THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MBEYA

REVISION NO. 30 OF 2019

(From Award in Complaint with Ref. No. CMA/SNW/ILJ/35/2019 of the Commission for Mediation and Arbitration for Mbeya at Mbeya dated 29th November 2019, Ndonde Severin, Arbitrator.)

CHINA GEO-ENGINEERING CORPORATION.....APPLICANT

VERSUS

ELIMU MWAMPASHE.....1ST RESPONDENT

LYAGABA EMMANUEL LYAGABA.....2ND RESPONDENT

JUDGEMENT

Date of Last Order: 30/07/2020
Date of Judgment: 18/09/2020

MONGELLA, J.

The applicant is calling upon this Court to call for, examine and revise the proceedings, and award of the Commission for Mediation and Arbitration in Labour dispute no. CMA/SNW/ILJ/35/2019. The application is brought under section 91(1)(a), 91(2)(b), 91(2(c) and 94 (1) (b) (i) of the Employment and Labour Relations Act, Act No. 6 of 2004; and Rule 24(1), 24(2)(a), (b), (c), (d), (e), (f), Rule 24(3)(a), (b), (c), (d) and Rule 28(1)(a) (b), (c), (d), (c), (d), (e) and Rule 55 (2) of the Labour Court Rules, 2007 GN No. 106 of 2007. It is supported by the affidavit of one Frank Liu, a principal

officer of the applicant, which was adopted to form part of the applicant's submissions.

Both parties were represented whereby the applicant was represented by Mr. Isaya Mwanry and the respondent was represented by Mr. Benedict Sahwi, both learned advocates. The application was argued by written submissions which were timely filed in this Court by both parties.

In the affidavit in support of the application, the applicant raised three issues for determination by this Court being: 1. Whether the contract of employment between the applicant and respondents was automatically terminated; 2. Whether there is enough evidence on record that the respondents continued to work with the applicant after completion of their employment contract; and 3. To what reliefs are the parties entitled to. Mr. Mwanry made a general submission in support of the applicant's application.

He started by providing the background of the dispute. On this, he submitted that the applicant is a foreign company dealing in construction. The applicant secured a tender from the Government of the United Republic of Tanzania to construct a road from Mpemba to Ileje within Ileje District. To effect performance of the tender contract, the applicant recruited several staff including the respondents who hailed from villages along the project area. He said that the respondents were employed on 27th and 28th February 2018 respectively for a one year contract which was to end on 27th and 28th February 2019, respectively. However, on 5th March 2020, the respondents filed a dispute with the CMA

claiming for unfair termination on the ground that the reasons for termination were unknown and the procedure for termination was not followed. These reasons stated in CMA Form No. 1 were changed in the respondents' opening statement whereby it was stated that the termination was on "invalid reasons." Later on during tendering their evidence, the respondents advanced another reason for termination being "misconduct for being alleged to have stolen grease."

Regarding the change of reasons for termination stated by the respondents in CMA Form No. 1, opening statement and during their testimonies, Mr. Mwanry argued that what should guide this Court and should have guided the Hon. Arbitrator is what was stated in CMA Form No. 1 because parties are bound by their own pleadings. To this effect he referred the court to the case of ***Ngerengere Estate Company Limited v. Edna William Sitta***, Civil Appeal No. 209 of 2016 (CAT at DSM, unreported) and that of ***Yara Tanzania Limited v. Charles Aloyce Msemwa T/A Msemwa Junior Agrovet and Others***, Commercial Case No. 5 of 2013 (HC at DSM, unreported). He added that the employer had to prove on balance of probabilities the fairness of termination basing on what was stated by the respondents in CMA Form No. 1. However, since the respondents created confusion on their reasons for termination, then the evidence of the employer becomes heavier than that of the respondents.

