982 respectively.

##### **3.2.1 Universal Declaration of Human Right of 1948.**

This instrument marked a great achievement of human right, justice and peace in the world simply because it was established for the purpose to open up a modern way of living out of fear and to ensure all people have access to freedom, dignity and equality.

In respect to this study, this law enshrine various crucial aspects of labour which still applicable and of highly respected in any country by prescribing rights that are inherently to all human being. Such as per article 1,2 and 7 which state that every person has the right to equality and dignity which in labour law particularly on aspects of wages, hours

of work, conditions of work and benefits in touch are object that form part and parcel of being treated equally and without discrimination as per article 2<sup>60</sup>. The UDHR in article it gives the basic principle which is most referring in labour law which is non-discrimination as on any basis is unacceptable and punishable before the law even in Tanzania.

Also under article 7 of Universal Declaration it provide that all people are equal before the law and are subject to equal protection by the law it means that both employer and employee must be given equal right in respect of each and being protected from an act that will cause harm or disadvantage to another. So even investigation process being the matter must be conducted in such way protect the privacy of employee and the all the rights entitled must be respected. On other hand the employer must be protected from employee misconduct that will results disadvantage to the company or organization.

In respect of article 10<sup>61</sup> it gives the right to an employee to be given a chance to defend in any allegation towards him. So the law recognized the importance of person being given such right to avoid arbitrary decision which will eventually bring to miscarriage of justice.

The basic provisions from Universal Declaration in relation to this study is under article 23 which prescribe the right to work, equal remuneration, freedom of choice of employment, just and be in favorable working conditions, right to form and join trade union and protection of unemployment.<sup>62</sup> With this provision of the law marked a change of legal recognition of the right to work in in good and favorable conditions

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<sup>60</sup> Universal Declaration Of Human Right Of 1948 under Article I and II.

<sup>61</sup> Idem it prescribe the right to be heard.

<sup>62</sup> Universal Declaration of Human Right Article 23(1) state as "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

upon being given protection from any act by employer that will result to unemployment. Workplace investigation can result to unfair employment termination and finally unemployment rate increase. So for avoidance of high rate of unemployment in any given country the proper manner of dealing with investigation process must be fair and standardized.

### **3.2.2 Termination of Employment Convention No. 158 of 1982.**

This convention was result of recommendation of 1963 which aims to address the issue of economic difficulty and technological change protecting the employee from unfair termination of employment contract<sup>63</sup>. This convention given hand to several points relating to process of termination of employment contract such under article 2 enshrined categories of employment contract as contract of specified period of time, contract of specific task, probation workers and workers of short period of time. Under article 3 it defined termination of employment to mean termination of employment at the initiative of the employer.

This convention prescribed valid reasons for termination of employment contract by employer such as capacity of employee or conducts of the employee or based on the operational requirements<sup>64</sup>. The law is also prescribe the procedure to be complied while terminating an employee such giving him or her the right to be heard or defend unless it's expected unreasonable to do so as per article 7. This is also discussed in the case of *AFREXA Vs Ramadhani Bakar*<sup>65</sup> where the honourable judge A.C Nyerere cited article 7

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<sup>63</sup> Under the preamble of the termination of employment Convention

<sup>64</sup> Termination of employment convention no 158 of 1982 under article 4.

<sup>65</sup> (2016) Labour Revision no 94 under page 5 of the typed judgement.

to be mandatory provisions for employer to comply and that is to give an opportunity to employee to defend for the allegation or in other word it termed as right to be heard. This law also gives the requirement of appeal procedure of employee towards the decision of employer by having labour tribunal, board, labour court and the committee with impartial nature.<sup>66</sup> So the procedure is essential area for the sake of justice while in some cases employer mislead the judgment by failure to comply with procedure.

### **3.3 DOMESTIC LEGAL INSTRUMENTS IN RELATION TO INVESTIGATION PROCESS.**

#### **3.3.1 The Constitution of the United Republic of Tanzania of 1977 and its amendment.**

The Constitution is mother law of land to which it has supreme authority over the other laws in Tanzania. Being the fact that any law which contradicts with it will be declared void and null then requirement of compliance with the spirit of constitution is mandatory<sup>67</sup>.

