IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 140 OF 2024

BETWEEN

GODWIN GEOFREY ..... APPLICANT

VERSUS

PIVOTECH COMPANY LIMITED ..... RESPONDENT

RULING

Date of last Order: *15/02/2024*
Date of Ruling: *08/03/2024*

MLYAMBINA, J.

In the instant matter, the Applicant and the Respondent had an employer/employee relationship since 2005 where the Applicant was employed as a Field Technician. On May 2020, the Applicant was promoted to a new position as a Field Operation supervisor, a position which led to a signing of a new employment contract which was fixed in time. It is alleged that, on 16/6/2022 when the Applicant was still in official duties, he received a letter written by one Ebenezer Kombe. It was titled "end of contract." Being aggrieved with such letter, on 12/8/2022, the Applicant referred the dispute to Commission for Mediation and Arbitration (herein CMA). It was on 58th day after receiving of the letter.

On 18th July, 2023, when hearing was still proceeding at CMA, the Respondent raised a preliminary objection claiming that the matter was filed out of statutory time. Upon disposal of the preliminary objection by oral submissions, on 11/10/2023, the Hon. Arbitrator ordered that the preliminary objection will be determined along with the Award. But on 5/12/2023, when parties appeared for continuation of hearing, the Hon. Arbitrator dismissed the matter for being time barred. The Applicant being aggrieved, he preferred this application on the following grounds, as set in the supporting affidavit:

i. *Whether the learned Arbitrator erred in holding that the mater was time barred without taking into consideration on the nature of employment contract entered between the Applicant and the Respondent.*

ii. *Whether the learned Arbitrator was correct to consider and decide for unfair termination instead of breach of contract.*

The application proceeded by way of written submissions. Before the Court, Mr. Allen Nanyaro, learned Counsel appeared for the Applicant while Mr. Ian Harold, learned Counsel was for the Respondent.

Arguing in support of the first ground, Mr. Nanyaro submitted that, the Arbitrator erred in law and fact for ruling that the dispute instituted

at CMA was time barred. He urged the Court to look at the pleadings before the CMA specifically the referral form (CMA) Form No. 1), as it states the dispute arose on 16/6/2002. Further, the *Labour Institution (Mediation and Arbitration) Rules G.N. No. 64 of 2007 (herein GN. No. 64/2007)*, specifically under *Rule 10(1) and (2)* clearly provides for time limit of instituting labour disputes. He stated that as per the case in hand, they strongly hold that the dispute between the Applicant and the Respondent follows within the ambit of *Rule 10(2) of GN. No. 64/2007* which is 60 days.

Further, the Referral form filed by the Applicant before the CMA, clearly specifies that the nature of the dispute before CMA was on breach of contract. The Labour Court has encountered this scenario from time to time and ruled out that the time limit for breach of contract is 60 days. Counsel Nanyaro put reliance of his submission to the case of **Rui Wang v. Eminence Consulting (T) Ltd**, Revision No. 306 of 2022 High Court of Tanzania Labour Division at Dar es Salaam (unreported) p.18.

On the second ground, it was submitted that the Arbitrator erred in law and fact in totally departing from parties' pleadings especially on CMA Form No. 1. The pleading indicated that it was on breach of contract but the Arbitrator ruled on unfair termination. Mr. Nanyaro

argued that unfair termination and breach of contract are different on each other and each stand as a different cause of action with different time limit and each has a different remedy. Despite of his submission, Counsel Nanyaro recognized the case of **St. Joseph Kolping Secondary School v. Alvera Kashushura,** Civil Appeal No. 377 of 2021 Court of Appeal of Tanzania at Bukoba p. 14 (unreported). In line with the cited decision, the Counsel argued that the Court doesn't mean that when there is breach of contract the cause of action switches to unfair termination, rather the only thing the Court of Appeal of Tanzania emphasized is the conditions under *Section 37 of Employment and Labour Relations Act [Cap 366 Revised Edition 2019] (herein ELRA)* implicitly to all employment contract. He stated that on the case before the Court, the Arbitrator changed the cause of action as implicit in the CMA F1 to unfair termination.

It was Counsel Nanyaro's view that the Arbitrator ought to have waited until hearing was complete before both parties so that she could have reached a position to rule out and consider as to whether the conditions stipulated under *section 37 of ELRA* were implicitly demonstrated by the parties during hearing of the case. In the upshot, Counsel Nanyaro urged the Court to consider the Applicant's affidavit,

the prayer in the chamber summons be granted and the file be remitted to the CMA for continuation of the hearing.

Responding the application, Mr. Harold submitted that the nature of dispute from CMA form No. 1 was on breach of contract. He argued that as per *Rule 10(2) of G.N. No. 64/2007,* the time limit is 60 days. He stated that the Applicant and the Respondent had fixed term contract which expired on 24/05/2022. He added that; as per the date of the letter titled "end of contract", there was no any contract between the parties, the contract expired on 24/5/2022.

Mr. Harold went on to submit that *Rule 4(2) of the Employment and Labour Relation Code of Good Practice G.N. No. 42 of 2007 (herein GN. No. 42/2007)* clearly stipulates:

> Where a contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires unless the contract provided otherwise.

That, the clearance form was filled by the Applicant on 24/05/2022. Also, the exits interview form was filed on 27/05/2022 as deponed in the Counter affidavit. He stated that while following his rights at NSSF, the Applicant went to request the letter titled end of contract. Such letter was written in honest. At page 2 of CMA F1, the Applicant wrote the Respondent unfairly ended his contract. Therefore, the Arbitrator was

correct in holding that the matter was on unfair termination because it was a fixed term contract which expired on 24/5/2022. He maintained that the contract was not renewed.

In rejoinder, Mr. Nanyaro reiterated his submission in chief and added that the contract was re-newed by default.

I have dully considered the rival submissions of the parties, CMA and Court records as well as relevant laws. I find the Court is called upon to determine one issue; *whether the dispute was timely filed at the CMA.*

The Applicant strongly maintained that the dispute between the parties herein arose on 16/06/2022 when the Applicant was served with a letter titled "End of Contract" which was admitted at the CMA as exhibit A4. For the reasons which will be apparent hereunder, the contents of the mentioned letter are hereunder reproduced:

> This is to confirm that the employment contract between Pivotech on one side and you on the other side ended on 24th May, 2022.
> Following the end of contract, your Social Security benefits (NSSF) will be processed as per the Fund's Regulations.
> We thank you for the period worked for our organization and wish you well for the future.

The above extract clearly stipulated that the contract between the parties expired on 24/05/2022, the fact which is also proved by the employment contract entered between the parties (exhibit A4). The said contract commenced on 25/05/2020 and agreed to end on 24/05/2022. As the record bears testimony, before the CMA, the Applicant strongly alleged that when the agreed term expired, he continued to work. Thus, the contract was renewed by default.

After critically examining the record, it is my finding that the Applicant's allegation is not proved. There is no any evidence in record to prove that the Applicant continued to work after expiry of the agreed period. Even in his testimony, during cross examination, the Applicant admitted that he did clearance 0n 24/05/2022 and 27/05/2022 as rightly submitted by Mr. Harold. Hence, there is no evidence in record to prove that the Applicant was assigned any work after clearance.

Therefore, in the circumstances of this case, I join hands with Mr. Harold's submission as per *Rules 4(2) (supra)*. That, a fixed term contract automatically terminates upon expiry of the agreed term. That is the law's position which have been highlighted by the Court in range of decisions including the case of **City Square Hotel v. Kassim Copriance**, Revision No. 373 of 2022, High Court Labour Division, Dar es Salaam.

In the matter at hand, the contract was automatically terminated on 24/05/2022. Thus, the cause of action arose on such particular date and not 16/06/2022 as alleged by the Applicant. In his submission, the Applicant strongly alleges that the dispute between the parties herein is breach of contract and not unfair termination as decided by the Arbitrator.