Mr. Mwanry argued that the employer proved fair termination on three grounds being: first that the respondents' employment ended automatically. Referring to section 14 (1) (b) of the Employment and Labour Relations Act, No. 06 of 2007 (ELRA), he argued that a contract of

employment can be of a specified period of time, that is, a fixed term contract. He argued that as per the employment contracts (exhibit R1, P1 and P4) the respondents' employment contracts were for a specific period of one year whereby they started from 27th and 28th February 2018, respectively and automatically terminated on 27th and 28th February 2019 respectively. He referred to section 4 (2) of the ELRA which provides:

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

Basing on the above provision, Mr. Mwanry was of the view that the respondents' employment contracts terminated automatically after the expiry of their employment tenure as the employment contracts do not bear any clause on renewal of the contract. To buttress his point, he referred to the case of ***Serenity on the Lake Ltd v. Dorcus Martin Nyanda***, Civil Appeal No. 33 of 2010, (CAT at Mwanza, unreported) in which it was held:

> *"...the law is clear that, where the contract of employment is for a fixed term, the contract expires automatically when the contract period expires unless the employee breaches the contract before the expiry in which the employer may terminate the contract."*

He referred to the testimonies of the respondents (PW1 and PW2 respectively) as seen at page 19 and 30 respectively of the typed proceedings, whereby both respondents admitted that their employment contracts ended on 27th and 28th February 2019. He argued that the admission by the respondents as to the date of ending of the

employment contract makes it undisputed that the contract of one year automatically terminated. He further referred to the case of ***National Oil (T) Limited v. Jaffery Dotto Msensemi & 3 Others***, Revision No. 558 of 2016 (HC at DSM, unreported) in which my learned sister, Nyerere, J. held that where the contract ended automatically and the employee fails to prove that he continued to work or had reasonable expectation to renew the contract, then it shall be concluded that the employment contract ended automatically as agreed in the contract.

Second, Mr. Mwanry contended that the respondents' employment contracts were not renewable by default. He submitted that after the Hon. Arbitrator's findings that the employer successfully proved that the termination was fair by automatic expiration; it was then the duty of the respondents to prove that the contract continued after the expiration of the contractual period. He argued that the records do not indicate any proof that the respondents continued with work after the expiry of their contract. He argued so submitting that there was no any evidence of oral or written renewal of respondents' employment contract. He said that both respondents testified on cross examination that they were not given any letter or signed any contract after expiry of their employment contract on 27th and 28th February 2019, respectively.

Mr. Mwanry further submitted that there is no evidence on record to the effect that the respondents were assigned duties at the workplace after expiration of their contract. He said that none of the respondents proved that they were assigned tasks to perform by the employer. He referred to the testimony of DW2 and DW3 who used to attend daily at work,

whereby they testified that they never saw the respondents at the workplace. He was of the view that it shall be an injustice to consider the respondents to have continued with employment in the absence of evidence showing that they were assigned duties after expiration of their employment contract.

He added that there is no evidence on record to the effect that the respondents were paid wages or attended at the workplace after expiration of their contract. He submitted that both respondents testified that they were lastly paid wages on 26th February 2019 and thereafter they were paid no wages or salaries after the expiration of their employment contract. He argued that the non-payment of wages to the respondents by the applicant signifies that the respondents did not continue with work. He further argued that the respondents claimed to have been terminated on 5th March 2019, but failed to prove that they attended work between 1st and 4th March 2019. He referred to the testimony of DW1, DW2 and DW3 who testified that attendance at workplace was evidenced through an attendance sheet, popularly known as "job card."

Mr. Mwanry challenged the "job cards" (exhibit P3 and P6) tendered by PW1 and PW2, the respondents respectively, on the ground that the same were not genuine. He argued that these purported job cards do not bear any dates and thus it is unknown as to which month or year the job cards belonged to. He added that as per the testimony of the respondents themselves, it is the supervisor who fills the dates in the job cards. Basing on this testimony, Mr. Mwanry argued that the fact that the job cards do

not bear the dates filled by the supervisor signifies that the same were not issued by the supervisor on behalf of the employer and thus it cannot be ascertained that the respondents worked after the end of their employment contracts.

