EFFECTIVENESS OF LABOUR LAW REFORM IN THE CONTEXT OF EMPLOYMENT RELATIONS IN HEALTH SECTOR FROM 2004 TO 2015: A Study of Muhimbili National Hospital in Tanzania

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ABSTRACT

This study analyzed modes of expressing grievances as well as identifies measures and challenges over management of strikes from 2004 to 2015 at Muhimbili National Hospital (MNH) in Tanzania. The focus was to fill in the knowledge gap on whether the escalating strikes that took place from 2004 to 2015 at MNH were behind defects of Employment and Labour Relations Act, Cap 366 (ELRA) and Labour Institutions Act, Cap 300 (LIA) within the framework of labour law reform or not. Literature indicates that before 2004 strikes were not inherent rights of workmen. Semi-structured interview, FGD and documentary review supplemented each other to collected data from 86 respondents. Results revealed that the laws had positive effects on modes of expressing grievances. In the first instance, since 2004 the laws made employees aware of their rights to strike and used it as a tool to press for their demands whenever collective bargaining was futile. In the second instance, the employer gradually abided with provisions for good governance to create formal systems for grievances handling hence strikes ceased after 2015. Results too indicated that from 2004 to 2015 there were challenges over management of strikes but came to end by good governance practices. In short, the employer's non-compliance to good governance practices activated strikes and the opposite was true. It was recommended that more studies should be conducted on roles of good governance on improving working condition in public service in general.

Keywords: Labour law reform, Employment relations, Health sector, Good governance, Strike, Standards of employment, Muhimbili National Hospital (MNH).

INTRODUCTION

The rules to regulate employment relations have been in existence ever since the emergence of production relations. Such rules have been subject to reform to create conducive relations. The enactment of ELRA and LIA in 2004 expected to launch a new phase of labour regime in Tanzania capable of maintaining employment relations and rescue employees' trust to their government. Besides great expectation from ELRA and LIA, there existed dynamics of labour discontents that manifested through strikes from 2004 to 2015 between main actors in health sector, MNH in particular (Rutinwa, *et al.,* 2010). The discontents raise questions as to the effectiveness of labour law reform in the framework of ELRA and LIA (The Express, Weekly Newspaper, January 1, 2006; The Citizen, Weekly Newspaper, January 26, 2012 cited in Mwenisongole, 2017). It is on the basis of this milieu where this study attempts to fill in the knowledge gap as far as the escalating strikes that took place from 2004 to 2015 at MNH were concerned.

Forces of Law Reform leading to enactment of ELRA and LIA

Since the independence of Tanzania in 1961 (then Tanganyika), labour law reform have been influenced by external forces to accommodate socio-economic and political changes focusing on, *inter alia*, broadening the role of market forces in the economy (Mtaki, 2005; Lyoba, 2007; Semboja, 2007 and Rutinwa, *et al.,* 2010). To a greater extent, the reform acted as a response to the ratified conventions from International Labour Organization (ILO). The ratification of Conventions demanded a legal base upon to effect their binding (Mtaki, 2005).

Expectation from ELRA and LIA

Before the advent of ELRA and LIA, Tanzanian labour law regime was linked to outdated colonial ideology. The act of workers to withdraw their labour was regarded as a breach of contract (Rutinwa, *et al.,* 2010). Strike became a weapon of the working class in collective to press employers to meet disputed interest (Poulsen, 2011 cited in Mwenisongole, 2017). In 2004, Tanzania overhauled its labour laws when it enacted ELRA and LIA (Mtaki, 2005 cited in Mwenisongole, 2017). Subsequently, in 2007 the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No.42 of 2007 was promulgated to facilitate the enforcement of the labour standards and rights stipulated in the Acts (Mtaki, 2005).

Rationale and Objectives of the Study

The provisions in ELRA and LIA expected to instill harmonious employment relations among main actors in employment sector in general (Mtaki, 2005). To the contrary, in 2004 to 2015 Tanzania has witnessed dynamics of labour discontents that manifested through strikes in health sector and MNH in particular (Guardian, Weekly Newspaper, 30th June 2012 cited in Mwenisongole, 2017). The discontents create a knowledge gap as to the effectiveness of labour law reform in the context of employment relations.

