

**IN THE HIGH COURT OF THE UNITED REPUBLIC
OF TANZANIA LABOUR DIVISION
AT DAR ES SALAAM**

LABOUR DISPUTE NO. 25 OF 2008

BETWEEN

**GENERAL SECRETARY RESEARCHERS,
ACADEMICIAN AND ALLIED WORKERS**

UNION [RAAWU] COMPLAINANT

VERSUS

KULU MASWANYA -

ACTING SECRETARY MLIMAN BRANCH.....RESPONDENT

J U D G M E N T

11/05/2015 & 05/06/2015

Mipawa, J.

This complaint has been filed by the applicant namely Researchers Academician and Allied Workers Union¹ as against the Respondent Kulu Maswanya, the Acting Branch Secretary of the Applicant's Mlimani Branch. The proceedings have been instituted under Section 53 (1) and 94 (1) (d) of the Employment and Labour Relations Act².

The facts which the applicant put forward to rely upon in this complaint are basically four that is [*idest*]:-

- 1. The Branch Secretary has the duty to collect membership contribution and union dues and remit the money to the Secretary General³.*

¹ Commonly known for its acronymy as RAAWU

² Act No. 6 of 2004 Cap 366 R.E. 2009

³ Article 4:5 (b) (1) (vi) of RAAWU Constitution

I will not trek or venture to discuss the four preliminary objections on points of law raised by the respondent as they lack importance in so far as the preliminary objection on the point of forum **non-conveniens** is concerned. Suffice it to say here that this marks the end of the present matter at hand which consequently is dismissed therefore.

I.S. Mipawa
JUDGE
04/12/2015

Appearance:-

1. Applicant: Mr. Mohamed Tibanyendera, Advocate - Present
2. Respondents: Absent

Court: This ruling has been read to the party as shown above in the absence of the Respondents.

I.S. Mipawa
JUDGE
04/12/2015

2. *That the constitution of RAAWU required under article 3:6 to retain 20% of the membership union dues to the Branch 80% to be remitted to the Head Office⁴.*
3. *It is the duty of the General Secretary to administer and to take care of the union money under article 11:2 (f) and report to the relevant authorities all union expenditure and to insist good administration of union funds⁵.*
4. *The respondent had failed neglected or refused to remit the membership subscription of 80% to the Head Office Tzs. 101,333,382.10⁶.*

The Respondent on the other had argued in reply to the amended statement of complaint that, the respondent was instructed by the branch union members not to remit their money to the Head Quarters for failure to account for it, bad use of the same and for very poor service to the members:-

...That since RAAWU is a voluntary organization its members have exclusive liberty and power to refuse to pay fees or hold their fees if no plausible services is rendered to their satisfaction by the union leaders they belong...⁷

⁴ *ibid* article 3:6

⁵ *ibid* article 11:2 (f)

⁶ Applicants statement of complaint at page 2

⁷ Respondents reply to the amended statement of complainant

The Respondent further stated that, the General Secretary of RAAWU has no absolute power to command or instruct the Branch Secretary to operate and act the way she want [against wishes of members]⁸:-

*...[That] the branch members of Mlimani have exclusive power and unanimously have instructed the Respondent not to remit their deductions to the General Secretary on grounds that the Head Quarters have been continuously mis-appropriating their deductions to their own benefit...*⁹

It was the contention of the respondent in his reply to the statement of complaint that, the respondent was operating under the instruction/mandate of the Mlimani Branch members who elected him and whom have instructed him to withhold their contribution¹⁰.

During the hearing of this complaint the applicant was represented by Mr. Nzowa, Learned Counsel while the Respondent enjoyed the service of Mr. Mwarabu, Learned Counsel.

The applicant's witness Mr. Evarist Mwalongo Zonal RAAWU Secretary told the Court that their main complaint is about members contribution of Mlimani Branch had not been remitted to the General Secretary at the Head Quarters. He produced as exhibit in Court a letter of 4th October, 2007 written by the employer University of Dar es Salaam on the deduction of monthly contribution of members and which contribution

⁸ *ibid* at page 2

⁹ *op. cit* note 7 at page 2

¹⁰ *op. cit* note 7 at page 3

is remitted through a cheque to the Branch¹¹. He also produced a letter completing the employer to remit members contribution direct to the Secretary General¹².

He also told the Court that he was informed by the Chief Accountant that Branch contributions were not being remitted to the Head Quarters about 141 million Tzs. They wanted the employer to adhere to Act No. 6 of 2004 section 61 that it was his duty to remit the contributed money to the National General Secretary. However PW1 concluded that he was not informed that members did direct the Branch Leadership not to remit the contribution to the head office because they were getting poor services. He concluded that you can contribute without getting services.

The Applicant prayed that, the court do grant an order to compel the respondent to remit the unremitted union dues to the Head Office and any other order the court may deem fit to grant.

The Respondent Mr. Kulu Maswanya told the Court that as an employee of the University of Dar es Salaam since June, 1903, they have two trade union namely Researchers Academicians and Allied Workers Union styled RAAWU and Tanzania High Learning Trade Union THTU¹³. The THTU was formed after the members were dissatisfied with the services RAAWU was providing to them¹⁴.

¹¹ Exhibit P. 1 letter dated 4th October, 2007

¹² Exhibit P. 3 letter to the employer dated 12th Feb. 2008 wrote by RAAWU asking the employer University of Dar es Salaam to remit the contribution to the Secretary General

¹³ THTU was formed in the year 2008 from RAAWU

¹⁴ Members formed new trade union styled THTU due to poor services RAAWU provided and misuse of the members contribution

The Respondent further testified that he was elected as an Acting Branch Secretary of Mlimani from March, 2008. After taking office, he found in the office a decision or resolution of members at the General Meeting that their contribution should no more be remitted to the Head Office of the Applicant RAAWU. The reasons were that the members were not getting services from RAAWU Applicant. The contribution ceased to be sent to the Applicant in the year 2007.

The Respondent further added that the members have powers with their contribution according to RAAWU constitution and the Employment and Labour Relations Act¹⁵. That when a member fails or does not sent contribution for three consecutive months he is dismissed from membership or lost his membership automatically¹⁶:-

3.9 (a) Mwanachama atakoma kuwa mwanachama iwapo:-

(1) Hatawasilisha michango yake kwa miezi mitatu mfululizo kwa makusudi.

(2) Atajiuzulu uanachama kwa kuandikia Halmashauri ya Tawi lake juu ya uamuzi wake.

(3) ...(not applicable)

(4) ...(not applicable)

(5) ∴...(not applicable)

(6) ...(not applicable)

(7) ...(not applicable)

¹⁵ *op. cit* note 2

¹⁶ RAAWU constitution article 3:9 (a)

The Respondent testified further that if he could have collected members contribution contrary to the members wishes they could have fired him out of office. He did not misuse any members contribution or acted against the constitution¹⁷.

After the members had stopped to set contributions to the applicant they decided to form a new trade union called THTU¹⁸, which could deal with their problems. Their contribution remained in RAAWU account but later on it was used to strengthen the newly formed trade union¹⁹. However not all members shifted to the new trade union and their contribution was remitted to RAAWU Head Office. The Respondent and others shifted to the new trade union.

The charges of misappropriation of funds that was preferred against the Respondent was washed away by the Director of Public Prosecution that the respondent was not concerned²⁰. He produced a letter from the Director of Criminal investigations to that effect²¹.

In conclusion the respondent told this Court that he is no longer a RAAWU member and the contribution dues of the members who remained in RAAWU trade union were remitted to RAAWU Head Office.