Considering the lack of proper dates on the job cards presented by the respondents, Mr. Mwanry argued that it is trite law that a document must speak for itself and thus cannot be qualified by any oral evidence to vary or add anything. He argued that the gap in the documents cannot be filled by adding or assuming that the date was of March 2019 while the documents do not state so. He was of the view that it shall occasion injustice if the same is done. He added that the respondents never brought any witnesses to back up their assertions or to refute the testimonies of DW2 and DW3, fellow employees, who testified not have seen the respondents at workplace after expiry of their employment contracts. On these bases he challenged the decision of the Hon. Arbitrator to the effect that he believed the job cards were for March 2019 as claimed by the complainants/respondents. Mr. Mwanry argued that the Hon. Arbitrator based his decision on beliefs and not on evidence. He concluded that no matter how strong beliefs are, they cannot override real evidence available on records. Courts of law are supposed to act on proof and not on beliefs.

On the third ground, Mr. Mwanry argued that the respondents had no reasonable expectation to renew the contract. He referred to section 36 (a) (iii) of the ELRA which defines "termination of employment" to mean failure to renew a fixed term contract on the same or similar terms if there

was a reasonable expectation to renew. He further referred to Rule 4 (4) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 which provides that it shall be unlawful for the employer to terminate the employment when there is a reasonable expectation to renew. He again referred to the case of ***National Oil (T) Limited*** (supra) in which the court stated the factors to be considered in determining reasonable expectation for renewal of the employment contract. The court stated that reasonable expectation is created by previous renewals; employer's undertakings to renew; and failure to renew the employment contract on similar terms.

On the strength of these authorities, he argued that the employment contract bears no clause on renewal of the contract thus the respondents had no any legitimate expectation to renew the employment contract. He added that the respondents failed to prove any undertaking to renew or to prove existence of previous renewal. Mr. Mwanry averred that the applicant did not write any termination letter because he knew that the employment contract had terminated automatically. To this effect he cited the case of ***Ahombwile Yesaya Mwalujaga v. M/S Shield Security Ltd.***, Revision No. 333B of 2013 (HC at DSM, unreported) in which it was held that *"if there were no expectation of renewal, the contract would have expired automatically with no need to write termination letter."*

In consideration of the submission he made above, Mr. Mwanry concluded that the respondents had no base to claim for unfair termination. He reiterated his position that the employer/applicant proved that the termination was fair on the ground that the employment contract

ended automatically. On the other hand, the respondents failed to prove expectation of renewal of the employment contract and therefore cannot claim to be terminated unfairly. He thus prayed for the CMA award to be quashed.

On his part, Mr. Sahwi, on behalf of the respondents, opposed the application. He first adopted the contents of the counter affidavit sworn by him to form part of his submission and also made a general reply to Mr. Mwanry's submission. Starting with the argument that the respondents kept on changing the reasons for termination thereby leading to confusion, Mr. Sahwi argued that there was no any confusion created. He contended that the applicant's counsel's argument is misconceived and aimed at misleading this Court in proper determination of the parties' rights. Referring to CMA Form No. 1, Mr. Sahwi contended that on reason for termination as seen at page 6 of the form, the respondents put a tick at an item stated "unknown" but on the same page providing for substantive aspect of termination, the respondents wrote that "*no valid and proved reason was advanced by the employer prior to termination.*" He said that in the opening statement the respondents stated that the termination was based on invalid reasons and testified that there were allegations that they had stolen grease.

Mr. Sahwi argued that there was no new reason introduced by the respondents as contended by the applicant's counsel. He contended that the allegation that the respondents were involved in stealing grease was included in CMA Form No. 1 at the substantive aspect of termination. He added that the opening statements forms part of the pleadings in the

CMA whereby they elaborate the contents of Form No. 1 and comes prior to framing of issues. He was of the view that if there is any aspect arising from the opening statements from the parties to the dispute, the same is covered by the issues to be framed in order to be resolved during hearing. Therefore, the fact that the respondents were accused of stealing grease was covered by the term "invalid reason." Mr. Sahwi added that the applicant's counsel has brought this issue at this revisional stage, but never raised and argued on the same during the hearing or final submissions. On this argument he concluded that the issue before this court in this dispute is whether the contract was renewable or not and therefore the argument on change of reasons for termination is irrelevant at this material stage.

On whether the applicant proved fairness of termination, Mr. Sahwi challenged Mr. Mwanry's contention that the employer proved fairness of termination. He argued that the employer proved nothing as to the substantive and procedural aspects of termination. He was of the stance that these two aspects were the ones calling for proof on balance of probabilities in the circumstances of the case at hand upon finding that the contract renewed by default. He contended that it is absurd to contend that the applicant proved the fairness on termination merely by submitting that the contracts terminated automatically and the same does not amount to proving the case on balance of probabilities.

Referring to the testimony of the respondents that there were allegations that they had stolen grease from the employer, Mr. Sahwi was of the view that the applicant terminated the respondents' employment contracts.

He submitted that the same started with information from the respondents' supervisor to the effect that there could be deduction of T.shs. 20,000/- from each of them from their March salary to cover the loss emanating from such theft. That, the respondents refused to heed to such decision something which led to their termination from employment. Citing section 37 (1) of the ELRA he argued that it is unlawful for an employer to terminate the employee unfairly. Citing also section 37 (2) of the ELRA and Rule 8 (1) (c) and (d) of G.N. No. 42 of 2007, he argued that the employer is obliged to adhere to fair procedures in terminating the employment contract and to base the termination on valid and fair reasons. He contended that there was no proof of the alleged theft as no investigation was conducted by the applicant to secure proof to such effect. On these bases he concluded that the applicant had no valid reasons for termination and did not adhere to any termination procedures thus rendering the termination unfair substantively and procedurally.

Mr. Sahwi challenged the evidence of DW1, one Frank Liu. He submitted that this particular witness testified hearsay evidence which is not admissible under the law, that is, section 62 (1) (a) to (d) of the Evidence Act, Cap 6 R.E. 2019. He referred this Court to the testimony of this witness whereby he first stated that he started to work for the applicant on 23rd November 2016 in Kilimanjaro region. When cross examined, he testified that he started working with the applicant on 08th May 2019 thus met the respondents at the CMA as they were already terminated two months ago when he started working on 08th May 2019. He as well testified to have obtained the information regarding the respondents from other people and from documents at the office. Mr. Sahwi prayed for this

evidence to be expunged from the court record for being obtained contrary to the law.

Mr. Sahwi also challenged the testimonies of DW2 and DW3, one Oliver Abraham, a secretary in the Applicant's company and one Boniface Alfeo Lulangasi, a driver in the applicant's company. He contended that, by their positions these two witnesses do not qualify to prove fairness of termination under section 39 of the ELRA as they do not fall in the managerial position. He argued that there are various matters in this case which ought to have been clarified by senior officials and not DW2 and DW3 as they needed managerial information. For instance, he referred to the testimony of DW2 who testified that the job card is filled by the supervisor and she was not aware on which dates the same were filled and on whether the respondents requested contracts orally or in writing. Mr. Sahwi argued that these answers suggest that DW2 was not aware of the managerial information which ought to be revealed by senior persons, but it was not the case. He as well challenged the evidence of DW3, the driver, on the ground that his evidence had nothing to do with proving fairness on termination. Considering all these facts, he contended that the applicant failed to prove fairness on the termination to the required standard.