The CURT subject to this study it prescribe the basic right of an individual essentially under article 12 and 13 it provide that all human being are equal and be subject to protected by laws without discrimination. But also under article 22 and 23 it gives that all person have the right to work and be paid equal remuneration in respect of work done. By fact of Constitution of the United Republic of Tanzania making right to work and be paid equal remuneration as basic right, it then gives a picture that no one should interfere with such right in any manner whatsoever which will be contrary to the requirement of law and even though for a person to be fired from work the reasonable ground and procedure must be well observed and complied with respectively. That can

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<sup>66</sup> Idem as per article 8.

<sup>67</sup> Under article 64(5) Of Constitution of the United Republic of Tanzania of 1977 as amended from time to time

be referred in the case of *Mussa Andrea Mtunga Vs Tanzania Electric Supply Company LTD*<sup>68</sup> whereby Judge Mupawa Cemented that right to work is a right that cannot be taken away from an individual, unless there are valid reasons for doing so, and fair procedures.

The Constitution of Tanzania as far as this study is concerned it has greatly taken party by having essential provisions that create a base of employment law. That is for the contract of employment to be construed there must be work to be done by employee and from therein, then the relation between employer and employee begin whereby the duties and obligation towards such relation become part and parcel of parties thereof. Such duties under the Constitution it stipulate the among duties of employer which is the duty to pay equal remuneration to the employee in regards to the substance of the work.<sup>69</sup>

### **3.3.2 The Employment and Labour Relation Act [CAP 366 R.E 2019].**

This law is principle legislation which governs the matter in relation to employment by containing employment standard, rights and duties of parties to the employment, disputes mechanism settlement in relation to labour law.<sup>70</sup> This law contains provisions that essential for labour specifically under part II it is all about fundamental rights and protection such involves protection of employee against workplace discrimination, prohibition of forced and child labour, and giving requirement of freedom of association.<sup>71</sup> The labour regime before the enactment of this law in Tanzania faced a lot of challenges that create a list of legal problems and a lot of cases to the effect that laws

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<sup>68</sup>(2015) High Court Labour revision no 06 under page 16 of the judgment.

<sup>69</sup> The Constitution of United Republic of Tanzania of 1977 as emended in several time under article 23 which states as "Every person who works is entitled to just remuneration."

<sup>70</sup> Make reference to preamble of the ELRA of 2004 as emended in 2019.

<sup>71</sup> Idem in references to section 5-12.



applicable in Tanzania did not meet international standard of protection of employment field. But with the change and enactment of ELRA marked significance change of legal protection between employer and employee.

In respect to this study under this law subject to provisions of part III which is all about employment standard such as giving right to an employee to work under favorable conditions, payment of remuneration, hours of work, and giving leaves to an employee.<sup>72</sup> But most under sub part E which prescribe the conditions for termination of employment contract by providing forms of termination, reasons for termination, procedure of terminating employment contract and the remedies for unfair termination.<sup>73</sup>

Forms of termination recognized under this law includes the following a lawful termination of employment under the common law, a termination by an employee because the employer made continued employment intolerable for the employee, a failure to renew a fixed term contract on the same or similar terms while there was a reasonable expectation of renewal, a failure to allow an employee to resume work after taking maternity or agreed maternity leave, and a failure to re-employ an employee while the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them.

Reasons for termination subject to this law stipulated includes as either related to the employee's conduct, capacity or compatibility, and lastly based on the operational requirements of the employer.

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<sup>72</sup>Employment and Labour Relation Act CAP 366 R.E 2019 under section 13-34

<sup>73</sup> Idem subject to provision of section 35-44.

This law also prescribed the remedies for unfair termination of employment contract as per section 40(1) which are first remedy is to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination, second remedy is to re-engage the employee on any terms and the last remedy is that the arbitrator Court may decide to pay compensation to the employee of not less than twelve months remuneration.

### **3.3.3 Employment and Labour Relation (Code of Good Practice) Rules GN 42 Of 2007**

This rule was made in respect of provision of section 99 of ELRA of 2004 which gave the authoritative power to the minister to make guidelines and code of good practice in relation to application of employment and labour relation act. These rules stipulate the whole process of termination through giving recognition to forms of termination, the categories of termination, and reasons for the termination of employment contract, the procedure of termination in respect to the ground of termination, remedies available to unfair termination and all benefits that are to be given to an employee<sup>74</sup>.