¹⁷ *ibid*

¹⁸ Tanzania High Learning Trade Union formed in the year 2008 after breaking from RAAWU

¹⁹ *ibid*

²⁰ The DPP wrote to the Police Criminal investigation Department that he was [Respondent] not concerned

²¹ Exhibit D letter from DCI Director of Criminal investigation Department of 20/07/2007 reference no. CID/HEAD QUARTERS/C. 8/11/Vol. V/114

The issues which were agreed inter-parties at the hearing of the complaint were basically four (4) which may be summarized as follows:-

1. *Whether the Respondent by virtue of his position as Branch Secretary had failed neglected or refused to remit to the Head Office of the Applicant the 80% of the unions dues collected despite being reminded to do so.*
2. *Was the Act of the Respondent to refuse to remit the 80% of the union dues collected contravened RAAWU constitution and illegal.*
3. *Whether or not the Respondent was instructed by members not to remit the unions dues²².*
4. *Whether the members have exclusive powers to instruct their Branch Secretary not to remit the 80% of the union dues to the Head Office²³.*

The Learned counsels for both parties filed their final written submission pursuant to the order to this Court²⁴.

The complainant's written submission was that under clause 4.5 (b) (i) (vi) of the RAAWU constitution²⁵, the union field branch secretary has a duty to collect membership contributions and union dues and remit the same to the General Secretary [union's Head Quarters]²⁶.

²² See the amended statement of complaint and the submission of the respondent and the complainant on the agreed legal issues

²³ *op. cit* note 22

²⁴ The order was given on 9th July, 2014 by the Court

²⁵ RAAWU constitution [2005]

²⁶ Complainant's written submission finale at p. 1

That under clause 36 of the RAAWU constitution²⁷, 20% of the membership union dues collected is retained by branch and remaining 80% is required to be remitted to Head Office.

*...3.6 Mgawanyo wa ada ya uanachama asilimia
ishirini ada ya uanachama itabaki tawini na
asilimia themanini 80% itapelekwa Makao
Makuu...*²⁸

It is the duty of the General Secretary [as per the constitution] to administer and take care of union funds and to report to the relevant union's organs on how the union's monies has been utilized²⁹.

The complainant submitted further that in their view once union dues is deducted from members salary it becomes unions property and the field branch secretary is required to remit 80% of it to the Head Office without any excuse and short of that is contravention of the union's constitution and the law³⁰. He further told the court in his submission the duties of trade union representative at work place as required by the Employment and Labour Relations Act³¹; that:-

*62 (4)... Trade union representative shall perform the
following functions:-*

*(f) To perform trade union functions under
the union's constitution*³².

²⁷ *op. cit* note 25

²⁸ *op. cit* note 25 the Kiswahili version as quoted from the complainant's written submission

²⁹ Clause or Article 11.2 *op. cit* note 25

³⁰ *op. cit* note 26 at page 2

³¹ Act No. 6 of 2004 Cap 366 R.E. 2009

³² *ibid*

The Respondent's claim is that the money was not remitted on instructions from members who were dissatisfied with RAAWU union services, however it is the complainant's contention that the respondent's assertion has no any supporting piece of evidence to substantiate the same, like sharing minutes of the alleged members meeting which came with the said resolution.

On deliberate failure or refuse to pay union dues the complainant argued that it is true that RAAWU constitution makes the membership of the person to cease automatically, however in the present case members dues were deducted from salaries of members and collected by branch leadership. The complainant concluded by citing the provisions of the Employment and Labour Relations Act³³; that:-

...An employee may revoke an authorization by giving one month's written notice to the employer and the trade union³⁴...

Thence no single member of RAAWU at that time had revoked his/her authorization to deduct union dues from his/her salary. Therefore no member had ceased to be a member of RAAWU³⁵.

The Respondent on the other hand submitted that the respondent Mr. Kulu Maswanya who introduced himself as member of a new trade union known as Tanzania High Learning Trade Union is guided by the rights of members.

³³ *op. cit* note 31

³⁴ *op. cit* note 31 see section 61 (4) of the Act

³⁵ *op. cit* note 26 at page 4

Under the provisions of Employment and Labour Relations Act that members who have common interest create a trade union, and they write a constitution which becomes the guide of members. If a trade union goes contrary to the expectation of its members, then the members have exclusive right to quit and join or form another trade union of their choice which they think will protect their rights and welfare.

He submitted that the Respondent who was the Acting Branch Secretary after assuming the office, found directives from the previous Branch Secretary which were members resolutions that the applicant (RAAWU) as a trade union had failed to meet their demand of providing services to their expectation. That RAAWU as a trade union was not eligible to collect their contribution while poor services was their plight. The contribution were made by members who directed their elected leaders not to remit their contributions to the Head Office. Their contribution was retained not in the hands of the respondent as claimed by applicant but the same was kept in the RAAWU Branch Account of which the respondent was not even a signatory. Hence the respondent by virtue of his position as Acting Branch Secretary did not fail, neglect or refuse to remit to the Head Office 80% of the union dues collected due to the directives given by Mlimani branch members:-

...On the second issue; that whether the act of the respondent to refuse to remit the 80% of the union dues collected contravened RAAWU constitution...

The Respondent submitted on this issue that the reason why Mlimani Branch members directed their leaders not to remit 80% of their

contribution to the Head Office, was due to poor service RAAWU was providing to her members. The members convened a lawful meeting on 19/04/2007 and passed their resolution not to remit their own contribution:-

...On whether the respondent was instructed by the members of the RAAWU Mlimani Branch not to remit the union dues to the Head Office...

The Respondent's Learned Counsel submitted that issue by a letter that affirmatively answered the issue, was Exh. D - 1 of 12nd May, 2009 where the Director of Public Prosecution stated that:-

...Baada ya maelezo hayo hapo juu suala linalofuata ni kama kukataa kwa uongozi wa RAAWU Mlimani kupeleka sehemu ya michango [yao] RAAWU Taifa kutaibua kosa lolote la kijinai. Wanachama wote wa RAAWU Tawi la Mlimani katika Mkutano wao halali wa tarehe 19/04/2007 waliamua kwa kauli moja kusitisha upelekaji wa michango yao RAAWU Taifa kutokana na kutoridhishwa na huduma walizokuwa wanazipata. Badala yake waliamua michango yao yote ibaki na itumike kuwahudumia kwenye Tawi...ni kosa la kimkataba la wanachama kukataa kutoa michango yao kwa RAAWU, kosa ambalo adhabu yake inatolewa na mkataba huo huo nayo ni kupoteza uanachama wake...³⁶

¹⁶ Respondent final written submission at page 8 - 9

On the issue whether the members have exclusive powers to instruct their Branch Secretary not to remit the 80% of the union dues to the Head Office³⁷, the respondent submitted that members of any trade union have exclusive powers to instruct their Branch Leaders to act otherwise if they have all the genuine reasons to do so because they are the ones who contribute. Therefore if no service is provided their contributions are misappropriated then lawful meetings and resolution obtained therefrom protect them and gives exclusive powers to instruct their leaders to do otherwise. He concluded that the respondent is not liable at all in handling and effecting members decision³⁸.

I will commence by answering the first and second issues reached interparties and then dispose them ***in tandem*** [together] perhaps for easy of reference let me quote:-

1. *...Whether the respondent by virtues of his position as a Branch Secretary had failed neglected or refused to remit to the Head Office of the Applicant 80% of the unions dues collected despite being reminded and*
2. *...Whether the Act of the Respondent to refuse to remit the 80% being union dues collected contravened RAAWU constitution.*

Mr. Nzowa, Learned Counsel for the complainant had submitted that when union dues is deducted from member's salary it becomes union's property and the field Branch Secretary is required to remit 80% of it to

³⁷ *ibid* p. 9

³⁸ *op. cit* note 36

the Head Office without excuse and short of that is a contravention of the union's constitution and the law. He referred to section 62 (4) (f) of the Employment and Labour Relations Act No. 6 of 2004, and Article 3:6 of the RAAWU constitution. The RAAWU constitution in Article 3:6 requires 80% of the dues collected by the union from its members be remitted to the Headquarter while 20% remains at the Branch. Section 62 (4) (f) of the Act No. 6 of 2004 [the ELRA] reads:-

...62 (4) Trade union representative shall perform the following functions:-

- (a)*
- (b)*
- (c)*
- (d)*
- (e)*
- (f) To perform trade union functions under the union's constitution.*

Now, the respondent on the issue at contravention had submitted that after assuming office he found directives from the previous Branch Secretary [RAAWU] which was a member's resolution that since RAAWU as a trade union had failed to meet the demands of its member by providing services to their expectation then RAAWU as a trade union was not eligible to collect their contribution while poor services was their plight. Members directed their leaders not to remit their contribution and the money was kept in RAAWU Branch Account. There is a letter titled "*maamuzi ya Mkutano wa Wanachama wa RAAWU Tawi la Mlimani wa tarehe 19/04/2007*". The members meeting directed the leaders to stop remitting

their contribution of 2% to the Head Office see 1D - 2. The evidence of the respondent Mr. Maswanya was clear on that point above that members had refused their contribution to be remitted to the Head Office because RAAWU was not fulfilling its duties towards the members. I entirely and respectfully agree with the respondent that:-

...If a certain trade union goes contrary to the expectation of its member then its members have exclusive right to quit and join or form another trade union of their own choice which they think will protect their rights...

I think to my mind, the members were right to direct their leaders at Mlimani Branch not to remit the said dues 80% to the Head Office of the applicant after being dissatisfied with their trade union RAAWU. This was a resolution of members at a meeting that their contribution should remain in the branch account and not to be remitted to the Head Office of RAAWU [Applicant]. The move was in my view to diffuse themselves from RAAWU and start another trade union which would protect their rights, and the money [contribution] kept in the branch account would meet the needs of creating needs or forming another party as they did immediately and formed a new trade union styled THTU. This is a right on freedom of Association enshrined under section 9 (1) of the Employment and Labour Relations Act:-

9 (1) Every employee shall have the right:-

- (a) To form and join a trade union.*
- (b) To participate in the lawful activities of the trade union.*

Therefore when the respondent had diffused from RAAWU and formed a trade union called THTU, they were exercising their right of freedom of Association granted by the Act supra. The Act further prohibits any person to discriminate against an employee for exercising any right conferred by the Act³⁹. The Act prohibits a wide range of actions which infringe the right to freedom of association. The main right which seems the applicant to have infringed was his acts of demanding the contribution of 80% from the members to be remitted to the applicant's head office inspite of the members [branch members] resolution not to have their contribution remitted to the applicant's head office, was or is the **FREEDOM NOT TO ASSOCIATE AND FREEDOM TO ASSOCIATED**. Positively speaking freedom of association:-

*...Refers to the fact that it protects the **rights of employees and employers to form collective entities [trade unions and employer's organization]** and join these entities. In the case of trade unions, this positive right is protected by prohibiting both the state and employers from infringing the right...*

The right to form a collective entity [trade union] was exercised by the respondent when they refused their contributions or members' dues to be remitted to the Head Office of the Applicant [RAAWU] and their act of requiring the deducted money to be kept in their branch account instead of remitting [dues] to the applicant's head office RAAWU amounted in my view *"... not contributing for three consecutive months..."* which had the

³⁹ RAAWU constitution Katiba ya Chama Toleo la Mwaka 2005

effect of [being] automatically ceasing to [continue] be a member of RAAWU [an employee may also revoke membership under section 61 (4) of the Act No. 6 of 2004 Employment and Labour Relations Act] Article 3:9 of the Applicant's constitution RAAWU reads:-

3:9 Kukoma Uanachama [end of membership]

(a) Mwanachama atakoma kuwa mwanachama iwapo [a member will cease to be a member if].

(1) Hatawasilisha michango yake kwa miezi mitatu mfululizo kwa makusudi [he will deliberately not contribute his dues for three consecutive months].

(2)

(3) Death [of a member] atafariki.

(4) Be chased in terms of article 3:10 (a) atafukuzwa uanachama kwa mujibu wa kifungu 3:10 (a).

*(5) Atafungwa jela kwa kosa la jinai [will be imprisoned for a criminal offence]⁴⁰
[English translation mine]*

The record shows that members of Mlimani Branch had deliberately refused to contribute to the Applicant's Head Office their dues for the reasons stated and therefore it was not correct to say that the money which was deducted from the salaries of employees and kept in the branch account was or had belonged to the applicant RAAWU Head Office, especially of those employees who have refused to be retained by

⁴⁰ RAAWU constitution Katiba ya Chama Toleo la Mwaka 2005

RAAWU or who had diffused from their former trade union RAAWU and formed another trade union THTU and joined it in so far as section 9 (1) of the Employment and Labour Relations is concerned. However for those who selected to continue with RAAWU trade union the money or their contribution belonged to RAAWU and there was evidence that their contribution was remitted to RAAWU Head Office and the contribution of those who formed another trade union THTU was used to form the newly trade union. Thence there was **FREEDOM NOT TO ASSOCIATED AND FREEDOM TO ASSOCIATE**. There was positive nature of the freedom of association and negative nature of the freedom of association. The positive nature is what we have described above, that is, people or employees formed another trade union apart from their former one. Mlimani Branch members formed THTU (new trade union) thus:-

*...Negative aspect of freedom of association refers not to any disadvantage or draw backs, but instead it refers to the **right not to associate** sometimes this is called freedom of non-association means that an person may force an employee to belong to a union in the first place and that **no person may force an employee to belong to a union other than the union of the employee's choice...***

It is pertinent clear therefore that the acts of the Applicants [RAAWU] to insist the contributions [dues] of the members who have resolved that their contribution must not be remitted to the Applicant [RAAWU] Head Office and forcing the members to contribute had infringed the rights of the employee to freedom of association concept **of right not to**

associate and form a trade union. The employees who later formed a new trade union styled THTU had the right not to associated with RAAWU trade union hence forming a new trade union which they called Tanzania Higher Learning Trade Union [THTU]. **Freedom of non-association with RAAWU.** The principle or one aspect of freedom of association in the negative as above explained. For those who did not join the new trade union THTU and remained to be members of RAAWU were not forced to join the new trade union THTU and thence their right to associate or not to associate was not infringed because as we have explained **above** in the negative aspect of the freedom of association that [two instance]:-

***First;** no person may force an employee to belong to a union.*

***Second** no person may force an employee to belong to a union other than the union of the employee's choice...*

There was clear evidence that those who did not want to join the new trade union THTU, had their contribution kept in the branch account and remitted to the applicant's head office because they chosed RAAWU trade union as their choice to associate. The applicant RAAWU was therefore acting improperly to force the respondents or employees members who had already ceased to belong to RAAWU in accordance to article 3:9 (a) (1) of RAAWU constitution⁴¹, to remit their contribution dues to the applicant RAAWU and this was tantamount to forceably associating the employees with the trade union which is not of their choice. There must be therefore freedom not to associated and freedom to associate

⁴¹ Kukoma uanachama (a) Mwanachama atakoma kuwa Mwanachama iwapo (1) hatawakilisha michango yake kwa miezi mitatu mfululizo kwa makusudi *op. cit* note 39

freely and not by force through any means whatsoever. Frankly speaking there is this what is known as freedom of disassociation i.e. freedom to disassociate. Proffessor Basson et in Essential Labour Law Vol. 2 [collective labour law]⁴² describes it as to:-

*...Refer to a situation where employees who have decided to associate with each other [in other words to form a trade union] also decide to prevent other employees from associating with them. A good example of this is where a union's constitution stipulates that only employees who are employed in a specific industry or sector [such as the financial sector for example] may join the union...*⁴³

The Respondent was, as the record shows, an Acting Branch Secretary who had taken over after the death of the incumbert branch secretary of Mlimani Branch, and we have found that he did not fail or neglected or refused to remit the applicant's 80% of the union dues collected, rather the members had directed their leaders not to remit any of their dues to the applicant's head office RAAWU by their resolution passed at the meeting of members. I consider also the testimony of the respondent on this aspect as well as his affidavit and I have no reasons not to believe of what he had told this court on the passed resolution of members that the contributions should not be sent to the applicant's head office but be used to form another trade union of members choice to wit the THTU trade union. There was no contravention of RAAWU's

⁴² [2002] 3RD Edition Labour Law Publication HOUGHTON 2041 South Africa. Proffessor Annal Baason BCL, LLB, [Pret] LLD [Unisa] is a Professor in the Department of Mercantile Law University of South Africa [Unisa] and an Advocate of the High Court of South Africa

⁴³ Professor Basson *op. cit* note 41

constitution. in this regard as claimed. Therefore the respondent did not refuse or neglect to remit the 80% neither did he contravene RAAWU's constitution nor did he do anything, but was instructed by members only through their resolution not to remit their contribution to the complainant's head office RAAWU the above discussion clearly expose, issues no. 1, 2, as well as issue no. 3 that:-

*...Whether or not the respondent was instructed by members not to remit the union dues...*⁴⁴

I will now concentrate on the fourth issue raised by the parties in this matter. The 4th issue goes like this:-

*...Whether the members have exclusive powers to instruct their branch secretary not to remit 80% of the union dues to the head office of the complainant RAAWU...*⁴⁵

In his written submission Mr. Nzowa Learned Counsel for the complainant argued that it is the duty of the General Secretary to administer and to take care of the unions funds according to clause 11:2 of the RAAWU constitution:-

11:2 KATIBU MKUU

Katibu Mkuu ndiye Mtendaji Mkuu wa Chama anayewajibika katika utekelezaji wa maamuzi yaliyopitishwa na Mkutano Mkuu Baraza Kuu na Kamati

⁴⁴ Issues agreed interparties see the complaint filed by the complainants RAAWU and the respondent reply to the amended statement of complaint and the written submission of both parties

⁴⁵ *ibid*

ya Utendaji wa Taifa na atafanya shughuli zifuatazo:-

*(g) Kusimamia utunzaji wa hesabu za fedha za chama na kutolea maelezo matumizi yake yote ya fedha za chama na kuhimiza utawala mzuri wa fedha za chama...*⁴⁶

The Respondent as regard to the fourth [4th] issue submitted in his written submissions that members decision are made in the lawful meetings, that since on 19th April, 2007, the Mlimani Branch members convened a lawful meeting and what transpired and agreed upon was also lawful. He concluded that members to any trade union have exclusive powers to instruct their branch leaders to act otherwise if they have all the genuine reasons to do so, because they are the ones who contribute, therefore if no service are provided to them their contributions are misappropriated. Lawful meetings and resolution obtained therefrom protect them and give them exclusive powers to instruct their leaders to do what they need.

I think by and large that the act of the Mlimani Branch members to convene a meeting on 19/04/2007 which discussed among others, the poor services to members provided by the complainant and resolved not to remit the 80% contributions to the complainant head office [RAAWU] was an act referred to as **THE RIGHTS OF TRADE UNION MEMBERS to participate in the affairs of the trade union** i.e. the right to participate in the union's lawful activities which includes meetings and coming with resolutions for the betterment of the members at large. In this matter the

⁴⁶ *op. cit* note 39 RAAWU constitution see also the complainant written submissions at p. 2

members at Mlimani Branch did convene lawful meeting to discuss the nagging issue of their welfare, that the complainant inspite of having a lion's share in the contribution of dues collected i.e. 80% had provide no services or provided poor service to the members. Letter from Mlimani Branch of RAAWU dated 23/04/2007 reference RAAWU/CK/HALM/63⁴⁷ reads in part:-

...Tunapenda kukutaarifu kwamba tawi letu lilikuwa na Mkutano wa kawaida wa wanachama siku ya Alhamisi tarehe 19/04/2007 katika Mkutano huo mjadala mkubwa ulifanywa na wanachama katika ajenda ya taarifa ya maendeleo ya suala la uboreshaji maslahi ya wafanyakazi waendeshaaji wa vyuo vikuu ...Baada ya mjadala mrefu yafuatayo yalihitaji kutolea maamuzi kwa kura ya wazi ya kunyoosha mkono:-

- 1. **Ushiriki katika sherehe za Mei Mosi, 2007,** jumla ya wanachama asilimia [60%] waliunga mkono kushiriki sikukuu za Mei Mosi 2007.*
- 2. **Kusitisha makato ya 2% kupelekwa makao makuu ya chama.** Wanachama wote [100%] waliunga mkono hoja ya kusitisha makato ya 2% hadi hapo watakapoona uwajibikaji kwenye suala hili...*

I entirely and respectfully agree with the respondent that members of any trade union have powers to instruct their branch leaders to act in accordance to what they have lawfully decided through their lawful meetings for the benefits of the members. Therefore members who are

⁴⁷ Letter by RAAWU Mlimani Branch written by the Secretary out Z.P. Masende to the complaint RAAWU Secretary General

contributors, had the exclusive powers to instruct their leaders not to remit to 80% of the union dues to the head office. The right of the trade union members is protected under the law of Employment and Labour Relations Act No. 6 of 2004:-

S. 9 (1) Every employee shall have the right:-

a) to form and join a trade union;

b) to participate in the lawful activities of the trade union⁴⁸.

Now the rights of the trade union members under section 9 (1) of the Act⁴⁹ does not only protect the employee who are members of the trade union to join and form a union but the section also grants the members of a union the **right to participate in the affairs of the union** under section 9 (1) (b) of the Act. To my mind to participate in the affairs of the union includes, but not limited to the members convening lawful meetings to discuss the affairs of the union in the light of their expectations and welfare. Indeed to make resolutions which would positively affect their well being and what have you are positive affairs of the union. Hence the exclusive rights of members employee.

To conclude, the protection of freedom of association of employees and employers is not only protected by our laws to wit, the Employment and Labour Relations Act No. 6 of 2004 but is also guided and emphasized by the ILO International Labour Organization by article 2 and 3 of the **Freedom of Association and Protection of the Right to Organize**

⁴⁸ Cap 366 RE 2009 sub-part 'D' Freedom of Association Employee's right to freedom of Association

⁴⁹ *ibid*

Convention No. 87 of 1948 which reads:-

Article 2: workers and employers without distinction whatsoever shall have the right to establish and subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3:

- 1. Workers and employers organization shall have the right to draw up their constitution and rules to elect their representatives in full freedom, to organize their administration and activities and formulate their programmes.*
- 2. **The public authorities shall refrain from any interference which would restrict this right or impede the exercise thereof..** [emphasis mine]*

The Respondent was the acting secretary of Mlimani Branch before the branch members had organized themselves and decided to form a new trade union styled the THTU as I have explained above and as the **evidence** showed. This right to organize is emphasized in the ILO convention namely the right to organize and Bargain Collectively Convention No. 98 of 1949. Therefore the right to join and form a union is protected in our law, and ILO convention emphasis the same. The law also grants the members of the union the right to participate in the affairs of the union.

In the event and on the foregone the present complaint filed by the complainants does not have any base, the dispute is dismissed *in toto* [in its entirety].

I.S. Mipawa
JUDGE
05/06/2015

Appearance:-

1. Applicant: Present Margareth Mohamed Assistant Secretary RAAWU
(Applicant)
2. Respondent: Absent

Court: Judgment is read over and explained to the Applicant who is present but in the absence of the Respondent. Further right of appeal explained.

I.S. Mipawa
JUDGE
05/06/2015