IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: SEHEL, J.A., FIKIRINI, J.A. And KHAMIS, J.A.)

CIVIL APPEAL NO. 55 OF 2021

GLORIA THOMPSON MWAMUNYANGE..... APPELLANT

VERSUS

PRECISION AIR TANZANIA LIMITED..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania, Labour Division, at Dar es Salaam)

(Muruke, J.)

dated the 14th day of December, 2018

in

Labour Revision No. 292 of 2017

.....

JUDGMENT OF THE COURT

29th Sept. & 7th December, 2023

SEHEL, J.A.:

The dispute giving rise to this appeal involves a contract of employment in which the appellant, **Gloria Thompson Mwamunyange,** was employed by the respondent, **Precision Air Tanzania Limited,** as Reservation and Ticketing Sales Agent for a term of five years commencing from 23rd June, 2011. Nonetheless, the contract provided a room for parties subject to issuance by either of them of one month's notice prior to its expiry to renew the same by

mutual agreement, on similar or new terms and conditions. By the time the contract ended, none of the parties issued a notice of intention to renew it. It happened that, on 30th June, 2016, the respondent issued to the appellant a proposal for the renewal of the contract for six months duration. Since the appellant was not satisfied by the proposed terms, she declined the offer by not signing it. The appellant's refusal to sign the proposed six-months contract prompted the respondent to terminate her employment and thus, issued a termination letter dated 17th August, 2016. Aggrieved with the termination, the appellant referred the dispute to the Commission for Mediation and Arbitration (the CMA) alleging unfair termination.

The respondent's defence in the CMA was that the contract between the parties was a fixed term contract with a specific clear term of five years from 23rd June, 2011 which automatically expired on 22nd June, 2016. It was also contended that, since the appellant refused to sign the new contract, the employer- employee relationship between the parties ended in June, 2016 and thus, there could never be an issue of unfair termination.

On the other hand, the appellant asserted that since she continued to work after expiry of the period of five years, there was an automatic renewal of the contract by default.

The CMA decided in favour of the appellant holding that the contract was automatically renewed on the ground that, by default, there was renewal of the five years contract in terms of Rule 4 (3) of the Employment and Labour Relations (Code of Good Practice) Rules published in the Government Notice No. 42 of 2004 (henceforth G.N. No. 42 of 2007). As such, CMA awarded the respondent a total sum of TZS. 35,519,570/= as compensation for unfair termination.

The respondent was not satisfied with the decision of the CMA hence moved the High Court of Tanzania, Labour Division, at Dar es Salaam (the High Court) to revise the proceedings and award. Having heard the parties, the learned judge of the High Court allowed the application reasoning that since the contract of employment between the parties was a fixed term contract, it came to an end after the lapse of the fixed term of five years, and thus, no termination was done by the respondent. The appellant has now approached this Court faulting the High Court's decision on the following grounds of appeal:

"1. That, the honourable High Court judge erred in law for her failure to rule that the contract of employment between the appellant and the respondent did end automatically without taking into account that the same was renewed by the respondent.

2. In the presence of ample evidence that the appellant continued to work for the respondent upon cease of the existed contract, the High Court judge erred in law to reach to the conclusion that no contact existed between the appellant and the respondent.

3. Despite reaching to the decision that the contract between the appellant and the respondent was a fixed term contract, the honourable High Court judge failed to interpret the import of Rule 4 (2) of GN. No. 42 of 2007 which clearly shows that the said contract was renewed by default.

4. The honourable High Court having ruled that parties are free to bring their contracts to an end by consensus erred in law by failure to rule that the respondent did not heed to terminate clauses which in

essence requires renewal of the contract to be done by mutual consent.

5. The honourable High Court judge failed to analyse evidence on record which shows clearly that by conduct of parties, there was unfair termination of the appellant employment contract."

When the appeal was called on for hearing before us on 26th September, 2023, Messrs. Sylvanus Mayenga and Roman Masumbuko, learned advocates, appeared for the appellant and respondent, respectively.

At outset, Mr. Masumbuko sought leave of the Court which was readily granted to argue a point of law that:

"The appeal contravened the provisions of section 57 of the Labour Institutions Act as the five grounds of appeal are not on pure points of law."

In the circumstances, we ordered parties to address us on both the preliminary point of law and the appeal itself simultaneously. To that end, the respondent's counsel was the first to submit on the preliminary objection.