In respect to this study the main focus is rule 13 which stipulate about the requirement of conducting investigation by employer for the purpose of ascertaining the allegation towards an employee. In reference to the case of *AFREXA Vs Ramadhani Bakari*<sup>75</sup> Judge Nyerere commented that "The relevant procedures to follow during termination of employment contract on misconduct is provided under Rule 13 of the Employment and Labour Relations (Code of Good Practice) GN 42/2007 which among other procedures

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<sup>74</sup> As per rule 3 to 27 of the Employment and Labour Relation(Code of Good Practice) Rules GN 42 of 2007

<sup>75</sup> (2016) High Court Labour Revision no 94 under page 5-6.

requires employer first to conduct investigations to ascertain whether there're are grounds for hearing to be held."

### **3.3.4 Employment and Labour Relation (General) Regulation GN 47 of 2017.**

This regulation was made in respect of provision of section 98 of the Employment and Labour Relation Act of 2004. This regulation contain several matter in respect of labour laws such includes it prescribe the employment standard as per rule 11- 17, it also stipulate on strikes and lockout, employer association, trade union and federation together with forms that are applicable while dealing with labour matter<sup>76</sup>.

Generally from the above discussion they are governing laws in regards to this study and they form base of employment laws giving protection of employer and employee in dealing with one another. And in respect to the cases under employment field from board, labour court, labour tribunal or commission are required to comply with procedure as stipulate in those above laws.

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<sup>76</sup> Idem under rule 18-30

## CHAPTER FOUR

### RESEARCH FINDINGS AND ANALYSIS TOWARDS INVESTIGATION PROCESS IN TANZANIA.

#### 4.1 Introduction

This chapter is made up of finding and analysis of data from the field of various personnel who are part to the investigation process upon which the researcher examine their views in relation to this study effectively. The list of personnel upon researcher relied on includes arbitrator, advocate, employee, and employer as below respectively analysed chronologically.

#### 4.2 RESEARCH ANALYSIS

##### 4.2.1 Arbitrator

The researcher has furnished to meet the Honourable arbitrator working at the Iringa Commission for Mediation and Arbitration (CMA)<sup>77</sup> whereby the arbitrator has been at office for quite sometimes upon handling various cases in relation to termination of employment involving the cause of investigation process undertaken towards employee and he explained that in most of his case at hand (list of number of cases were not known) involving employer with duty to conduct investigation as per requirement of rule 13(1)<sup>78</sup> in the end resulted some of the being decided that the employer failed to properly doing investigation based on point that in course of conducting investigation process the employer failed to prepare written investigation report which rendered the

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<sup>77</sup> In course of interview conducted in 08 may 2024 at 14.20 PM at Iringa

<sup>78</sup> Employment and Labour Relation (Code of Good Practice) Rules GN 42 of 2007

case to be decided in favour of employee on the basis of failure to prove procedural adherence.

That was associated with lack of written investigation report to justify the procedure of doing investigation was effective complied as per the requirement of the law. The arbitrator also added that the employer failure conduct investigation properly is associated with the document to be drafted is nowhere to be find and even the content and structure of the document is not properly stipulated.

So with such point view from the arbitrator it is clearly prove that the law in itself is inadequate in stipulating proper manner to conduct investigation process especially prescribing mandatory requirement of writing investigation report after the investigation process is done and the law should clearly stipulate the structure and content to be disposed under the investigation report.

Also researcher have furnished to go through the case held upon by arbitrator Hon. Lucia Chrisantus, Arbitrator in Labour dispute between *Yakobo John Masanja Vs MIC Tanzania Limited*<sup>79</sup> where by the arbitrator accepted the investigation report (exhibit D11) bears no name and signature of the author to form part of the respondent evidence something that challenged by High Court Labour Revision between *MIC Tanzania Limited Vs Yakobo J Masanja*<sup>80</sup> whereby judge reversed that the acceptance of investigation report was invalid simply the arbitrator was erred in law to accept the document that bear no name and signature of the author. In respect to this case it also show that investigation process was not well complied for the reason that the law does not clear specify the

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<sup>79</sup> No. CMA/DSM/KIN/R.914/16/928 at Kinondoni

<sup>80</sup> (2021) Labour Revision no 107 bofore judge B.E.K. Mganga

content and structure on written investigation report rendered even the arbitrator to incur error in cause of assessing the investigation report submitted by the MIC Tanzania Ltd.

Also the researcher furnished to go through the case held by Honourable Magreth, Arbitrator of the Commission for Mediation and Arbitration in Labour Dispute between *Sinai Mwakisisile Vs MIC Tanzania PLC*<sup>81</sup> whereby Sinai Mwakisisile was employed by the MIC TANZANIA LTD in 15/05/2013 as Assistant Procurement specialist on permanent basis and later on given high position of Procurement Specialist. But 02/04/2017 the applicant was terminated for gross negligence after the disciplinary proceeding was conducted and thereafter referred the matter before CMA at Kinondoni Dar es salaam where arbitrator given decision in favour of applicant based on point that there was no investigation report to prove procedure adherence to termination by employer and finally arbitrator appears to suggest that the investigation has to be followed with a report. The same was affirmed in the revision of the same case before judge A. E. Mwipopo between *MIC Tanzania Plc Vs Sinai Mwakisisile*<sup>82</sup> where the Honourable Justice Mwipopo given his opinion that testimonies of witnesses without proof of document to show the finding or the report of the alleged investigation cannot prove that the investigation was conducted.

Hence this also demonstrate that the requirement of investigation report is necessary to be undertaken by employer in course of conducting investigation to the employee and

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<sup>81</sup> No.CMA/DSM/KIN/R.213/18/84 at Kinondoni - Dar es salaam

<sup>82</sup> (2019) High Court Labour Revision no 387 (unreported)

therefore the law must state clearly the content, structure and give mandatory requirement of preparing written investigation report.

#### **4.2.2 Advocates**

The researcher furnished to interview an advocate practicing mostly on employment and labour disputes having quite experience, knowledge and skills on such field of law.<sup>83</sup> In course of interview the learned advocate from the office stated among the other things that the labour laws are still developing and in fact it cover a lot of work field to the extent that the changes of laws go together with the changes of technology to build the modern society.

An advocate added that the process of conducting investigation by employer as far as the provision of rule 13(1)<sup>84</sup> of the Code is concerned it is too wide to the effect that an employer can choose not to write the investigation report, upon the position is quite different when it comes to court interpreting the provisions. So the provision of the law is inadequacy in prescribing the proper manner to conduct an investigation by employer and simply results to an employer failure to prove before the court or tribunal that investigation process was conducted effectively.

The researcher also succeed to consulted the other learned advocate by means of questionnaire<sup>85</sup> to the effect that in regards to his views on labour laws pertinent to investigation process it's actually clear on point that the laws does not specify clear the mechanism for an employer to handle the process, especially as to whether it will

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<sup>83</sup> The Interview was conducted on 09 May 2024 at 13:05 PM The advocate working at Lawmax Attorneys

<sup>84</sup> Employment and Labour Relation(Code of Good Practice) Rules GN 42 of 2007

<sup>85</sup> The questionnaire replied on 09 May 2024 through online means under social media platform.

depend on the institution set up procedure or the requisite of the general laws. And in most cases some institution takes power for granted to construe their own format of investigation tabled in manner as they prefer and finally the court pronounce on the document to be inadmissible simply because it does not contain names, signature, alleged violation of misconduct, name of person conducted investigation, experience on process, and the procedural finding to reach conclusion.<sup>86</sup>

Henceforth the researcher is finally comes into the finding that with such failure of an employer it's obvious the laws in respect to investigation process is still inadequacy to prescribe the proper manner to conduct investigation especially in course of requirement of mandatory investigation report writing, the content to be disposed thereof and the format it required to be drafted to justify the claim before the tribunal or the court of law.

It's settled view on investigation process that where an employer claim to conduct investigation without writing investigation report rather attending in court with witnesses to testify the fact, it will not be given weight in court or tribunal as per the opinion of the judge A.E Mwipopo in the case between *MIC Tanzania Plc Vs Sinai Mwakisile*<sup>87</sup> referring to page 13 of the judgment upon which he cemented that the testimonies of witnesses without proof of document to show the finding or the report of the alleged investigation cannot prove that the investigation was conducted.

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<sup>86</sup> In respect to an advocate opinions upon the perspective of investigation process influenced by his experience in dealing with some of the cases.

