



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
LABOUR DIVISION  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LABOUR REVISION NO. 7 OF 2018**  
(*Originating from CMA/BUK/100/2017 at Bukoba*)

**BEATRICE J. ISONDA.....APPLICANT**  
**VERSUS**  
**KAGERA SUGAR LIMITED.....RESPONDENT**

**JUDGMENT**

*Date of last order 27/11/2020*

*Date of judgment 04/12/2020*

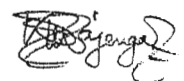
***Kilekamajenga, J.***

The applicant moved this Honourable Court to revise the award of the Commission for Mediation and Arbitration of Bukoba in case No. CMA/BUK/100/2017. He also urged the Court to set aside the award of the Commission. The application was made under **section 91(1)(a)(b) and 2(a)(b) of the Employment Labour Relations Act, No. 6 of 2004, Rules 24(1)(2)(3) and 28(1)(b)(c)(d) and (e) of the Labour Courts Rules, 2007**. When the case was fixed for hearing, the applicant

appeared in person while the respondent was represented by the respondent's Senior Human Resource Officer, Mr. Angetire Mwalyaje.

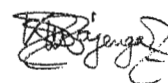
During the oral submission, the applicant informed the Court that she applied for employment at Kagera Sugar on 02/09/2005. He was called for an interview on 13/10/2005 and she appeared for the interview on 25/10/2005, however the interview was postponed. She was finally employed as a casual labour and indicate her address to the respondent. She worked as a casual worker for about a month before she was interviewed on 22/11/2005. She was employed by the respondent as a security guard. She was employed for a period of six months; however she worked for the respondent for seven years without any contract of employment. When she asked why there was no contract of employment, she was informed that she was a permanent employee. In 2012 she signed a one fixed term contract with the respondent for one year on 31/10/2012 which ended on 31/10/2013. She continued to work on one year contract which was renewable every year.

In 2017, her contract of employment ended on 31/10/2017. On 01/11/2017, she reported at work as usual; on that date at around 10am



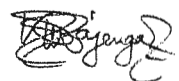
she was phoned by the supervisor and told to report at the main office. She went to the main office and given a letter that terminated his contract of employment. She was given a clearance form and continued with the clearance process. She was told to come the next day for payment. However, at around 4pm, her supervisor informed her that she will continue working. On the same day, she reported for work for the evening shift. She worked for the whole month until on 1/12/2017 when she was stopped from working by a termination letter. She thereafter filed the complaint before the Commission for Mediation and Arbitration. The applicant insisted that her employment was unfairly terminated and that she never signed one provisional contract with the respondent.

On the other hand, Mr. Mwalyaje resisted the application; before the oral submission he prayed for the counter affidavit to be adopted to form part of his submission. Mr. Mwalyaje submitted that the applicant worked for the respondent for almost seven years without any contract. During that time, the applicant worked under fixed term contract until in 2012 when she started to work under one year contract. The one year contract was renewed every year. On 31/10/2017 was given a termination letter because her fixed term contract of one year ended. Thereafter, the

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applicant complained that she expected an automatic renewal of the employment contract. As the respondent considered the applicant's prayer, the respondent issued a one month contract to the applicant. The applicant received the one month contract by dispatch on 01/11/2017. The one month provisional contract ended on 30/11/2017 and the applicant was given the termination letter. Therefore, there was no automatic renewal of the applicant's contract as provided under Rule 4(2) of the GN No. 42 of 2007. The applicant does not have the right to claim for unfair termination because her contract of employment automatically came to an end.

Mr. Mwalyage further averred that the applicant has no right to severance pay under **section 42(3)(c) of the Employment and Labour Relations Act and Clause 25 (b)(i) of the Collective Bargain Agreement (exhibit D.9)**. He argued that the applicant has not right to notice pay because the applicant's contract of employment ended. He cemented his argument with the case of **Gosbert Mutalemwa Joseph v. Kagera Sugar Ltd, Labour Revision No. 11 of 2018**. Also, the applicant wrote the letter applying for work from Kyaka and she was employed based on that address. Therefore, the applicant has the right to be repatriated to Kyaka and not Tabora as provided under section



43(1)(a)(b) of the Employment and Labour Relations Act. On the issue of payment of subsistence allowance, the applicant refused the offer of being paid the subsistence allowance on 16/02/2018, therefore the payment of subsistence allowance should be paid to that date and not otherwise. He finally urged the Court to uphold the decision of the Commission.