The time limit for referring disputes at the CMA is governed by the provision of *Rule 10(1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64 of 2007 (GN. No. 67/2007).* The relevant provision provides as follows:

> 10 (1) Disputes about the fairness of a employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.
>
> (2) All other disputes must be referred to the Commission within sixty days from the date when the dispute arose.

The above provision is clear, disputes concerning unfair termination must be filed at the CMA within 30 days from the date of termination whereas any other disputes including breach of contract must be referred to the CMA within 60 days from when the dispute arose. At

page 7 of the impugned decision, the Arbitrator was of the following view:

> Breach of contract that amounts to termination is the same as termination of a permanent contract of employment because all actions i.e breach and termination intends to end the employment contract.

I am at one position with the above holding of the Arbitrator. It is also my view that parties must distinguish between a mere breach of a term of contract and a breach of contract that results to termination. The earlier entails a certain term or terms of the contract has been breached such as failure to pay an employee as agreed in the contract or any other breach of the like. While, the later involves breach which results to termination of employment on different reasons such as misconduct, incapacity, incompatibility or on operational requirement.

Therefore, any employee who claims for breach of contract which result to termination of employment he/she has to refer such dispute at the CMA within 30 days from the date of termination as stipulated under *Rule 10(1)* of *GN. No. 67/2007.*

It is my further view that, time limit of filing disputes at the CMA when claiming for unfair termination must be the same to all employees of all categories be it permanent or fixed. That will serve the intention of

the legislature. It has been a tendency of employees on fixed terms contract who claims for unfair termination to hide themselves under the ambit of *Rule 10(2) of GN. No. 67/2007* so as to avoid being caught by limitation of time. Such practice should be discouraged so as to maintain proper and common application of the law to employees of all categories so long as they all claim for unfair termination of their employment. It is my view that such interpretation features within the interpretation made by the Court of Appeal in the case of **ST. Joseph Kolping Secondary School** (supra) where it was held that:

> We also do not agree with him that, under our laws a fixed term contract of service can be prematurely terminated without assigning reasons. This is because the conditions under *section 37 of the ELRA* are mandatory and therefore implicit in all employment contracts. It is only inapplicable to those contracts whose terms are shorter than 6 months. *(See section 35 of the ELRA).*

On the basis of the foregoing analysis, as pointed out, the cause of action in the matter at hand arose on 24/05/2022 when the Applicant's employment contract expired. The record shows that the dispute was referred at the CMA on 12/08/2022 which was after 79 days from when the cause of action arose. Therefore, the matter was referred at the CMA out of time. Hence, time barred as rightly found by the Arbitrator.

I don't disregard the Applicant's submission that the nature of dispute referred at the CMA is breach of contract as indicated in the CMA F1. Indeed, in the relevant form, the Applicant indicated that he claimed for breach of contract. He also claimed that the employer unfairly terminated his employment contract. It is my view that apart from their pleadings, in the CMA F1, parties have obligation to prove what they have pleaded by evidence. Short of that the claim stands as a mere allegation. Fortunately, in this case, the preliminary objection was decided after the Applicant's testimony. Thus, the Applicant was afforded the right to prove his claim, but he did not do so.

In the premises, as discussed herein above, the dispute was about unfair termination. Thus, the claim ought to have been filed within 30 days from the date of termination. Nonetheless, even if the dispute was about breach of contract, as firmly alleged, the same was supposed to be filed within 60 days pursuant to *Rule 10(2) of GN. No. 67/2007.* By simple calculation as indicated above, the dispute was filed at the 79th day from when the cause of action arose. Thus, it was still out of time.

In the event, for the reasons analysed herein above, I find no justifiable ground to depart from the Arbitrator's decision. The dispute was referred at the CMA without an application for condonation. Thus, the Arbitrator properly dismissed the same. I therefore uphold the CMA's

decision and dismiss the application for being devoid of merits. Order accordingly.

It is so ordered.

Y. J. MLYAMBINA

JUDGE

08/03/2024

Ruling delivered and dated 8th March, 2024 in the presence of Counsel Allen Nanyaro for the Applicant and Ian Harold Joseph for the Respondent.

Y. J. MLYAMBINA

JUDGE

08/03/2024