<sup>87</sup> (2019) High Court Labour Revision no 387 at Dar es salaam (Unreported Case)



### 4.2.3 Employee

The researcher of this study furnished to go through the views of numbers of employee to whom the investigation is normally conducted as per the requirement of the law but also without employee no employment contract can be undertaken therefore it can be said that employee play a great role in respect to this research.

The researcher first collected the view from an employee working under private institution<sup>88</sup> upon the course of his view based on investigation process he asserted that investigation report is of great significance simply because it justifies the process and maintain the clarity of truthfulness of fact. But also the employee stated that he never being involved under investigation but rather at their institution there is general disciplinary rules that prescribe the conduct that attract termination of employment contract even though it does not prescribe the manner to conduct investigation nor he never seen any drafted investigation report. Therefore this prove that in such institution the investigation process under their institution is inadequacy resulted from the weakness of the law to put mandatory requirement of writing investigation report.

The researcher furnished to collect view from one driver an employee working at private institution<sup>89</sup> being under employment for three years, he asserted that in his period of working he was once charged of gross insubordination for the fact of denying to orders from manager who told him collect package of boxes for his private setting and without issuing payment upon the incidence happen in several times. But in course of

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<sup>88</sup> A teacher by profession working at Dar es salaam through questionnaire

<sup>89</sup> Having it's headquarters at Songea-Ruvuma region

investigation he was suspended for a while after being given a letter but no investigation report was written in the end but he was warned to act as per the order.

This prove that in some of the private institution the mechanism of conducting investigation is poorly handled because investigation is conducted by person who has little or no knowledge of law and procedure to the effect that in course of termination of employee the obligation of the law to prove the termination is fair will be shaken easily for the fact that there is no document drafted to prove the procedural adherence to law but this also is associated with inadequacy of the law to prescribe the requirement of mandatory written investigation report.

The researcher succeeded to collect data from one employee working under public institution<sup>90</sup> upon his views on investigation process based on significance of employer to use a justifiable means to conduct investigation without affecting the rights and obligation imposed by the law and in respect to procedure applicable in conducting investigation are always involves a person being suspended for a while to cause the mechanism go smoothly especially in serious misconduct. But the employee added that for the purpose of fair procedure the employer is required to be fair and comply the laws even at the end to ensure writing of investigation report.

Therefore with such assertion of an employee it's actually based on proving the significance of the requirement of writing investigation report after the process of investigation is done. So the law needs to be adequate to provide clear on point of investigation process undertaking by employer.

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<sup>90</sup> A teacher of Primary School working at Singida who responded through questionnaires given to him by way of social media (WhatsApp) at 26 April 2024.

The researcher also furnished to go through the view of one of the employee working as shopkeeper at private institution<sup>91</sup> at first she introduced to be employed in the office for two years and working together with two other person. In course of interview the respondent adduced that she was once charged for gross negligence as there was a loss at the office but the employer did informed her on the allegation and threatened to terminate the employment contract if she cannot compensate for the loss occurred due to the negligent. But she further added that there was no investigation report written down or the rules in their office it does not mention the mechanism to be employed in conduct of investigation.

This prove that an employer didn't draft any document to show the process of investigation was conducted and if the employment was to come to an end it simply show that the employer had no chance to prove fair procedure of termination was followed. So this is simply the problem associated with the law as it does not specific provide for the requirement of writing investigation report, nor the content to be disposed and format it required to be drafted.

The researcher also by means of questionnaire collected data from one former employee used to work at Mbeya as Security Guard and he has been at the post for three year from 2 June 2018 until he was terminated in 2021<sup>92</sup>. In course of analysing his views asserted on the basis of investigation that he was terminated for the reason of being involves in sexual harassment to three women whereby he was informed of the charge and

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<sup>91</sup> Office situated at Old Bus Station-Iringa dealing with selling of cosmetic product through interview held on 07 May 2024 around 11:15 am

<sup>92</sup> The researcher applied social media (whatsapp) to ensure collection of data and the process took place at 05 May 2024

suspended the other day in 20 January 2021 pending investigation but in the end there was no investigation report written down until he was terminated.

This also prove that neither the institution had its own rules that gives the requirement of writing investigation report nor the rules under labour laws specify the basis of conducting investigation. Hence this is associated with inadequacy of the labour laws to prescribe the proper manner of conducting investigation process especially the require of writing investigation report, content to be disposed in the report and formed it required to be drafted.