Mr. Sahwi maintained the stance that though the employment contract ended on 28th February, the respondents worked until 5th March when they were terminated orally. To this effect his position is that there was automatic renewal of the contract. Citing Rule 4 (3) of G.N. 42 of 2007, he argued that a contract can renew by default if an employee continues to

work after the expiry of the fixed term contract and circumstances warrants it. He referred to the decision of this Court in ***Peter D. Nene v. China New Era Engineering Corporation***, Revision No. 29 of 2013 (unreported) in which the court when faced with a similar situation, found that a contract of three months renewed by default since the employee continued to work after expiry of fixed term contract. He thus challenged Mr. Mwanry's contention that there were no signed contracts after 28th February 2019, which signifies that they did not continue with work. On this he argued that the respondents testified with exhibits to the effect that they worked until 5th March 2019 though they did not sign any new contracts thus the contracts got renewed by default.

Mr. Sahwi also countered the argument that the respondents were not assigned any duties after their contracts ended. He argued that the applicant also contradicted himself by arguing that the respondents were not seen at workplace. He referred to the applicant's opening statement whereby at paragraph 2.4 it is stated that:

> *"That since 27th February 2019 the complainants have never appeared at work place (site) to work rather they were visiting the site to just negotiate about being offered another employment contract."*

Considering the above quotation, Mr. Sahwi argued that the same clearly reveals that the respondents were attending at the workplace and it corroborates the respondents' testimonies and exhibits P3 and P6, which shows that they attended at the workplace until 5th March 2019. He argued that the job cards, exhibit P3 and P6, were prepared by the

applicant and were mostly written in Chinese language. However, he added that the applicant's witnesses admitted to have known the cards and did not dispute their validity and the dates therein. The job cards were only challenged for not indicating the month and year in which they were filled. Referring to the testimony of the respondents and DW2, he argued that the said job cards were usually filled by the respondents' supervisor who also filled other particulars on every 25th day of the month for effecting payments on 26th day of the month.

He supported the opinion of the Hon. Arbitrator to the effect that the job cards were for March 2019. He argued that courts of law are empowered to form opinion while making decisions in accordance with the circumstances of the case and in accordance with the available evidence. He concluded that it was therefore proper for the Hon. Arbitrator to opine on the validity of the job cards and his opinion was well qualified.

Lastly, regarding payment of wages, Mr. Sahwi contended that it was clearly testified by witnesses on both sides that wages were payable on every 26th date of the month. Thus under the circumstances, the respondents could not tender exhibits showing that they were paid in March because they were to be paid on 26th March 2019 while they were terminated on 05th March 2019.

After digesting the submissions of both counsels and thoroughly gone through the court record, I can conveniently rule that there are four issues calling for determination by this Court. These are: one, whether the three

different reasons for termination advanced by the respondents in three different stages affected the rights of the parties and thus fatal; two, whether the respondents' employment contracts were renewable by default; three, whether the respondents were unfairly terminated; and four, to what reliefs are the parties entitled to.

Starting with the first issue, it is vivid on record that the respondents in CMA Form No. 1 under part B item (3) on reasons for termination, put a tick on the option titled "unknown," in the opening statement they stated that the reason was invalid, and during testimony they stated that there were allegations that they had stolen grease. In essence there is no dispute between the parties as to the fact that there were changes of reasons stated by the respondents in these three stages. The dispute lies as to the interpretation and the effect of those changes. Under part B item (4) (b) they explained that the reason was unfair as there was no valid and proved reason advanced by the employer prior to termination. Mr. Sahwi argued that the explanation under item (4) (b) connotes that the reason was invalid and therefore it is the same reason stated by the respondents in their opening statement. He argued further that during testimony, the respondents explained further that there were allegations of stealing grease from the employer. In his view, this explanation amplified on the "invalid reason" stated in CMA Form No. 1 and the opening statement.

In my view however, with all due respect, I do not find the three reasons connoting the same thing. By putting a tick on "unknown reason" it meant that there was no any reason advanced. This cannot mean that the reason was invalid because for the same to be invalid there had to be a

reason stated, but considered being illegal under the law. Besides, item (3) under part B of CMA Form No. 1 provides an option of other reasons whereby it leaves it open for the claimant to state any other reason not provided in the list of options. The respondents thus had the opportunity to state the specific reason for termination in the CMA Form No. 1. The reason stated by the respondents during testimony to the effect that there were allegations of stealing grease from the employer was very new altogether. It in fact falls under misconduct which is an option provided under part B item (3) and thus one would have expected the respondents to put a tick on that option. Being a matter of fact it ought to have been pleaded in CMA Form No. 1 and explained in the opening statement. Having raised the same during the testimony becomes an afterthought, as argued by Mr. Mwanry. I also find that the applicant's right to defend were prejudiced because having been sued for unfair termination of employment contract, the applicant started to address the court and therefore did not have the chance to thoroughly prepare and defend on this allegation. I thus expunge this reason from the record and proceed to deliberate this matter basing on the reason stated in CMA Form No. 1 which is "unknown" as prayed by Mr. Mwanry in his submission.

The second issue is whether the respondents' employment contracts were renewed by default. It is not disputed that the respondents' employment contracts ended on 27th and 28th February 2019, respectively. The dispute is on whether the said contracts got automatically renewed. While the applicants claim that the employment contract terminated automatically on 27th and 28th February 2019, respectively, as stated in the said contracts, the respondent claims that the contract got renewed by

default following their continuous attendance at work from the date of termination to 5th March 2019 when they were informed verbally of the termination. Rule 4 (3) of G.N. 42 of 2007 provides:

> *"... a fixed term contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it."*

From the above cited provision, it is clear that if an employee continues with work after the expiry of the fixed term contract, the said contract renews automatically. In proving that they continued with work, the respondents tendered attendance sheets popularly known as "job cards" (exhibit P3 and P6), which indicated that they were at work until 5th March 2019. In the CMA, parties were at dispute as to the authenticity of the said job cards on the ground that no month or year was indicated on the dates. The Hon. Arbitrator found that the cards were for March 2019. At this revisional stage, Mr. Mwanry still challenged the authenticity of the said cards and the reasoning of the Hon. Arbitrator. I therefore had to make a close scrutiny on the said job cards.

The job cards as they appear, they bear a column as to the days of the months and not the months and the year. Of more interest is that they contain Chinese handwritten prints. As per the testimony of witnesses from both sides, it is the supervisor, in this matter, one Mr. Zhang, who fills the job cards. Given the fact that the job cards bear Chinese handwritten prints, I find this piece of evidence credible. To this point I am convinced that the job cards were issued to the respondents by the applicant through his appointed supervisor. Since the job cards were designed by the applicant

who did not put a column or space for including the month and the year, the respondents cannot be faulted on that ground.

I have gone through the CMA award and I fully subscribe to the reasoning of the Hon. Arbitrator in ruling that the job cards were for March 2019. The Hon. Arbitrator took into consideration the facts that the job cards bear the signature of the said supervisor, a column for days of the month and not for the month and year, the Chinese language prints, and the fact that the applicant did not deny to have issued the said cards to the respondents. However, I add that they were for February/March 2019 because they clearly indicate that they started from 26th. This finding is supported by the testimony of DW2 for the applicant who testified that the job cards start on 26th of every month because the salary is paid on every 25th of the month. I also fully subscribe to the reasoning of the Hon. Arbitrator, as seen at page 9 of the award whereby she considered the fact that the contract was to end on 27th and 28th February 2019 respectively, but the applicant paid salaries up to 25th February 2019. The fact that he did not pay for 26th, 27th, and 28th February 2019 signifies that he intended to continue with the respondents as his employees and would have paid the said salaries on 25th March 2019.

