IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT MWANZA

LABOUR DISPUTE COMPLAINT No. 01 OF 2017

GIDION ODONGO .....}
RAMADHANI KILONZO.....} COMPLAINANTS
KESSY LIMBE & 86 OTHERS.....}

VERSUS

PAMBA ENGINEERING LTD.....}

TREASURY REGISTRAR.....} RESPONDENTS

ATTORNEY GENERAL.....}

JUDGMENT

27th April & 19th May, 2021

TIGANGA, J

In this complaint, the complainants are 89 individuals. They were employed by the first respondent in various capacities, and were lawfully terminated by their employer after the employer had been put under liquidation. They were paid their dues but according to them, they were not paid all their entitlements. They filed a complaint in terms of section 94

of the Employment and Labour Relations Act, No. 6 of 2004 and Rule 6 (1)(a)(b)(c)(d) and (e) of the Labour Court Rules, 2007 GN. No.106 of 2007. They are seeking for judgment and decree against the respondent as follows;

(i) Payment of Tshs. 70,909,000/= being the underpaid salaries which was increased but not paid, Tshs. 381, 749,500/= being the subsistence expenses from 18/12/1999 up to 28/05/2001, and Tshs. 211,740, 880/= being a hand shake, all items totaling Tshs. 738, 068,980/=,

(ii) Payment of interest in (i) above,

(iii) Any other relief as this honourable court may deem just to grant.

As pointed out, the background information which gave rise to the complaint at hand as indicated in the complaint filed by the complainant is that, before the year 1999 the complainants were employed by the 1st defendant in various capacities. However, on 08/12/1998, they were all terminated with the promise of being paid one month salary in lieu of leave, repatriation costs, and costs of transporting their personal effects.

According to the complainants, it was their expectation that, the basis of computing the terminal benefits payable was to be the new salaries which were apparently increased by the employer effective from January 1998 but contrary to what they were expecting; their benefits were calculated on the basis of the old salaries. Following that predicament, the complainants are claiming Tshs.70, 909,000/= which they were not paid by their employer.

Also that as an implied term of the contract, the complainant would be paid subsistence expenses from 18/12/1999 up to 28/05/2001 totaling Tshs. 381,749,500/=.

Further to that, it was pleaded that, on termination, the 1st respondent promised to pay a package of a handshake totaling Tshs. 211,740,880/=.

In the complaint, the complainants proposed the following legal issues;

a) Whether the complainants are entitled to the claims of subsistence allowance.

b) Whether the complainants are entitled to the claims of salary deductions/unpaid salaries

c) Whether the complainants are entitled to the claims of hand shake package.

As a matter of procedure, parties appeared to the Deputy Registrar for Pre trial Conference in terms of rule 10 of the Labour Court Rules GN No. 106 of 2007. On 06/05/2020 the Deputy Registrar issued a non settlement order where parties had agreed on the followings;

(i) That, the complainants were employees of the respondent

(ii) That, the 1st respondent was at all time the employer of the complainants

(iii) That, all liability of the first respondent had been vested with the second respondent,

(iv) That in termination letters, the respondent promised to pay the complainants one month salary in lieu of leave, repatriation costs and cost of transport.

(v) That the complainants were all terminated

However, the following issues were and remained in dispute as follows:

(i) That, the complainants were not paid all their entitlements,

(ii) That, the complainant were not underpaid,

(iii) That, the complainant were not paid subsistence allowance,

(iv) That, the complainant were not paid the promised handshake packages,

The issues which the court is required to decide upon and the relief sought are as indicated above.

After such non settlement order, the case took of for hearing when the complainants called three witnesses, namely Ramadhani Kilonzo, Gidion Odongo and Kessy Limbe, who testified as PW1, PW2, and PW3 respectively and tendered 9 exhibits, namely a termination letter, exhibit P1, salary slips of PW1, exhibit P2, a follow up letter to the PSRC, exhibit P3, A certificate of service issued to Gidion Odongo, exhibit P4, a salary slips of Kessy Balele, exhibit P5, the record of underpaid salaries, exhibit P6, subsistence allowance schedule, exhibit P7, handshake schedule exhibit P8, and a letter ending the contract of employment as exhibit P9.

The respondent called only one witness Herieth Joseph Nangela who testified as DW1 and tendered no any exhibit.

In his testimony, PW1 testified that, he was employed by the 1st respondent as filter and turner since 08/10/1981 but, he was terminated from the employment in 1999 through exhibit P1. However after

termination he was not immediately paid his entitlements; he was paid on 28/05/2001. According to him, at the time of his termination, he was being paid a salary of TShs.49, 925/= this is according to the salary slip, exhibit P2, but when he went to NPF, he found the deduction was from the salary which when computed, he was supposed to be paid Tshs.85,000/= but instead he was being paid Tshs. 49,925/=, therefore he was underpaid.

Having so found, in the company of his fellow employee they decided to ask for assistance from the Advocate, consequence of which they approached Mr. Muna, Advocate who wrote a letter to the employer which letter was responded to, by the PSRC through exhibit P3, which proved that they are entitled some of the claims. The salary he was receiving was Tshs. 49,225/= its ten percent is Tshs. 4,925/= but when he went to pension fund, he found that he was contributing about Tshs.10,000/= signifying that his salary was bigger than what he was receiving. According to him, after computing what he was supposed to be paid, he found the unpaid amount was Tshs. 811,900/=.

In his evidence, he also claim to be entitled to subsistence allowance of Tshs. 4, 969, 500/= which is computed from when he was interdicted up to when their employment was terminated, and Tshs. 3, 609,133/= the

handshake which was agreed between the employee and the 1st respondent. Under this component, he said he had already been paid Tshs. 246, 447/=.

Testifying for the rest of the complainants, he said the total amount of underpaid salaries is Tshs.78,124,100/=, the subsistence allowance Tshs. 423, 175,500/= and the handshake Tshs. 236,769,380/=

On cross examination, he said that, the list of the entitled was prepared by the complainants, but some of the complainants have already passed away. Further to that, he said that although they had agreement, but he did not tender such agreement of paying the handshake, as it was confidential information kept by employer.

In further cross examination, he said he was not interdicted at all, but his contract was terminated. He said they are claiming what they are entitled, as elaborated in exhibit P3, shows that some of the claims by the complainants were not listed on the letter exhibit P3 as their entitlements. In the year 2001, they were not paid new salaries (unpaid salaries).

In re examination he claimed that all that they claim were not paid to them.

PW2 said was employed in 1989 and worked for the 1st respondent up to 10/12/1999 when he was terminated, he tendered a certificate of service, exhibit P4 to prove his employment and termination. He said he claim the payment of handshake, because he was promised to be paid Tshs. 3,610,000/= but out of that, he was paid only Tshs. 67,000/= times two, which means he was paid Tshs. 134, 000/= so he is still claiming the balance of 3,476,000/=. He also said he claim the subsistence allowance, as they were not repatriated to their place of domicile immediately after termination. On that category of claim, he said he was supposed to be paid Tshs. 4,969,000/=. Last, he claims Tshs. 811,900/= as the unpaid salary which was underpaid.

He said the underpayment was discovered when he went to the pension fund where he found that the deduction was bigger than what was supposed to be deducted from the salary he was receiving.

On cross examination, he said he tendered no salary slip, he said in exhibit P3 the items to be paid have been listed, but in that list there is no handshake and underpayment salaries. He said he was paid handshake twice before the termination.

In re examination, he said his last salary was Tshs. 49,930/= but in NPF the deduction was Tshs.9,000/= which is as much as twice the amount which was supposed to be deducted, which means, the salary from which the deduction was made was bigger than what he was paid, hence underpayment which is claimed.

PW3 is said to be employed on 10/11/1992, he worked for seven years, before he was terminated in the year 1999. He said at the time when he was terminated, he was being paid a salary of Tshs 48,725/= per month, he tendered a salary slip of September, 1999 as exhibit P5. He said from that basic salary 10% contribution to the NPF was supposed to be Tshs. 4,872.50/=. However upon follow-up, to the NPF he discovered that the contribution he was making was Tshs. 16,805/= which means he was supposed to be receiving a salary of Tshs. 84,025/=, therefore he was underpaid Tshs. 35,300/=. He tendered the document titled underpayment as exhibit P6, that his name is appearing at item 45 of the document in which he indicated that, he was claiming Tshs 811,900/= while the total amount claimed by all complainants is Tshs. 78,124,100/=

He also said they prepared the document they call subsistence allowance analysis, exhibit P7 in which he appears at item 45, where he

personally claims the subsistence allowance of Tshs. 4,969,500/= while all complainants are claiming a total Tshs. 423,175,500/=.

According to him, this was due to the fact that, when they were terminated on 10/12/1999, they were not repatriated up to 28/05/2001, when they were paid their entitlement. He said from December, 1999, up to July 2000, Mwanza was a Municipal, before it became a City. The days of that period were 202 and the amount payable was Tshs. 7,500/= per day. While from July 2000, when Mwanza became a City the amount payable was Tshs. 10,500/=, it was 329 days. In the end he called upon the court to award him the amount listed on item 45.

PW3 also tendered the handshake schedule as exhibit P8, he claims that, he be paid as indicated at item 45 of the exhibit P8, in that item he personally claims Tshs.2,280,999/= while the total amount claimed by all complainant was Tshs. 236,769,344/=.

Furthermore, he said they also claim handshake which was supposed to be calculated to be two months salaries per year, for the years served. He tendered a letter which terminated their employment as exhibit P9.

On cross examination he said exhibit P9 does not say anything about the underpaid salary. He said some of the complainants have already

passed away. He mentioned some who have already passed away to be Berediana and Dickson Bigambo. He said exhibit P6 and P7 were prepared by the complainants, according to their entitlements. He said that although exhibit P7 and P8 were prepared by the complainants, they were not signed by all the complainants, he mentioned about 19 who did not sign it, to be Warioba Kisomi, Dickson Mwigumba,Verdiana Ituli, Musa Mfikiri, Mispina Musiba, Revocatus Thomas, Veronica Magonela, Juliana Ngowi, Lucas Chang'a, Julius Samwel, Nathaniel Mwagala, Anselemi Njumu, Esther Munisi, Daniel Paul, D Mabula, Noah Albert, Abas Ismail, Baraka Manyamba, and Albert Mnzava.

He said he had never discussed the issue of handshake, but the management took it to the Board but he has never seen an approval of the Board.

In re examination he said that in the schedule they are 100 but in the complaint they are 86. That marked the complainant's case.

The closure of the complainants' case was immediately followed by the defence case in which only one witness DW1, a legal officer from the office of Treasury Registrar, testified. In her testimony, she said that the complainants are claiming the Golden handshake from the Treasury

Registrar. He said procedure of paying the Golden Handshake is not statutory. It is normally built on the agreement between the employer and employee which agreement is registered to the Industrial Court, and the court issues the decree basing on the agreement which may be executed and is payable after the employee had left the office, in this case the Golden Hand shake agreement was supposed to be between the employer and the employees (complainant) she said however, that in their record there was no such an agreement, therefore there was no base of their claim as there is no such agreement which was registered in court.

Further to that, she said their office did not prepare any document in respect of underpaid salaries and subsistence allowance, she said regarding the underpaid salaries, according to the government directives, the corporation which were under liquidation were not supposed to be paid salary increment. She said Pamba Engineering was running under loss therefore there could not be salary increment to the employee.

She said she does not recognize exhibits P6, P7 and P8 as they had never been taken to their office therefore they are not containing valid claims.