Submitting on the preliminary objection, Mr. Masumbuko took us through each and every ground of appeal, and argued that, the grounds of appeal contravened the dictates of section 57 of the Labour Institutions Act (henceforth "the LIA") which requires an aggrieved party to appeal to the Court on point of law only. To support an argument that the Court has no jurisdiction to entertain an appeal originating from the High Court, Labour Division on factual matters, he cited to us the case of **Ladislaus S. Ngomela v. The Treasurer Registrar & Another,** Civil Appeal No. 66 of 2022 [2022] TZCA 265 that cited the decision of this Court in the case of **Patrick Magologozi Mongella v. The Board of Trustees of the Public Service Social Security Fund**, Civil Application No. 342/18 of 2019 [2022] TZCA 216 whereby the Court defined '*a question of law*'. The learned counsel contended that, having gone through the five grounds of appeal, he observed that the same required us to examine and analyse factual evidence regarding terms, conditions of the contract of employment and the conduct of the parties on the manner the contract came to an end. He therefore urged us to struck out the appeal for being misconceived.

Mr. Mayenga briefly replied that the five grounds of appeal raised pure points of law. He reasoned that the dispute between the parties arose from the contract of employment which was entered in June, 2011, and therefore the employment relationship was governed by section 15 (1) of the Employment and Labour Relations Act (henceforth "the ELRA") that outlines the terms and conditions of employment between the employer and employee. He invited the Court to examine the five grounds of appeal in the context of section 15 (1) of the ELRA. He added that the Court, being the highest Court in the country, has a duty to ensure justice is done to the parties by re-assessing the entire evidence on record to satisfy itself on the correctness of the proceedings and the decision arrived at by the High Court. Relying on the third definition of the point of law provided in the case of **Patrick Magologozi Mongella v. The Board of Trustees of the Public Service Social Security Fund** (supra) that; a question of law involves a situation where there is failure to evaluate the evidence or where there is no evidence to support the decision of the tribunal or the decision is so perverse or so illegal that no reasonable tribunal would arrive at it, the learned counsel for the appellant argued that the five grounds of appeal are within that

category because, if the High Court had considered the termination letter dated 17th August, 2016 it would have arrived at a different conclusion.

Submitting in support of the appeal, the learned counsel for the appellant combined the 1st and 2nd grounds of appeal, and contended that, clause 2 of the contract of employment, permits parties to the contract to renew it upon giving a one month's notice of such intention prior to the automatic termination. He added that, thereafter, parties will negotiate on the new terms and conditions.

The learned counsel contended that, given the conduct of the parties, that is, before the introduction of six (6) months contract, the appellant continued to work under the same terms and conditions of the five (5) years contract of employment, and that, she was issued with a termination letter on 11th August, 2016 then the contract of employment was renewed by default as held by the CMA.

Submitting on the third ground of appeal, the learned counsel for the appellant relied on the case of **Philipo Joseph Lukonde v. Faraji Ally Saidi**, Civil Appeal No. 74 of 2019 [2020] TZCA 1779 (21 September, 2020; TANZLII), by arguing that the High Court Judge had

no authority to interfere on the terms and conditions of the contract of employment to which parties had freely entered into. Lastly, on the 4th ground of appeal, the learned counsel for the appellant asserted that the appellant's employment contract continued under the same terms and conditions, and that, the same was renewed under the same terms. With that submission, he urged the Court to allow the appeal.

Responding to the grounds of appeal, the learned counsel for the respondent maintained that the parties' contract of employment was for a specified period of five years which expired on 22nd June, 2016. He added that clause 2 of exhibit D1 is conditional as it demands a party to the contract who wish to renew it to issue a one month's notice to the other party before an expiry of the term of contract, and thereafter parties will engage in re-negotiating the new terms of the contract. He pointed out that, in the present matter, none of the parties issued a notice of renewal, meaning that, the said contract of employment expired after the five-year term came to an end on 22nd June, 2016. To support his contention that the fixed term contract of employment expired automatically when the agreed period came to an end, unless stipulated otherwise, he cited rule 4 (2) of G.N. 42 of 2007 and the decision of this Court in the case of **Serenity**

On the Lake Ltd v. Dorcus Martin Nyanda, Civil Appeal No. 33 of 2018 [2019] TZCA 64 (11 April, 2019; TANZLII).

On the automatic renewal, the learned counsel for the respondent relied on the decision of this Court in the case of **Asanterabi Mkonyi v. TANESCO**, Civil Appeal No. 53 of 2019 (unreported) where the applicability of the concept of unfair termination of employment on a fixed term contract in case of failure to renew such a contract on the same or similar terms only was considered. In that case, the Court held that:

> *"The principles of unfair termination do not apply to a fixed-term contract (or even a special task contract) unless it is established that the employee reasonably expected a renewal of the contract".*

Mr. Masumbuko contended that apart from the fact that the renewal of the contract was conditional, the appellant was offered with a six months renewal but refused. In that respect, he contended that, the concept of automatic renewal cannot apply as there was no evidence showing reasonable expectation of renewal. At the end, he urged the Court to dismiss the appeal.