When rejoining, the applicant insisted that she was not given the one month contract and she never signed it. She further stressed that her contract of employment was unfairly terminated and therefore she is entitled to reliefs.

After considering the parties' submissions, it is pertinent now to consider the merits, if any, in the applicant's application for revision. I should declare that I previously dealt with disputes of this nature from the respondent. It seems there were several employees whose employments ended in the circumstances similar to this. There is no doubt that the applicant was employed by the respondent as a security guard. In her oral submission before this Court, she alleged that she worked for almost six years without any contract of employment. I think, this argument irrelevant

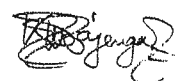
in this case because the applicant now is seeking remedy of the Court on the unfair termination of employment.

In 2012, the applicant was moved from being a casual labour to a fixed term contract. For the first time, he signed a one year contract with the respondent; such a contract was renewable every year. The contract commenced on 01<sup>st</sup> November and ended on 31<sup>st</sup> October of every year. It is undisputed fact that the contract which led to this dispute commenced on 01<sup>st</sup> November 2016 and lapsed on 31<sup>st</sup> October 2017. When the contract ended, the applicant received a termination letter and she began the clearing processes. Generally, her contract of employment came to an end and she was definitely prepared to receive her terminal benefits. Under the law, her contract of employment ceased just as **Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007** provides. The law provides that:

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

However, the applicant informed this Court that as she was doing the clearance, she was informed by her supervisor that she would continue working. On the same, i.e. on 1<sup>st</sup> November 2017 in the evening, she reported for work and she continued to work as usual. However, the allegation that she was orally allowed to work is not backed up with any proof. On the other hand, the respondent argued that she was given a one month provisional contract as the respondent was in the process to see if the one year contract could be renewed. According to Mr. Mwalyaje, the one month provisional contract was issue to the applicant on 1<sup>st</sup> November 2017 and she received it through a dispatch book. On the other hand, the applicant argued that she never received any contract on that date but she received a clearance form.

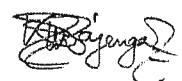
If that is true, the applicant's allegation that she reported for work on 1<sup>st</sup> November 2017 was based on the oral promise from her supervisor. However, her supervisor was not called to testify to support the applicant's story. Furthermore, the copy of the dispatch book which was tendered before the Commission shows that the applicant received a provisional contract. The provisional contract also ended on 30<sup>th</sup> November 2017; the applicant was served with the termination notice.

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In my view, the argument that the applicant expected an automatic renewal of the one year contract has no merit because the same contract came to an end and she even did the clearance. As earlier stated, the one month contract also ended and notice to that effect was given. I do not see any possibility that the applicant was unfairly terminated because the contract was a fixed term contract and were backed-up with expiry notice at the end. For the reasons stated above, the trial commission correctly addressed the issue of whether the applicant was fairly terminated.

On the issue of place of recruitment, the applicant submitted that she applied for the job from Tabora. She came for the interview which was postponed. Because she was already in Bukoba, she stayed at Kyaka and later applied for casual works to the respondent. She began to work as a casual worker until she later signed a fixed term contract in 2012. Therefore, the address of Tabora cannot be known in the records of the respondent because the interview that called her from Tabora was postponed. She was employed as a casual labour based on the address from Kyaka. In my view, the applicant's address known to the respondent is Kyaka and not Tabora. For that reason therefore the applicant was





entitled to the repatriation costs to Kyaka. The applicant will also be entitled for subsistence allowance. However, I understand, the applicant was approached for repatriation to Kyaka but she declined. As long as the right to repatriation was availed to the applicant but she wilfully refused. So, she will be entitled to the subsistence allowance up to the date when she refused to be repatriated. Apart from the rights stated above, the applicant is also entitled to a certificate of service.

In conclusion, the applicant is not entitled to other rights because her contract of employment was fairly terminated. The application is partly allowed. No order as to costs. Order accordingly.

**DATED** at **BUKOBA** this 04<sup>th</sup> Day of December, 2020.



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**Court:**

Ruling delivered this 04<sup>th</sup> December 2020 in the presence of the applicant present in person and the counsel for the respondent Mr. Richard Mzure.

Right of appeal explained.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**04/12/2020**



