

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION OF THE HIGH COURT)**

**AT MWANZA**

**LABOUR REVISION NO. 07 OF 2021**

(Arising from Award in Labour Dispute No. CMA/MZ/ILEM/89/202/43/2020 delivered by T.S.A.  
Malekela – Arbitrator of 29/09/2020)

**HUSSEIN JUMA.....APPLICANT**

**VERUS**

**MALAIKA BEACH RESORT LTD.....RESPONDENT**

**RULING**

*05<sup>th</sup> & 31<sup>th</sup> May 2021*

**RUMANYIKA, J.**

The application for revision is with respect to award and orders dated 29/09/2020 of the Commission for Mediation and Arbitration for Mwanza (the CMA) the employee applicant having had lost the war and battle. It is supported by affidavit of Hussein Juma (the applicant) whose contents Mr. Baraka Dishoni Learned Counsel adopted during audio teleconferencing on 05/05/2021 when the matter was called on for hearing. Mr. Kato Conrad learned counsel appeared for Malaika Beach Resort (the respondents). I therefore heard the parties through mobile numbers 0753 459 918 and 0716 066 706 respectively.

In a nutshell Mr. B. Dishoni learned counsel submitted:- **one**, that in fact with effect from 01/04/2020 the applicant was employed on one year term renewable contract but simply on the alleged employer's economic downfall therefore operational requirement terminated (not retired) on 05/03/2020 but the former continued working for another eight (8) days and was paid wages he therefore was improperly and unfairly terminated **two**, that evidence of Pw1 wasn't hearsay it therefore was wrongly discounted **three**, that the reason for termination may have been operational requirement yes, but if anything, the under laid procedure for retrenchment was not at all followed **four**, alternatively, that on the issue whether or not the applicant was fully paid terminal benefits the evidence adduced was contradictory. We humbly submit and pray. Counsel further contended.

On his part, having had adopted contents of the counter affidavit, Mr. Kato Conrad learned counsel submitted: (1) That in fact one having had been duly served with notice, the applicant's one year renewable contract of service, more so due to outbreak of the Covid -19 pandemic therefore operational requirement contract it lapsed on 05/03/2020 and the applicant was fully paid all the terminal benefits (2) That with regard to evidence of Pw1, rightly so being disregarded, not only he was a mere applicant's friend (not co-employee), but also the applicant was in no way prejudiced much as also, if awarded, compensation of shs. 627.2 million it would have ruined the employment industry.



A brief account of the evidence on record reads thus;

A Pw1 Elias Magoli stated that w.e.f 2021 he was recruited the respondent's electrical technician therefore he knew the applicant as co-employee until when the latter was terminated on 05/03/2020.

Pw2 Hussein Juma stated that on one year renewable term basis the respondent recruited him on 20/12/2018 as Continental Chef (copies of the letter of engagement, Identify card, and contract – Exhibits PE1, PE2 and PE3) respectively. That the contract should have ended on 01/04/2020 but upon serving him only a day written notice for termination dated 05/03/2020, they paid him severance allowance and the whole March, 20 month salary on 6/3/2020 (copy of the letter- Exh. APE4), yet still one instituted the labour dispute on 2012/2018 that his 28 days annual leave was long overdue and the shs. 627.2m claimed was general damages for premature termination thus mental injuries and loss of expectations.

Rw1 Rock Mnyama Malangwa the respondent's Front Office Desk Officer stated that in his capacity of a Continental Chef he was, w.e.f 01/04/2019 – 01/04/2020 on one year renewable term basis employed by respondent but by a written notice of 5/3/2020 terminated before expiry of the term hence the labour dispute (copies of the contract and letter- Exhibits RE1 & RE3) respectively. That on 06/03/2020 the applicant asked to be released so that he may look for alternative employment and therefore applied for terminal benefits so much so that he was paid accordingly the severance allowance of shs. 50,000/= and issued a certificate of service, leave and shs. 57,142/= for eight (8) days so far

worked, a month salary in lieu of notice and they were done. That there wasn't termination but on expiry of the contractual renewable term automatic termination no any pending unpaid annual leave or something (Exh.RE4) except unrealistic claims of shs 627.20 million that if anything, the notice of 05/03/2020 only intended to notify one about the expiry of one year contractual term.

The central issue in my considered opinion is not whether the termination was, in terms of procedure and substance unfair but rather whether there was termination much as it was undeniable fact that initially on one year term renewable basis the respondent recruited the applicant in 2012/2018 such that the term expired on 20122019. Now with the respondent's notice for no renewal, according to records dated and duly served on the applicant on 5/3/2020, end of the day the applicant was paid terminal benefits inclusive of the whole March, 2020 salary which notice had not been revoked, the issue of automatic renewal or loss of expectation it should not even have been raised leave alone termination or reasons therefor. The issue of the applicant's speculative rights being abrogated it was neither here nor there leave alone also prospective damages much as out of the one year renewable term of contract of service one more renewal should not have reasonably have expected under the circumstances.

It follows therefore, where there was a notice of renewal of one year term service contract in force any extra paid additional fraction of the term (in this case 11 months) it constituted no implied revocation of the notice rather it shall be considered as a mere bonus and wake up call to the



employee. It is very unfortunate that the labour dispute was preferred and instituted.

In the upshot, the devoid of merits application is dismissed. The CMA's award and orders therefore they are upheld. It is so ordered.

**S. M. Rumanyika**

**JUDGE**

**24/05/2021**

Right of revision explained.

The ruling is delivered under my hand and seal of the court in chambers this 31/05/2021 in the absence of the parties.



**S. M. Rumanyika**

**JUDGE**

**31/05/2021**