Regarding the claim of subsistence allowance, under paid salaries and other claim as they were paid all their entitlements since the year 2001, she asked the court to find that the claim has no legal or equitable bases.

On cross examination she said that the handshake agreement was supposed to be entered between the Pamba Engineering and the complainants, but there is no evidence that there was such agreement. She said the complainants were terminated in the year 1999, the registrar inherited the liability of the PSRC, and that there was no any liability of payment of the claimed amount inherited. She said that had there been the handshake agreement, then the same was supposed to be registered by industrial Court in accordance with the law which was there in the year 1999. She also said that subsistence allowance is normally paid where the employer delays to pay the repatriation expenses. He said in the payment which was effected in the year 2001 the transport allowance, subsistence allowance, and one month salary were paid. She said that in their complaint, the complainants agreed to have received the subsistence allowance.

Regarding the claim of underpayment, she said that the deduction was supposed to be according to what was in the salary slip as it is impossible the deduction to be beyond what is in the salary slip. She said the treasury registrar had never done anything because the complainant had no any genuine claim.

She said that the registrar did not do anything because the complainant had already been paid all their dues.

That also marked the defence case. Parties filed their final closing submissions which are summarized as follows:

In the final submissions filed by the counsel for the complainants, he reminded the court that in this case, three issues were framed. Submitting in support of first issue, he said, the complainants are entitled to subsistence allowance because they were terminated on 10/12/1999 and were paid their entitlements on 28/05/2001 including transport allowance.

He invited the court to rely on section 43(1)(c) of the Employment and Labour Relations Act, [Cap 366 R.E 2019] he said that on that the complainants are entitled to a total of Tshs. 423,175,500/=

Submitting on the second issue which is whether the complainants are entitled to the claims of salary deduction/unpaid salaries, he submitted

that, from the report they got from the pension funds, from February 1998 to December 1999 there was a salary increments to all complainants.

The discovered after finding that what was actually deducted and submitted to the pension funds is bigger than what they were receiving. He on that, referred this court to section 28 of the Employment and Labour Relations Act (supra) which prohibits the deduction of the employee remuneration without prior agreements or arrangement; from this line of argument, he submitted that the first respondent erred in law to deduct the complainants' remuneration without their consents.

Submitting on the third issue which is whether the complainants are entitled to the claims of handshake package, he submitted that the hand shake package were agreed between the complainant and the first respondent and it is also important to notify this court that the handshake package were partly paid by the first respondents to all the complainants as it is well indicated in exhibit P8. He reminded the court that in all labour cases, the burden of proof lied to the employer who is the respondent in this case. He said the employer tendered no evidence to prove any payment made by them to the employee. He prayed the court to grant to the complainants their right which they have fought for so long.

Submitting against the claims, the counsel for the respondent submitted that, the claims need to be proved by evidence and that since the complainants claim are not based on unfair termination, the complainants are duty bound to prove their claim on balance of probabilities.

He referred to the provision of section 39 of the Employment and Labour Relations Act (supra) which imposes the duty to the employer to prove that the termination was fair and remind the court that the claim at hand are not based on unfair termination. He said in the case at hand, none of the above allegations are based on unfair termination. Therefore the burden of proof remained with the complainants.

It is his further submission that, the complainants admit to have been paid all their statutory entitlements in the year 2001 as indicated in exhibit P3, they admit to be paid one month salary in lieu of notice, arrears of annual leave not exceeding one year, fare, transport costs, salary areas, and contributions from pension funds. He submitted that the claim of unpaid salaries and handshake are not among the entitlements in exhibit P3, therefore they are not justified because the 1st respondent was operating under loss hence its privatization.

Regarding the subsistence allowance, he submitted that through out the evidence, none of the complainants testified that their employments were terminated at a place other than where they were recruited. He submitted that, this means all complainants were recruited in Mwanza and the employment was terminated in Mwanza.

In the alternative but without prejudicing to what has been submitted, in the event the court finds the complainants were entitled to subsistence allowance which is denied, it is not to the extent claimed by the complainants.

He submitted that, the subsistence allowance claimed was Tshs. 381,749,500/= which was never proved by evidence. According to him, the exhibit P7 is titled subsistence allowance schedule, in that document, the figure of subsistence allowance is claimed to be Tshs. 423,175,500/= contrary to the figure reflected in the statement of complaint (Tshs. 381,749,500/=.

Moreover, the counsel questioned the authenticity of exhibit P7, as it was prepared by the complainants themselves in 2001, it was not signed at the time it was prepared, it was signed at the time when it was about to be tendered as evidence in court and some of individuals listed therein are

deceased. The question to ask oneself is, how they were able to sign exhibit P7 during trial, while they are reported to be dead, this renders the authenticity of exhibit P7 doubtful and unreliable?

The other ground of doubt is that, there is no reason adduced as how the complainants arrived at the figure of Tshs. 381,749,000/= reflected in the statement of complaint and the purported figure of Tshs. 423,149,500/= in exhibit P7, he submitted that on the basis of that contradictions between what was pleaded and what was purportedly proved, by exhibit P7, he prayed that on the bases of that contradiction, the claim in the subsistence allowance be disallowed.

In regard to the claim of hand shake which he calls, "mkono wa heri," he also said the same is unjustified. He submitted that in its nature handshake is normally payable upon termination of employment not during the subsistence of the employment. He cited the evidence of the complainants which was to the effect that they were paid handshake when they were still working, but the payment stopped after they were paid more than once. He said that, is not justified as also even exhibit P3 is clear that handshake is not one of the statutory entitlements. The said according to the exhibit P3 handshake is payable basing on the agreement

which throughout the evidence, there is no indication that there was such agreement.

In the alternative, he submitted that, even if there was an agreement of payment of handshake which is denied, for the same to have legal force, it ought to have been registered under section 41 of the Industrial Court Act, [Cap 60 R.E 2002]. He submitted that although Cap 60 (supra) was repealed by the Employment and Labour Relations Act [Cap 366 R.E. 2019] but it was in force 1999. Last he submitted regarding the claim of underpaid salary, that the same is not covered under exhibit P3, therefore not justified at all.

That marks the summary of the pleadings, evidence as adduced by the parties as well as the final closing submission clarifying some of the important issues in this dispute. However, in the evidence there are some issues which parties are not in agreement, those issues are those framed as issue for determination in this case, but there are some which were raised by the parties in the course of the hearing and final closing submissions. One of the said issues is on whom, the burden of proof lies in this case?

Since this is a legal issue, as a matter of practice, I will consider and resolve it first before going to other issues as resolving it, will help to give a bearing, on whose shoulders the burden of proof lies. The complainant's view is that in all labour disputes, the burden of proof lies on the employer, while the counsel for the respondents is of the view that, the burden of proof lies to the employer only when the claim is based on unfair termination.

Generally, in law as provided by section 110 and 111 of the Evidence Act, [Cap 6 R.E 2019] the burden of proof lies to a party who alleges the existence of certain facts. In labour cases, generally the burden remain in the general premises of civil cases as labour cases are civil cases.

However, the burden becomes on the shoulder of the employer if the dispute related to unfair termination as provided by section 39 of the Employment and Labour Relations Act [Cap 366 R. E. 2019] which provides that,

> *"In any proceedings concerning unfair termination of an employee by an employer the employer shall prove that the termination is fair"*

This means, it is only where the issue is on unfair termination of employment when the burden shifts to the employer. Otherwise, the general principle regarding burden of proof in Labour Cases is provided under section 60 (2) of the Labour Institutions Act [Cap R.E. 2019] which provides.

> *"60 (2) in any civil proceedings concerning a contravention of a Labour law;-*
>
> *a) the person who alleges that a right or protection conferred by any labour law has been contravened, shall prove the fact of the conduct said to constitutes the contravention unless the provision of subsection (1) (B) apply, and*
>
> *b) the party who is alleged to have engaged in the conduct in question shall then prove that the conduct does not constitute contravention"*

From the law as cited hereinabove, it is glaringly clear that the dispute at hand is not stemmed under unfair termination but on the claim of right which the employee was entitled after termination. Therefore the applicable law regarding the burden of proof is section 110 and 111 of the Evidence Act [Cap 6 R. E 2019] read together with section 60 (2) of the Labour Institution Act No. 7/2004.

Under section 60 (2) (a) the primary duty is vested to the person who alleges that his right or entitlement provided by labour law has been contravened is to prove that such right or entitlements were contravened by the employer. However after the allegations and proof of the existence of that right and its violation, then the person against whom the allegations are made has the duty to prove that, what he did does not constitutes contravention. In the case at hand, the complainant's claims that they were entitled to the claim of subsistence allowance, salary deduction or unpaid salaries, and handshake package was to be proved first, before the employer/Respondent had proved that he did not contravene those rights. Having so said, it remains the undisputed fact, that the complainants were duty bound to prove the claim and the standard of proof is on the balance of probabilities.

Now having established on whom the burden of proof lies, next is the first issue framed by the Court and the parties, which is whether the complainants are entitled to the claim of subsistence allowance?

Generally, under section 43 of the employment and Labour Relations Act [supra], immediately after the termination of employment the employer

had a duty of paying him, among others if the termination of employment was done at a place other than where the employee was recruited;

a) Transport allowance of the employee and his personal effect to the place of recruitment.

b) Daily subsistence expenses allowance during the period, if any, between the date of termination of the contract and the date of transporting him and his family to the place of his employment recruitment.

From the above provision, then for an employee to be entitled to payment of subsistence allowance, the employee needs to prove the followings;

i. That he was recruited at place other than where his employment was terminated.

ii. That he was not paid transport/repatriation allowance immediately after termination of his employment.

As rightly submitted by the counsel for the respondent, the complainant's witness did not say in their evidence that they were recruited at other place than Mwanza where their employment was terminated. PW1 did not say so in his evidence, and so is the evidence of PW2 and PW3. It

is important to note that subsistence allowance is entitled to only employees who were recruited at a place other than the place where their employment was terminated.

The second condition that is, to prove that they were not paid their rights immediately after termination, is consequential after the primary condition mentioned above has been proved.

The fact that there is no even a mention that they were engaged/recruited somewhere else other than Mwanza, leaves an important ingredient unproved to entitle the complainant the right to subsistence allowance.

Further to that, they did not even tender any exhibit, or tell the court that among the entitlement which they were paid, included the transport pay or expenses, from which the court would have probably inferred that they were recruited at a place other than Mwanza, where their employment was terminated, that said, I find the first issue is proved in a negative, that the complainant have failed to prove that they were recruited, at a place other than Mwanza for them to be entitled to repatriation pay and subsistence allowance.

The second issue is whether the complainants are entitled to the claim of deducted salaries/unpaid salaries. The only evidence as to why the complainants claims for deducted salaries/unpaid salaries, which they also call underpayment was because, they found, the deducted and remitted amount to the pension funds to be more than what was supposed to be deducted from their salaries.

It is from that amount they found remitted to their pension fund's account; they infer that they were supposed to be paid more than what they were receiving. The evidence they gave in respect to this category of claim is a document titled "under paid salaries".

That document was prepared by the complainants themselves, with a list of names and other details which include the salary scale, number of months unpaid, salary supposed to be paid, salary paid, difference/unpaid salary, and a total under paid salaries for all months. However no mention was made regarding the source of this information.

For instance, the information relating to Ramadhani Kilonzo, differs from the exhibit P2 the salary slip tendered by him, which according to its nature it seems to be computer system generated, which shows that the basic salary he was paid was Tshs. 49,925/= and the pension funds

deduction was Tshs. 4,992.50/=, so is the salary slip of Kessy Balele, exhibit P5. In my considered view, these two documents differ in status and contents, while exhibit P6 has its source of information not known exhibits P2 and P5 shows that they were generated from the computer system of employer and is actually recognized by the employer.

That being the case, I find the claim to be based on speculation and imagination as opposed to the tangible and credible evidence. That said, I also find this issue not prove at the required standard, the same is found to have been not prove by evidence.

Regarding the third issue which is whether the complainants are entitled to the claim of Landshake package. Before I venture into discussion of the substance of the issue, I find it important to point out the meaning of the term Golden Handshake or handshake as has been reffered by the parties. This is labour law concept which has been defined in various authorities, to start with, is Blacks Law Dictionary, 9th Edition Bryan A. Garner, Thomson Business, 2009 which defines it to mean;

> *"Golden handshake is a generous compensation package offered to an employee as an inducement to retire or upon dismissal.*

The second source is an online Dictionary Cambridge org, through *https Dictionary Cambridge, org*, defines it to mean.

> *"Golden handshake is usually a large payment made to people when they leave their jobs either when their employer had asked them to leave, or when they are leaving at the end of their working life as are ward for a very long or good service in their job"*

While *https://www. Investopedia.*com defines a Golden handshake to mean;

> *"A stipulation in an employment agreement which states that the employer will provide a significant severance package if the employee looses their job"*

From these definitions, it goes without saying that;

i) Golden handshake is paid by an employer upon retirement or termination or dismissal not as a statutory right but as an inducement or incentive or allurement.

ii) Before an employee claims it, there must be a voluntary agreement between the employer and employee that should he either retire, or get terminated, the employer shall pay the Golden handshake.

iii) It is also the fact that the same is payable either on retirement/termination or after retirement/termination

see Jonas Nehemia Makali vs Thomas Secondary School, Labour Revision No 893/2019 HC - LD, Mruke, J, also the case of **Tanzania Fertilizers Company vs Ayoub Omary,** Labour Revision No. 13/2019, HC - LD Mbeya, Nduguru, J.

From the above elaboration, the question which arises is whether there was a voluntary agreement between the complainants and the 1st respondent as far as payment of the Golden handshake is concerned.

From the evidence by the complainants, it has not been proved by either tendering the said agreement which would have entitled the complainants of the right to claim the handshake.

The only evidence presented in respect of such item of claim is that, the complainants were paid the same payments more than one installment, but the complainants said so without producing proof and that they could not obtain and tender the said agreement because it was the confidential document kept by the employer.

I am imagining, that if that document exists, and to the knowledge of the complainants the same is in the custody of the respondent why the

complainant didn't issue a notice to produce the said document. I also believe that, when they were paid the alleged installments, they were paid through documents probably a cheque, which is always issued together with a copy of payment voucher; the question is why they didn't produce the said documents the payment voucher.

Last, it is a common practice that any agreement voluntarily entered by two or more parties which is enforceable against them, must be in duplicate or triplicate to afford every party to that agreement a copy of it.

An agreement between the employer and employee on how the employee will be remunerated more than what the law provides cannot be confidential information held by the employer in the exclusion of the employees who are beneficiaries. In my considered view, the employee "the complainants" were supposed to have the copy and would have at least proved their so entitlement by producing the copy in court.

The agreement being the condition precedent for paying the handshake, in the absence of it, the employee cannot be taken to have proved his entitlement to the said right.

That said, I also find the 3rd issue to be proved in negative for want of evidence for the reasons given. That being the case, I find the whole case to have not been proved at the required standard, the claims fails for the reasons given.

Since this is a labour matter, no order as to costs is made.

It is so ordered.

DATED at **MWANZA** this 19th day of May 2021.

J. C. Tiganga

Judge

19/5/2021

Judgment delivered in open chambers in the presence of the parties respective Advocates as per coram. Right of appeal explained and guaranteed.

THE HIGH COURT OF TANZANIA
MWANZA
UHURU NA UMOJA

J. C. TIGANGA

JUDGE

19/5/2021