DW2 and DW3 testified that they were at workplace and never saw the respondents. Mr. Sahwi challenged the competence of these witnesses because they do not fall in the category of senior staff. Citing section 127 of the Law of Evidence Act, which provides every person is capable of testifying in court, Mr. Mwanry opposed Mr. Sahwi's contention. As much as I agree with the position of the law as argued by Mr. Mwanry and the

fact that the law does not compel a particular number of witnesses to be brought to prove any fact in any case (See: section 143 of the Evidence Act), I am also alive at the settled legal position that non-calling of a key witness for undisclosed reasons bears adverse consequences to the party required to call the said witness. In the case of **Hemedi Said v. Mohamed Mbilu** [1983] TLR 113 it was held that:

> *"Where for undisclosed reasons, a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witnesses were called they would have given evidence contrary to the parties interest."*

In **Aziz Abdalah v. Republic** [1991] TLR 71 the CAT also ruled:

> *"The general and well known rules are that prosecutors are under prima facie duty to call those witnesses who from their connection with the transaction in question are able to testify on material facts. If such witnesses are within search but are not called without sufficient reasons being shown, the court may draw the inferences adverse to the prosecution."*

In the matter at hand, the major dispute was on the authenticity of the job cards in proving whether the respondents continued with work or not after expiry of their employment contract. The said job cards bore the handwriting (some of the words are in Chinese language) and signature of the supervisor, one Mr. Zhang. He was also the one responsible for assigning duties to workers and thus was in a better position of knowing if the respondents were at work or not and if they were really issued with the job cards than DW2, DW3 and also DW1 who was not present at the work station at the time the respondents allege to have been terminated from

employment. Also as the custodian and the one responsible for preparation of the job cards he was in a better position to explain the manner in which the job cards are prepared as regards to the column of dates, which forms the point of contention in this matter. Taking all these facts into consideration, I find that the said Mr. Zhang was a key witness and thus pertinent for him to have been called to testify. To this point therefore, I find the respondents' contention that they continued with work after the expiry of their contract up to 5th March 2019 holding water and stands unshaken by the applicant's evidence. Thus under the law their contracts got renewed by default.

Having observed as above, I now move to the last two issues on whether the respondents were unfairly terminated and to what reliefs are the parties entitled to. Having worked for several days after expiry of the contract, I agree with Mr. Sahwi that a reasonable expectation for renewal was created. For being orally terminated without any reasons being assigned, I find no reason to fault the Hon. Arbitrator's findings that the termination was unfair both substantively and procedural. Under the circumstances, I do not subscribe to Mr. Mwanry's contention that the termination was automatic with the employment contract coming to an end on 27th and 28th February 2019. I find the cases he cited, that is, ***Serenity on the Lake Ltd*** (supra) and ***National Oil (T) Limited*** (supra) distinguishable from the matter at hand. This is because in these two cases the employer notified the complainants about non-renewal of their contracts prior to the date of expiry of the said contracts. Therefore, the complainants had no any reason to expect renewal and to continue coming to work. In the matter at hand, as discussed above, the employer

harboured the respondents by allowing them to continue with work and issuing them with job cards for registering their attendance at work.

Following the observations I have made above, I endorse the reliefs granted to the respondents by the CMA in the award to wit: Salaries for the remaining contractual period for each respondent, that is, T.shs. 325,000 x 12 = 3,900,000/-; Salary in lieu of notice for each respondent at T.shs. 325,000/-; Leave pay for each respondent at T.shs. 325,000/-. In Total, the applicant is ordered to pay a total of T.shs. 9,100,000/- (Tanzanian Shillings nine million one hundred thousand only.).

In the upshot, the applicant's application is hereby found to lack merit and is dismissed accordingly.

Dated at Mbeya on this 18th day of September 2020.

L. M. MONGELLA

JUDGE

Court: Judgment delivered in Mbeya in Chambers on this 18th day of September 2020 in the presence of the 1st respondent and his legal counsel, Mr. Benedict Sahwi.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) DIVISHENI YA MAHAKAMA YA KAZI (Labour Division)

L. M. MONGELLA

JUDGE