One of the strikes that took place in June 2012 came to be known as the Ulimboka crisis was remarkable and distorted the good image of the government as far as good governance is concerned (Guardian, Weekly Newspaper, 30th June 2012 cited in Mwenisongole, 2017). Although during 2004 to 2015 there were political and health sector reform, the main focus of this study is on labour law reform which intended to instill legal framework against discriminatory aspects of employment relations inherited from colonial labour regime. The objectives of this study, therefore, were two-fold: to analyze mode of expressing grievances at MNH; and to identify measures and challenges over management of strikes at MNH.

LITERATURE REVIEW

Published and grey literature revealed that laws and in particular labour laws have been subject to reform to harmonize emerging changes over time with reference to rights and duties of employer and employee respectively. Depending on the degree of realization of legal issues to be reformed in a

particular country, labour law reform is a universal phenomenon. As such the ILO, has among other things, incorporated the right to strike in international legal instruments as one of fundamental measures for harmonizing employment relations of democratic values within labour regime (Majhosev &, Denkova, 2013).

In Tanzania labour law reform coupled with the world trends of liberalization policy reflected the need to have a new labour law regime which safeguards democratic values (Lisakafu, 2014). By enacting the ELRA the reform successfully repealed and replaced harsh provision enshrined in the Employment Act of 1954 which did not conform to universal democratic right of employees as follows: First, section 42 of the Employment Act of 1954 which provided for summary dismissal was repealed and replaced by section 37(1) (c) of the ELRA which provide for fair procedures for termination of employment; Secondly, section 28 (4) of the Industrial Court Act which made the award (decisions) of the Industrial Court final and conclusive (i.e. not appealable or reviewable in any other courts of law). The reform provided the room for further determination of labour suits to the High court (Labor Division) and to the Court of Appeal by the way of appeal, revision or review as provide under section 91 of the ELRA and 57 of the LIA respectively; Thirdly, the Employment Acts of 1954 was silent on issues related with picketing during strike, use of the replacement labour in lawful strike or lockout by employer, locking the employer in the premises. The reform under section 76(3) of the ELRA incorporated them as part and parcel of the right to strike (URT, 2004a & URT, 2004b). Finally, before the reform handling of labour dispute was complex, lengthy and bureaucratic (Poulsen, 2014 cited in Mwenisongole, 2017). The enactment of LIA resolved all the mischief related with dispute management system. The ELRA and the LIA consolidated all the existing labour laws and streamlined labour regime that avoids most of the shortcomings of the previous one (Lisakafu, 2014).

Scope of Labour Law Reform

In Tanzania, initiatives for labour laws reforms existed even before and continued after independence. Various stakeholders were involved to synchronize diverse labour issues. This study, however, confined itself within 2004 to 2015 timeframe in four major labour contexts:

Enactment of Legal Instruments.

Legal instruments prescribed substantive and procedural issues. On one hand, the ELRA was enacted to provide for core labour rights, to establish basic employment standards, to provide a framework for collective bargaining, to provide for the prevention and settlement of disputes, and to provide for

related matters to be determined by the law (URT, 2004a). On the other hand, the LIA was enacted to provide for the establishment of labour institutions namely: the Labour, Economic and Social Council; the Commission for Mediation and Arbitration (CMA); the Essential Services Committee; the Wage Boards; Labour Administration and Inspection; the High Court (Labour Division); and the Court of Appeal of Tanzania. The law provide for their functions, powers and duties, as well as other matters related to them to be prescribed by the law (URT, 2004b). Yet, the Employment and Labour Relations (Code of Good Practice) Rules of 2007 was enacted to supplement for good practice to guide fair procedures not only for justice to be done but also to be seen and believed to be done (URT, 2007).

Installation of Labour Management System

Labour management system encompasses of labour institutions established under the LIA (URT, 2004a). The institutions are the management machinery of labour matters in Tanzania. In the first instance the Labour, Economic and Social Council (hereafter referred to as the Council) and the Wage Boards play an important advisory role in labour market policy formulation. While the Council participates in the development of general labour policies, the Wage Board is involved in the determination of minimum wages and standards. The participation of these two machineries is necessary to ensure that government takes the interests of the relevant stakeholders into account when formulating these policies. In the second instance the CMA and the Labour Court are responsible for the resolution of labour disputes. The CMA resolves labour disputes through mediation and arbitration while the Labour Court resolves disputes by adjudication. Both institutions are essential to ensure that employees are able to defend and protect their rights (Rutinwa, *et al.,* 2010).

Awareness Creation on Employment Standards

Labour law reform introduced several employment standards which were not recognized by labour regime before the reform. Under employment and labour laws, by employment standards means technical specifications or criteria designed to be used consistently as a guideline for acceptable minimum base by which employers and employees have to abide for when regulating terms and conditions of employment for conditions of service to be just and fair. Employment standards help to eliminate sub-standard employment, exploitation, discrimination and promote equality, justice and fairness of employment (Procyk, 2013 and Lohani & Swepston, 2006). Awareness occurs when an individual is sufficiently informed about a subject for him/her to be conscious of its existence and its broad subject matter. In this sense, awareness of an employment standard implies that the individual

had heard of it, and had some idea of the area of labour rights to which it relates (Meager, *et al*., 2002).

In Tanzania, most of awareness creation programmes were engineered by ILO coupled with local institution such as CMA. Some of the employment standards such as employment contract, recruitment policy, hours of work, leave matters, grievance and disciplinary procedures, dispute resolution, workplace offences, organizational rights, confidentiality clause as well as termination procedures were presented and discussed through organized workshops, seminars, meetings and in-house training at institution level conducted by trade union representatives. Other employment standards related with employment rights were streamlined in formal and non-formal education programmes in schools and colleges focusing on awareness-raising and capacity building on human rights in general. Yet, debates through trade union and activists' platforms on measures needed to respect employment standards increased awareness among employers and employees on available remedies against violation of employment standards (Lisakafu, 2014).

Promotion of Good Governance and Human Rights

Labour law reform opened a new era where promotion of good governance and human rights was inevitable in order to balance the interests of employers on one hand, and those of employees, on the other (Mtaki, 2005). The ELRA, therefore, incorporated provisions which promote and or are consistent with the basic human rights as enshrined in the Constitution of the United Republic of Tanzania, Cap 2 of 1977 [R.E. 2008]. The rights relate to: prohibition of child labour; prohibition of forced labour; prohibition of discrimination; right to freedom of association and collective bargaining (UTR, 2004a & URT, 2008). Good governance and human rights are mutually reinforcing. Without good governance, human rights cannot be respected and protected in a sustainable manner. The links between good governance and human rights can be organised around four areas: strengthening democratic institutions; improving public service delivery; rule of law; and combating corruption (UNHCHR, 2007).

Synthesis of Scholars' Views

The enactment of legal instruments with regards to labour matters, installation of labour management system, awareness creation on employment standards, as well as promotion of good governance and human rights had greater contribution for labour law reform to have positive impact on improving employment relations in labour regime. Among other things, the reform introduced employees' right to strike as a universal democratic right of all employees, regardless of where they are employed (Majhosev & Denkova, 2013). Several scholars have written numerously about strike with reference to labour law reforms (Lal, 2002; Garg, 2003; Zyberstajn, 2002 and Eslava, 2008). Some of them have described strike as a weapons used by demotivated and demoralization employees to press for their demands. Yet, others looked at it as employees' mode of expressing grievances once collective bargaining proves failure. According to Lal (2002), strike is a weapon that demotivated and demoralized employees use on their advantage when lawful measures like collective bargaining is not fruitful. However, his study failed to explain the grounds for the illegal strike. In addition, Garg (2003) argued that for a strike to succeed as a mode of expression it must be both legal and justifiable. Whether the strike is legal and justified is a question of fact which is to be decided on evidence on records. The fact was stated in the case of syndicate **Bank vs. K. Umesh Nayak 1994 (69) FLR 806 (SC)** that strike is the inherent right of the workmen where the employer resorts to a rigid approach. Nevertheless, in **HMT Ltd vs. HMT Head Office Employees Association AIR AIR [1997] Sc. 585** it was held that although strike is inherent right of the workmen, strike without consent is illegal and the employees engaged in the strike are not entitled to remuneration for the period of such strike. Zyberstajn (2002 cited in Mwenisongole, 2017) found that in Brazil, labour law reform was employee based while Eslava (2008 cited in Mwenisongole, 2017) revealed that in Columbia the reform increased productivity though stated nothing in relation with strikes. All in all, labour law reforms legalized lawful strike as employees right (Rutinwa, *et al.,* 2010).

Knowledge Gap

Studies conducted in and outside Tanzania together with scholars' views revealed that labour law reforms were inevitable to establish and sustain harmonious employment relations. The reform expected to harmonise working conditions and relations between employers and employees. Despite high expectations about the reform, the opposite was achieved. Literature indicated that employees' had right to strike and used it effectively. Yet, little is known whether strike was the only mode of expressing grievance and no study had identified measures and challenges over management of strikes. It was the purpose of this study, therefore, to fill in the knowledge gap other studies haven't attempted.

METHODOLOGY

The study employed qualitative approach supplemented by simple statistical calculation (Patton, 2002; Bricki & Green, 2007; Creswell, *et l.*, 2011; Palinkas, *et al.*, 2015 & Fry, *et al.*, 2017). MNH was selected as the case study following its central role to organize strikes at that particular period. About 86 respondents participated sampled from total of 194 accessible population comprising employees who have experienced at least once in a strike as key players or had been member of the bargaining unit. From the population, 18 were purposively selected where 4 were from the Management team, 5 from Workers Council, 4 from TUGHE, 3 from MAT and 2 from Legal Officers who provided primary data through semi-structured interview. Similarly, 68 respondents were randomly selected where 10 were from Officer Grade cadre and 58 from Supporting Staff to provide primary data through FGD.

Table 1: The sample size of the study and Data collection tools

S/N	Target Population	Accessible Population			Sampling Method	Actual Sample Size			Tools for Data Collection
		M	F	Total		M	F	Total	
1	MNH Management Team	6	6	**12**	Purposive	1	3	**4**	Interview
2	Officer Grade	16	10	**26**	Randomly	4	6	**10**	FGD
3	Support Staff	65	59	**124**	Randomly	26	32	**58**	FGD
4	W/ Council	10	5	**15**	Purposive	2	3	**5**	Interview
5	TUGHE	4	2	**6**	Purposive	2	2	**4**	Interview
6	MAT	5	3	**8**	Purposive	2	1	**3**	Interview
7	Legal Officer	2	1	**3**	Purposive	1	1	**2**	Interview
	TOTAL	**108**	**86**	**194**		**39**	**47**	**86**	

Source: Field Data, 2021

Documentary review supplemented to collect secondary data. Triangulation technique dominated during data collection. The Tanzania Public Service College approved the protocol for the study, MUHAS granted research clearance and respondents were consulted in advance to have their consent. To ensure validity and reliability of data, instruments were discussed thoroughly by colleagues to avoid data distortion, authentic respondents were involved to ascertain data and crystallizations were employed to crosscheck accuracy (quality control) of data. Data were analyzed manually based on study objectives to suit the purpose of the study.

ANALYSIS

The analysis focused on salient features of ELRA and LIA, the right to strike, factors for illegal strike, and legal controversy on strikes as arranged in the following sub-headings. The analysis focuses on key salient features of ELRA and LIA, the right to strike, factors for illegal strike, and legal controversy on strikes as explained below:

Key Salient Features of ELRA and LIA

Labour law reform sought to enhance policies to respond to market principles in line with world economic forces (Lyoba, 2007). Key salient features reflected in ELRA and LIA among others are: provisions for good governance; promotion of industrial harmony; promotion of productivity; and establishment of vibrant labour institutions (Mtaki, 2005).

The Right to Strike

Section 75 (a) of ELRA recognize workers' right to organize and engage in a strike at a workplace. Again section 76 (1) (a) and 76 (2) (a), (b) of ELRA read together with Rule 39 (2) of Employment and Labour Relations (Code of Good Practice) Rules, 2007 legalize strike and set guidance for workers who provide essential services should conduct strike if necessary. According to rule 40 (1) of Code of Good Practice Rules, 2007 strike ends if the dispute is settled. In general, a lawful strike requires keen observation of procedures to strike.

Factors for Illegal Strike

Illegal strikes have always been a by-product of several factors including ignorance of the employees on rules for organizing a lawful strike (Mwalongo, 2012). The second factor is cumbersome procedures for employees to wage a lawful strike. The procedures contribute much to spoils employees' zeal to strike lawfully. The third factor is the interference of the government to stop lawful strike even if the employees' demands are not met. The last factor is that trade unions are passive or reluctant to facilitate lawful strikes (Mbiro, 2016).

Legal Controversy on Strikes

ELRA and LIA declare that calling for a lawful strike is the right of employees. Yet, the laws require employees or their trade unions to seek and obtain consent to organise a lawful strike. Consequently, the court, on several occasions, has declared some strikes illegal for the lack of consent at the expense of the employees' right to strike. As such, there is a growing call for the government to provide more room for employees to wage a lawful strike.

RESULTS

The study presented the results based on two objectives of the study as shown below in detail:

Modes of Expressing Grievances at MNH from 2004 to 2015

The study revealed three modes of expressing grievances used by employees at MNH ranging from individual initiatives, collective bargaining and Trade Union's call for strike:

Individual Employees' Initiatives

Individual employees had different modes of expressing their grievances at MNH. The study discovered that some of the employees preferred part time in private hospitals for more pay. Yet others quitted medical profession or went abroad for green pastures. Unlike the former mode, the later contributed much to decrease the number of doctors and medical specialists.

Collective Bargaining

Collective bargaining enhanced MNH Trade Union with bargaining power on behalf of the employees to negotiate with the MoHSW. Although through collective bargaining remuneration was increased, yet the employer paid little attention on working condition due to non-compliance to good governance. Medical and physical facilities continued to deteriorate and became source for escalating strike in health sector from 2004 to 2015.

Trade Union's call for Strike

Though FGD the study revealed that employees who were demoralized, demotivated and dissatisfied took advantage of section 75(a) under ELRA to call for strike through Trade Union. Trade Union's call for strike as a mode of expressing grievance was often used once collective bargaining did not come-up with fruitful result. In general, calling for strike was inevitable whenever the employer remained adamant to abide with provision related with good governance despite of collective agreement. In a long run, the employer's practice of good governance improved working condition hence strikes ceased.

Measures and Challenges over Management of Strikes at MNH from 2004 to 2015

It was found that there have been deliberate efforts at national level to practice good governance through the President's Office, Public Service Management and Good Governance whereby management of human resource was structured. The use of Open Performance Review and Appraisal System (OPRAS), promotion of public service ethics where employees pledged to serve with highest

standards of loyalty, respect, dignity and integrity were maintained. At the institutional level, measures focused on improving working conditions and fringe benefits. Health related risks which jeopardized MNH employees were no more. Despite of available measures for managing strikes, challenges prevailed as follows:

Lack of Fund

The findings indicated that more often MoHSW has always been inadequate to meet all claims of health employees. Worse enough, misallocation of funds allotted for the claim was rampant as such distorted efforts to end-up employees' grievances. More specific, whatever re-allocation of fund made, MNH management gave it low priority and misallocated it for burning requirements for the hospital.

Leadership Challenges

Although MNH was separated from MUHAS the two institutions never worked independently. Through FGD the study revealed that the two were interdependent as such neither MNH nor MUHAS ran her activities without affecting the leadership style of the other. More often medical specialists who worked at both MNH and HUHAS at a time were a little bit difficult to handle when engaged in the move of strike.

Work load Burden

The study revealed that, many health specialists left MNH for green pasture elsewhere in and outside Tanzania as such those who remained at MNH were overburdened. Work load burden became not only a challenge but a source of strikes when no additional pay was given.

Lack of Medical Equipments

The deterioration of facilities and services were often due to MNH's being ill-equipped to meet the needs of patients across the spectrum of care-from emergency care to chronic disease management. It was so disappointing for the national hospital to lack some important medical equipment such as CT-Scan and radiation machines.

In general, challenges ranging from financial constrains, leadership style, workload burden, lack of medical facilities coupled with employer's inability to comply with good governance had become the major determinant of frequent strikes at MNH and in health sector at large.

DISCUSSION

The discussion is centred into provisions on: substantive and procedural rights after 2004; terms, general conditions of service and clinical facilities; governance practices and mode of expressing grievances as well as challenges over dispute settlement mechanisms.

Provisions on Substantive and Procedural Rights After 2004

The enactment of ELRA and its regulations made under section 99(1) of ELRA gave specification of rights, obligations and enhanced the conduct of employees and the employer on how to enforce their rights based on contractual terms. Again, LIA introduced labour institutions to facilitate effective enforceability of both the employers' and employees' rights coupled with smooth handling of labour disputes. The provisions saved as eye opener and reminder for employees to demand their rights through strikes whenever amicable means failed something did not happen before 2004. Magalla (2018) and Shadrack (cited in Magalla, 2018) revealed that although section 75 of the ELRA provide for the right to strike, on one hand, indirectly denied it on the other hand as provided under the same read together with section 76 of ELRA. More often such provisions subjected employees into unlawful strike whenever they exercised their right to strike.

At the international level as well, despite of the provision of the right to strike, the exercise of the same has been attacked by various pressures. Xhafa (2016) revealed that such pressures reached a new peak at the 2012 International Labour Conference (ILC), at which the Employers' Group challenged the existence of an internationally recognized right to strike protected by ILO Convention No. 87 and questioned the most authoritative international mechanism for bringing violations of the right to strike to the attention of a global audience. The limitation under national and international instruments (provisions) contributed much to fuel frequent strikes in 2004 to 2015. Nyango and Mutihir (2021) observed that although many countries made Acts that provided the right to strike, yet there were other countries like South Africa where the right to strike was enshrined in the Constitution. At universal level the right to strike is governed by the Convention no. 87 "Freedom of Association and Protection of the Right to Organize" of 1948, Convention no. 98 on the "Right to Organize and Bargain Collectively" and the 1949 Recommendation no. 92 on "Volontary conciliation and Arbitration." With these instruments, the right to strike was justified only when it complied with procedural provision as revealed by Majhosev and Denkova (2018).

Terms, General Conditions of Service and Clinical Facilities

Both employer and employees knew terms and general condition of service set by ELRA. However, demands for salary increment, claims of long unpaid arrears, non-payment of call and overtime allowances, un-proportional workload, un-paid annual leave, poor infrastructure as well as shortage of clinical facilities demoralized employees from staying at MNH. Similar grounds that led MNH employees to stay demotivated and demoralized were found by Mwangu, *et al.,* (2008) at the same. For those who were not happy with their jobs, attributed the attitude with: first, low salaries which

counted for 73.3% among supporting staff, 66.7% nurses, 63.3% doctors, 54.5% other clinical staff. Factors related to the poor working environment were the second major reason for demoting MNH employees where 50% of the clinical supporting staffs were prevalent followed by 36.7% of doctors, 35.8% supporting staff, and nearly 17% of the nurses. Shortage of clinical facilities was cited as the third major factor in causing low morale at work. This problem was cited by nearly 38% of respondents in the category of other clinical staff, almost one-third of the nurses, and nearly 27% of doctors. Nearly one-third of the nursing staff and almost 29% of doctors were considering resigning from their positions, as were 22% of supporting staff, and 18% of other clinical support workers such as laboratory technicians, pharmacists and radiological assistants.

Un-proportional workload caused by shortage of doctors led to many doctors to engage in frequent unpaid overtime following meagre budget allocated. According to Lunogelo (2013) in 2012 the WHO suggested that a country ought to have a ratio of 600 people/patients per doctor. South Africa, for example, in 2012 one doctor served 1,200 people. In case Tanzania compared itself to South Africa, Dar es Salaam alone which at that time had a population of about 4.5 million, was supposed to have 3,750 doctors. In other words, Tanzania with a total of about 45 million people in 2012 needed about 37,500 doctors. It was very unfortunate that in 2012, Tanzania had less than 2,000 doctors in total, whereas 300 were at MNH. In short, negativity dominated and became major determinant of strikes. Russo, *et al.*, (2019) reported the same, that in low-income countries, uncertainty of terms and general conditions of service as well as shortage of clinical facilities fuelled the occurrence of strikes in health sector.

Governance Practices and Mode of Expressing Grievances

In its various phases, labour law reform sought to enhance policies to promote good governance. Since the enactment of ELRA and the Employment and Labour Relations (Code of Good Practice) Rules 2007 most of Chief Executives and Management team in public sector adopted good governance practices. Transparency in health services has increased information and employees became aware of many ethical issues. Such information became one of the sources of grievances and a ground upon MNH employees stood not only for their rights against malpractice made by some of the top officials who were entrusted to manage or supervise health services but also for the rights of patients who deserved free services yet were charged taking advantage of their ignorance. Management team became more accountable and increased involvement of staff members in planning and implementation of various decisions relating to workers rights. Workers' council meeting,

involvement of trade union, and collective bargaining were the most reliable modes of expressing grievances. However, Bryson, *et al.,* (2015) cautioned that although collective bargaining explains how mutual gains can be achieved by employees and employers, it should not be taken for granted because more often employer's choice plays a primary role. This observation concurs with the findings from MNH, where the employer rarely fulfilled collective bargaining. Strike became the last means of grievance expression for action speaks louder than words.

Basically, throughout the world, demotivated and demoralised workers have had different modes of expressing their grievances. The same was found by Fajana (1995) that in expressing union discontents, individuals and groups exhibit different responses. Some would be passive while others active. Yet, some dissatisfaction may wait to be ignited at the slightest further provocation. Makinde (2013) found that employees in Nigeria expressed their grievances through absenteeism, labour turnover and sabotage to employers' orders. As with MNH employees, the ultimate expression of individuals varied depending on personal interests. Brain drain at MNH, for example, was a common indicator of individual reaction. Despite of the negative impact of strike as a mode of expressing grievances, Songstad, *et al.,* (2011) found that the November 2005 strike at MNH was beneficial to employees in health sector. The strike resulted to substantial salary increase for all health employees in Tanzania.

Challenges over Dispute Settlement Mechanisms

Challenges over dispute settlement mechanisms ranged from individual labour disputes (e.g. promotion backlog, un-paid leave or instances when termination is fair substantively but unfair procedurally), collective labour disputes (e.g. failure or incomplete performance of collective agreement) and strike related disputes (e.g. where a lawful strike is barred). Such instances had multiple sources at MNH such as failure to exhaust settlement mechanisms, laxity to resolve some of the disputes in time, and instances when MNH employees staged for strike simply because of the administrative decision made by MUHAS and vise versa (Mwangu, *et al.,* 2008).

Un-fair termination

Un-fair termination has always been against the law, particularly Article 13 of the Constitution of the United Republic of Tanzania, Cap 2 of 1977 [R.E.2 008] read together with section 37 (1) of ELRA and the Employment and Labour Relations (Code of Good Practice) Rules 2007 [hereafter referred to as GN 42 of 2007]. Although challenges on un-fair termination affected individuals, contributed a lot

to influence MNH employee collectively stage for strike especially when the un-fairness was deliberately made to humiliate some of the employees who sort to stand steady for their rights. Court cases on un-fair termination are evidenced in the case of **MUHIMBILI NATIONAL HOSPITAL vs. ANDREW KOMBA & NELSON ILETA**, LABOUR REVISION NO. 502 OF 2019 held in the High Court of Tanzania (Labour Division) at Dar es Salaam. In this case the applicant terminated the respondent on fair and valid reasons but unfortunately he did not observe some of the legal requirements on procedures for fair termination as provided under section 37 of the ELRA read together with rule 13 of GN 42 of 2007 and Guideline 4 of the Guidelines for Disciplinary, Incapacity and Incompatibility Policy and Procedures (herein the Guidelines). Although the two respondents were not re-instated, yet the applicant was ordered to pay compensation to the respondents of not less than twelve (12) months' remuneration in accordance to section 40 (1) (c) of of the ELRA.

Another case on un-fair termination was between **FAIMA SIRAJI vs. MBEYA URBAN WATER AND SEWERAGE AUTHORITY,** REVISION NO. 5 OF 2020 (Arising from Labour Dispute No. CM A/M BY142/2015) held in the High Court of the United Republic of Tanzania (Labour Division) at Mbeya. In this case, the applicant being aggrieved with the award of the Commission for Mediation and Arbitration filed the instant application seeking to revise and set aside the award on the ground that: she was substantively unfairly terminated; and that the arbitrator did not exercised her discretional powers Judiciously; she also prayed for the court to set aside the impugned award and order another statutory compensation. After going through the testimonies and evidence, the Court found that the Arbitrator didn't take into account the circumstance of the case guided by the principle of natural justice, equity and common law. The court upheld the CMA award and ordered accordingly the granted reliefs based on the decision by the Court of Appeal cases of **Yusuph Same & Another vs. Hadija Yusuph**, Civil Appeal No. 96 of 2002, CAT (unreported) and **Regional Manager, TANROADS Kagera vs. Ruaha Concrete Company Limited**, Civil Application No. 96 of 2007 (unreported).

Incomplete performance of collective agreement

Collective agreement has always been reached amicably between TUGHE and MNH management but the challenge has always remained on the performance. There are instances where even the MoHSW promised to fulfil the demand laid down by TUGHE, yet little was accomplished until when TUGHE intimidated to convene or convened strike.

Disputes beyond MoU

Memorandum of Understanding (MoU) between MNH and MUHAS was signed to describe among other things the mechanisms to settle disputes occurring along their mutual cooperation. Basically, MNH and MUHAS are separate institutions administratively though they have never worked absolutely independent of one another. However, there have had challenging disputes happening beyond MoU not because of defective measures to handle them but due to inevitable circumstances within the framework of industrial relations between MNH and MUHAS. Though disputes beyond MoU between MNH and MUHAS rarely happened, yet their occurrence posed commotion that made members of staff from both MNH and MUHAS convene secondary strike or stay unrest.

Strike-related Disputes

As a legal right, every employee has the right to strike and every employer has the right to lockout in respect of a dispute of interest respectively as provided under section 75(a)(b) of ELRA. However, the law restricts person engaged in an essential service to strike or lockout. Among others, such person include all healthcare employees as described under section 76(1)(a) and section 77(1)(c) of ELRA. More often MNH employees had fallen victim of strike-related disputes whenever did not comply with the legal requirement to convene strike. In actual fact, MNH employees knew the restrictions but were often forced to strike after all possible peaceful measure did not bear fruits.

The discussion concluded that the enactment of ELRA and LIA enlightened employees to know their rights, measures to attain their rights and procedures to convene strike as one of their rights. Such knowledge became a stepping stone for employees to demand their unfulfilled rights through escalating strike that happened in 2004 to 2015 whenever the employer paid little attention to comply with provision for good governance.

CONCLUSION, IMPLICATIONS, AND FUTURE DIRECTIONS

The background of this study has shown that before 2004 labour laws had coercive elements. As such the labour law reforms endeavoured to eliminate such unpleasant aspects and harmonise employment and labour relations at workplaces. The review of the literature revealed that the enactment of ELRA and LIA was a remarkable stage towards improving employment relations in Tanzania. The case study approach was employed whereby triangulation technique dominated during data collection. The findings revealed that awareness of right to strike among MNH staff as well as the employer's gradual abidance to provisions for good governance was inversely proportional. Some of the controversial

aspects became hard nut to crack for employees to attain their right to strike. Based on the discussion, labour law reform was effective to improve employment relations in health sector. It was recommended that more studies should be conducted on roles of good governance on improving working condition in public service in general.

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