The researcher succeeded to collect data from one employee working under public institution<sup>93</sup> upon his views on investigation process based on significance of employer to use a justifiable means to conduct investigation without affecting the rights and obligation imposed by the law and in respect to procedure applicable in conducting investigation are always involves a person being suspended for a while to cause the mechanism go smoothly especially in serious misconduct. But the employee added that for the purpose of fair procedure the employer is required to be fair and comply the laws even at the end to ensure writing of investigation report.

The researcher first collected the view from an employee working under private institution<sup>94</sup> upon the course of his view based on investigation process he asserted that investigation report is of great significance simply because it justifies the process and maintain the clarity of truthfulness of fact. But also the employee stated that he never being involved under investigation but rather at their institution there is general

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<sup>93</sup> A teacher of Primary School working at Songea who responded through questionnaires given to him by way of social media (WhatsApp) at 26 April 2024.

<sup>94</sup> A Doctor by profession working at Iringa through questionnaire

disciplinary rules that prescribe the conduct that attract termination of employment contract even though it does not prescribe the manner to conduct investigation nor he never seen any drafted investigation report. Therefore this prove that in such institution the investigation process under their institution is inadequacy resulted from the weakness of the law to put mandatory requirement of writing investigation report.

The researcher furnished to collect view from one driver an employee working at private institution<sup>95</sup> being under employment for two years, he asserted that in his period of working he was once charged of gross insubordination for the fact of denying to orders from manager who told him collect package of boxes for his private setting and without issuing payment upon such incidence happen in several times. But in course of investigation he was suspended for a while after being given a letter but no investigation report was written in the end but he was warned to act as per the order.

Therefore with such assertion of an employee it's actually based on proving the significance of the requirement of writing investigation report after the process of investigation is done. So the law needs to be adequate to provide clear on point of investigation process undertaking by employer.

#### **4.2.4 Employer**

The researcher to this study collected data from several employer under private institution to the effect that, the basis of this study is directly touch the obligation imposed to employer to ensure the procedure stipulated under labour laws are effectively complied with also in course of employment contract upon termination of employment the employer first part before the employee.

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<sup>95</sup> Having its headquarters at Songea-Ruvuma region

The researcher furnished by means of questionnaire to collect data from an employer having a Microfinance business<sup>96</sup> whereupon he asserted the point that he has rules that guiding his business which together with labour laws in Tanzania. His views in respect to questions given created base for investigation process as he has a manager who is responsible in conducting investigation but it's rules neither prescribe the requirement of writing investigation report nor the law require them to do so.

Henceforth in regards to his view it is clear prove that the requirement of writing investigation is undefined and not mandatory something that also the labour laws in Tanzania failed to prescribe simply means there is inadequacy in labour laws.

The researcher interviewed an employer involves in employing drivers of tricycle<sup>97</sup> whereby in course of interview he asserted the point that at his office there is rules that guides the drivers in contract especially on conducting investigation process but in case of doing investigation he is obliged to questions the particular employee in respect to the alleged misconduct and in the end decide whether to terminate the employee contract or to warn but he never write down investigation report.

So it is obvious that in case of termination of employee the employer will be in a position to lose his case for failure to prove procedure adherence in course of termination as per section 37(2)(c) of ELRA<sup>98</sup>

Also the researcher interviewed an employer of security guards<sup>99</sup> in course of interview he asserted the point that he has no written rules guiding security guards but terms in the

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<sup>96</sup> Operating and having it's office at Ipogoro-Iringa upon the questionnaire was replied at 08 May 2024

<sup>97</sup> The interview was conducted at his office situated in Ilala- Iringa on 03 May 2024 at 15:09 pm.

<sup>98</sup> The Employment and Labour Relation Act [CAP 366 R.E 2019]

employment contract expressly provide concerning investigation process and he has no tendency of writing investigation report in any case instead inform the employee on misconduct and if the act is gravity enough to attract termination may act upon to terminate the contract especially where there is loss of properties, insubordination, bad character with his family member. Hence this is actually the defect that can result for employer failure to prove procedure adherence in respect of termination of employment contract and it's direct associated with inadequate of the labour laws in Tanzania to prescribe the requirement of written investigation report, content to be disposed in the document and format it required to be.

The researcher furnished by means of questionnaire to collect data from an employer having a Microfinance business<sup>100</sup> whereupon he asserted the point that he has rules that guiding his business which together with labour laws in Tanzania. His views in respect to questions given created base for investigation process as he has a manager who is responsible in conducting investigation but it's rules neither prescribe the requirement of writing investigation report nor the law require them to do so.

Henceforth in regards to his view it is clear prove that the requirement of writing investigation is undefined and not mandatory something that also the labour laws in Tanzania failed to prescribe simply means there is inadequacy in labour laws.

Generally from the above analysis of the researcher to this study with no doubt that the labour laws in Tanzania pertinent to investigation process are still inadequacy to

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<sup>99</sup> The employer takes employee for individual house security guards at Njombe nearby bus station, the interview was conducted through cellphone call at 07 May 2024

<sup>100</sup> Operating and having it's office at Makorongoni-Iringa upon the questionnaire was replied at 08 May 2024

prescribe the proper manner of conducting investigation process upon rendering an employer failure to have evidence before the tribunal or the court to prove procedure compliance in respect to fair termination of employment contract. Therefore the hypothesis of the study is positively proved to the extent that labour laws in Tanzania are inadequate to prescribe proper manner to conduct investigation process.



## **CHAPTER FIVE**

### **RECOMMENDATIONS AND CONCLUSION IN RELATION TO INVESTIGATION**

#### **PROCESS IN TANZANIA**

##### **5.0 INTRODUCTION**

This chapter composed of researcher recommendation and conclusion towards the problem of the labour laws in Tanzania associated with inadequacy of the laws to prescribe the proper manner to conduct investigation upon the obligation relied on employer hand to justify fair termination of employment contract.

##### **5.1 RECOMMENDATIONS IN RELATION TO INVESTIGATION PROCESS IN TANZANIA**

The researcher recommend that there must be amendment of the provisions of 13(1) of the code of good practice<sup>101</sup> to the effect that the rule itself is inadequacy to prescribe proper manner to conduct investigation process by employer and thereby the provisions needs to be specific prescribe as follows

###### **5.1.1 LEGAL RECOMMENDATIONS**

First, the rule has to stipulate the mandatory requirement of writing investigation report so as to enable an employer being in a position to comply with the requirement of the law<sup>102</sup> that is for a tribunal or labour court to hold judgment in favour of employer in respect with the cause of investigation process adherence then the document to as proof of procedure must be certain and drafted.

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<sup>101</sup> Employment and Labour Relation ( Code of Good Practice) Rules GN 42 of 2007

<sup>102</sup> Labour Institution Act CAP 300 R.E 2019 specific under provisions of section 60(1) and (2) which provide for the burden of proof.

Second, the Rule of 13(1)<sup>103</sup> needs to stipulate precisely the contents of the document that is written investigation report to be composed of names of parties to the employment contract, statement of the alleged misconduct, provisions of the laws and guidelines of the institution alleged to be violated, the mechanism applied in the investigation, the name of a person conducting investigation, status of the investigator together with signature thereof.

Third, the Provisions of the Rule needs to prescribe the sample of format needed to be reflected by employer in course of preparing the document especially to state the name of the employee, date the investigation started and ended, alleged misconduct, methodology applied in the investigation, brief experience of the investigate, and finally name and signature.

### **5.1.2 NON-LEGAL RECOMMENDATIONS**

The researcher first recommend on raising of awareness among the employer in respect to mechanism that have to be employed while conducting investigation as some of them find themselves in breach with the duties that given by the law example the duties of confidentiality and protection of privacy.

Also the researcher is recommending that an employer has to create friendly environmental to ensure maintenance of relationship between employer and employee in course of conducting investigation process as it happen sometimes some employer do not prepare a good environmental resulting to after investigation the employer and employee relationship become at stakes.

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<sup>103</sup> Employment and Labour Relation (Code of Good Practice) Rules GN 42 of 2007.

## 5.2 CONCLUSION

The researcher is in views that with above finding in relation to labour laws pertinent to investigation process upon termination of employment contract by employer, it will of great advantages to consider the amendment of the rules governing investigation in Tanzania giving employer strength into the case as proof of fair procedure compliance as per the requirement of the law and burden of proof simply because the provisions until now is inadequacy to prescribe the proper manner of conducting investigation process. Therefore the researcher call for immediately amendment of the laws with due respect with recommendations stipulated under this study respectively.

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