We have given due consideration to the contending written submissions and oral arguments advanced for and against the preliminary objection and the appeal. We wish to start with the point of law raised by Mr. Masumbuko. There is no doubt that counsel for the parties are at one on the jurisdiction of the Court regarding appeals arising from the High Court, Labour Division which is governed by section 57 of the LIA that reads:

> *"A party to the proceedings in the Labour Court may appeal against the decision of that court to the Court of Appeal of Tanzania on a point of law."*

From the above provision of law, it is clear that a party who is aggrieved by the decision of the High Court, Labour Division may appeal to the Court on a point of law only. A point of law or a question of law was well defined in the case of **CMA – CGM Tanzania Limited v. Justine Baruti**, Civil Appeal No. 23 of 2020 [2021] TZCA 256, that:

> *"...a question of law means any of the following: **first**, an issue on the interpretation of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine on*

tax revenue administration. ***Secondly,*** *a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record.* ***Finally, a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there is no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it.***"

The learned counsel for the appellant beseeched us to find that the five grounds of appeal fall under the third category of the definition of "a question of law" as explained in the case of **CMA-CGM Tanzania Limited v. Justive Baruti** (supra). With due respect, we are not persuaded by that contention because on analysis of the appeal on merits, we find that the five grounds of appeal centred on a five-year employment contract entered by the parties on 23rd June, 2011. In trying to bring the five grounds of appeal into the perspective of pure points of law, Mr. Mayenga contended that the contentious issue between the parties was an employment contract thereby sections 14 and 15 of the ELRA comes into play. Mr. Mayenga

contended that these provisions lay down basic terms and conditions of an employment contract. He thus implored the Court to find that the said grounds of appeal raise pure points of law.

Admittedly, the dispute between the parties centres on an employment contract. However, we failed to find any word, in the five grounds of appeal, either expressly or by implication, inviting the Court to consider the non-compliance of sections 14 and 15 of the ELRA. The record of appeal conflicts with the submission made before us by the learned counsel for the appellant. According to the records, during the entire five-year contract term, the appellant had no quarrel with the terms and conditions. The qualm started after the contract ended on 22nd June, 2011 and after the respondent proposed for a renewal of contract for six months duration. Clearly, as rightly submitted by the learned counsel for the respondent, the five grounds of appeal invite the Court to examine and analyse factual evidence regarding terms, conditions of the contract of employment and the conduct of the parties to see whether the contract came to an end. Here we wish to adopt the reasoning stated in the case of **Agnes Severini v. Mussa Mdoe** [1989] T.L.R. 164 in which the Court dealt with what has to be certified as a point of law. It said:

> *"That certificate is capable of two interpretations. It could mean posing the question whether there was any evidence at all to support the concurrent decisions of the courts below. It could equally mean to ask the question whether the evidence as adduced was sufficient to support and justify those decisions. How, this distinction is imported. The question whether there was any evidence at all to support the decision is a question of law which can properly be certified for the opinion of this court. But whether the evidence as adduced was sufficient to support the decision is a question of fact which could not properly be the subject of a certificate for the opinion of this court".*

In the present appeal, we hold the same view that, the question whether the evidence as adduced on the conduct of the parties was sufficient to support the automatic renewal or not is a question of fact which this Court has no jurisdiction to hear and entertain in terms of section 57 of the LIA. We therefore find merit on the preliminary objection raised by the learned counsel for the respondent which is accordingly, sustained.

For the aforesaid stated reasons, we proceed to strike out the appeal, as we hereby do. Given the circumstance of the matter, we order that each party shall bear own costs.

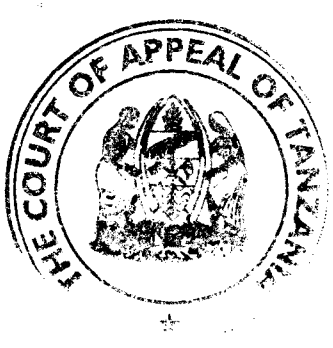
DATED at **DAR ES SALAAM** this 29th day of November, 2023.

B. M. A. SEHEL
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The Judgment delivered this 7th day of December, 2023 in the presence of Sylvanus Mayenga learned counsel for the Appellant and Mr. Roman Masumbuko learned counsel for Respondents is hereby certified as a true copy of the original.



C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL