

**IN THE HIGH COURT OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPEAL NO. 313 OF 2004**

*(Original Labour Case No. 35 of 2003; before Miss Tarimo, RM at  
Morogoro District Court)*

**MASHAURI S. MALEO . . . . . APPELLANT**

**VERSUS**

**PRIVATUS LIPEMBE . . . . . RESPONDENT**

*Date of last order – 20/11/2007*

*Date of Judgment – 5/12/2007*

**J U D G M E N T**

**Shangwa, J.**

The Appellant in this case one Mashauri Maleo is faulting the decision of the District Court of Morogoro in Labour Case No. 35 of 2003 for ordering him to pay the Respondent Privatus Lipembe a sum of shs.872,400/= out of a total claim of shs.920,400/= being salary in arrears from January, 1998 up to March, 2003. He raised two grounds of appeal. First, that the trial magistrate erred in law when she concluded that the 1<sup>st</sup> defendant took over inherited assets

of the second defendant when it collapsed. Second, that the trial magistrate erred when she observed that there were assets/property left behind by the Limited Cooperative Society (2<sup>nd</sup> defendant) at the time of its demise.

Before the District Court of Morogoro, the Appellant did not deny the Respondent's claim of salary in arrears from January, 2003 to March, 2003. However, he denied the Respondent's claim of salary in arrears from January, 1998 to December, 2002. He lodged a counter claim against the Respondent for shs.48,000/= as one month's salary in lieu of notice. The said counter claim is in respect of the month of March, 2003 when the Respondent decided to stop work as watchman at the Appellant's premises without giving him any notice. The Respondent did not contest the Appellant's counter claim above mentioned.

In her judgment, the trial magistrate observed that although Twende Pamoja Cooperative Society Ltd (2<sup>nd</sup>

defendant) is no longer in existence, there is evidence to show that all its properties were inherited by the defendant/Appellant and that the plaintiff/Respondent continued to work as a watchman in the same premises after being inherited by the defendant. After so observing, she said, she was of opinion that since the 1<sup>st</sup> defendant (Appellant) took over the properties of Twende Pamoja Cooperative Society and as the Respondent continued to work with him, he is liable to pay him the salary in arrears of shs.920,400/= claimed from January, 1998 to March, 2003 minus shs.48,000/= which is one month's salary in lieu of notice.

According to the Appellant, the Respondent was employed by Twende Pamoja Cooperative Society Ltd from 1980 up to December, 2002 when the said society failed to continue with business, and that he employed him from January, 2003 to March, 2003. Counsel for the Appellant

Mr. Binamungu and Mr. Kanonyele, Advocates do contend that as the Respondent was employed by the Appellant from January, 2003 up to March, 2003, he is not liable for payment of shs.920,400/= which the Respondent is claiming from him effective from January, 1998 up to March, 2003 and that the trial magistrate was wrong in her opinion when she said that the Appellant inherited/took over the Assets/properties of Twende Pamoja Cooperative Society Ltd. It was further contended by counsel for the Appellant that under S. 75 of the Cooperative Societies Act No. 14 of 1982, Twende Pamoja Cooperative Society could sue and be sued, meaning that the Respondent had the right to sue it for payment of his salary in arrears for the period from January, 1998 up to December, 2002.

The Respondent submits that the appellant is liable for paying him salary in arrears for the entire period from January, 1998 to March, 2003 on grounds that when

Twende Pamoja Cooperative Society Ltd failed to continue with its business, he continued to work on the same premises as watchman until March, 2003 when he decided to stop work.

In my judgment, I think that the Respondent Privatus Lipembe is only entitled to payment of salary in arrears during the period he was employed by the Appellant Mashauri S. Maleo. That is from January, 2003 up to March, 2003 amounting to shs.89,400/= minus 48,000/= which is a one month's salary in lieu of notice. He is not entitled to claim from the Respondent payment of salary in arrears during the period when he was working with Twende Pamoja Cooperative Society Ltd. That is between January, 1998 and December, 2002 when the said Society disintergrated.

As correctly argued by counsel for the Appellant, the said Society was capable of being sued by the Respondent

for his salary in arrears before it ceased to exist. The reason why he did not do so is best known to himself and it is not fair for him to burden the Appellant with the claim of salary in arrears for the period he was not under his personal employment. Indeed, as argued by counsel for the Appellant, there is no evidence to show that when Twende Pamoja Cooperative Society collapsed, its assets/properties and all its employees were inherited by the Appellant. But even if the properties of the said society were taken over by the Appellant, and even if the Respondent continued to work as watchman on the same premises with him, such facts cannot make the Appellant liable for payment of his salary in arrears which were not paid by the said society during its existence.

As I have already said, the Appellant is only liable for payment of the Respondent's salary in arrears amounting to shs.89,400/= from January, 2003 to March, 2003 minus

shs.48,000/= as one month's salary in lieu of notice which were counter claimed by the Appellant.

For these reasons, I hereby allow this appeal but I order that each party should bear its own costs.

  
A. Shangwa

**JUDGE**

5/12/2007

Delivered in open court in the presence of the parties  
this 5<sup>th</sup> day of December, 2007.

  
A. Shangwa

**JUDGE**

5/12/2007