IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LABOUR DIVISION]
AT ARUSHA

CONSOLIDATED REVISION APPLICATIONS NO. 73 & 76 OF 2019
(Originating from Labour Dispute No. CMA/ARS/ARB/81/2018)

HARRISON OLANG' ..... APPLICANT

Versus

MOUNT MERU UNIVERSITY ..... RESPONDENT

JUDGMENT

11th May & 8th July, 2021

Masara, J.

In the Commission for Mediation and Arbitration for Arusha (the CMA), **Harrison Olang'** (the Applicant herein), filed a labour dispute No. ~~CMA/ARS/ARB/81/2018 against his employer,~~ **~~Mount Meru University~~** (the Respondent herein), claiming for unpaid salaries as well as breach of contract. Having heard the parties and scrutinized the exhibits tendered, the CMA was satisfied that there was no breach of contract between the parties. The CMA also ruled that there was no any claim of unpaid salaries and that the only claim that was found justifiable was payment of gratuity at the tune of TZS 26,455,959.00/=. The Respondent was ordered to pay the Applicant within a period of 14 days from the date of the award. Both parties were aggrieved by the CMA award. The Applicant preferred Revision Application No. 76 of 2019 while the Respondent filed Application No. 73 of 2019. These Applications were, following the prayer of both parties, consolidated. The application is supported by affidavits of Harrison Olang' and Sheck Mfinanga respectively. At the hearing, the Applicant appeared in Court in person

unrepresented while the Respondent was represented by Mr. Sheck Mfinanga, learned advocate. The consolidated Application was heard through filing of written submissions.

Before delving into what was argued by the parties herein, it is necessary to restate facts leading to this application, albeit briefly. The Applicant was employed by the Respondent in the position of Vice Chancellor from January, 2004 in a contract that ended sometimes in 2013. On 1/1/2014, the Applicant signed another contract of three years with the Respondent that expired on 31/12/2016. After expiry of the three years contract, the Applicant continued working with the Respondent until August 2017 when he was terminated from his employment. He referred his dispute in the CMA on 19/10/2017 claiming to be paid his terminal benefits to the tune of TZS 172,434,061.66/=, after being condoned to file his claim of unpaid salary in a ruling dated 16/3/2018. As earlier stated, the CMA did not honour his claims. In the award delivered on 27/8/2019, his claims of unpaid salaries and breach of contract failed on the grounds that there was no breach of contract since the Applicant's contract expired on 31/12/2016 as specified in the contract.

In his written submissions, the Applicant submitted that he was employed by the Respondent as a Vice Chancellor from 1/1/2014 in a contract that would expire on 31/12/2016. After the expiry of the contract, he continued working with the Respondent peacefully in the same position, hence the contract was automatically renewed. He argued that he was served with a

letter from the Respondent on 18/4/2017 telling him that upon expiry of his employment he would be paid his terminal benefits, he replied in a letter dated 20/8/2017 9/5/2017, reminding the Respondent that he was still in service.

According to the Applicant, he was terminated on 20/8/2017 when he was denied entrance in the Respondent's premises by the gate security officers. He maintained that his continuing working after the expiry of the contract acted as an automatic renewal of the contract, citing Rule 4(2) and (3) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N No. 42 of 2007. In his view, considering the evidence on record, the Respondent breached his employment contract because there was no documentary evidence tendered to prove handling of office from him to any other person, and even in exhibit A3 the Respondent acknowledged that the Applicant was still in work.

The Applicant fortified further that the CMA arbitrator invoked inapplicable principle of the law by deciding that the Applicant was eligible to the position of Vice Chancellor for a maximum term of 10 years. That the Charter he made reference to became operational in July, 2009, while the University was registered in 2005. He maintained that he cannot be covered by the said charter as it cannot operate retrospectively; therefore, he should be considered to have begun his employment in 2009; thus, his first five years would end in 2015 and the second term would end in 2020.

The Applicant also faulted the arbitrator's decision stating that he based his decision mostly on the Respondents testimonies as he did not consider exhibits A1, A2 and A3 despite the same being undisputed. He narrated that he was being paid TZS 2,939,511/= per month as salary. His contract was three years contract, which he had only worked for 8 months from January 2017 to August 2017. In his view, he had 28 months remaining which he calculated to the tune of TZS 172,434,061.66/=. He therefore prays that the Court sets aside the award by CMA and award him the unpaid salaries and compensation for breach of contract.

In reply, Mr. Mfinanga preceded his submissions by challenging the act of the Applicant's failure to file written submission in respect of Revision Application No. 73/2019, implying that he failed to prosecute his case. He cited two cases: **Perdeep Sigh Hans Vs. Merey Ally Saleh and 3 Others** and **Lidya Meteya Laizer Vs. Michael Meteya**, Misc. Land Application No. 51 of 2010 (both unreported). Mr. Mfinanga submitted that on 4/10/2019 he filed Revision Application No. 73 of 2019 challenging the award. He implored the Court to allow the application for reasons stated in his affidavit, which he also adopted. He therefore prayed the Court to allow Application No. 73 of 2019 for being uncontested.

With respect to the Applicant's application, Mr. Mfinanga contended that the Applicant had no permanent contract to entitle him to continue working with the Respondent even after the expiration of his employment contract. He fortified that the Applicant's contract was a fixed term contract as per section

14(1)(b) of the ELRA, which lapsed on 31/1/2016 as stipulated in the contract itself. According to the learned advocate, the Applicant admitted, in his evidence, that his employment ended on 31/12/2016 and he even gave farewell speech to the staff and students in the November 2016 graduation ceremony. It was Mr. Mfinanga's contention that there was no expectation of renewing the contract since even the Applicant admitted that his employment was to last on 31/12/2016 without renewal. He fortified that the Applicant's employment was for specific period in terms of Rule 4(2) of G.N No. 42 of 2007; therefore, it expired automatically. To support his contention, he cited the case of **Ahobwile Yesaya Mwalugaja Vs. M/S Shiled Security (T) Ltd**, Revision No. 333B of 2013. He concluded that non-renewal of the Applicant's contract by the Respondent did not amount to breach of contract as the contract was a notice by itself.

On the way the arbitrator construed the Mount Meru University Charter, Mr. Mfinanga submitted that the arbitrator was correct because, as per the evidence DW3, the Respondent had a provisional charter in 2003, and after fully registration of the University it was supplemented by the current charter. Mr. Mfinanga also faulted the Applicant's complaint stating that the arbitrator considered the evidence of both parties. He stated that the Applicant was not precise about his salary of TZS 2,439,381/= while on his application for condonation he stated his salary to be Tzs 2,939,551/= and at the CMA the Applicant admitted to have lied in the condonation application.

The Respondent's advocate submitted that the award of TZS 26,455,959/= to the Applicant as Gratuity was awarded with no justifiable reasons and that there was no documentary proof for reaching to that amount. He added that the Applicant did not offer any explanations leading to award of the amount. Mr. Mfinanga stated that the Applicant's contract provided that upon successfully completion of the contract the Applicant will be paid gratuity but it did not specify the amount.

According to the Respondent's advocate, the claim for gratuity was supposed to be lodged within 60 days from the date the dispute arose. That the Applicant did not prefer extension of time with respect to gratuity. The Applicant only preferred extension of time for unpaid salaries, therefore the award by the arbitrator was hopelessly time barred, insisted Mr. Mfinanga. Eventually, he prayed this Court to allow their revision and dismiss the Applicant's revision Application.

In his rejoinder submission, the Applicant contended that Mr. Mfinanga was not appointed to represent the Respondent in Application No. 73 of 2019 and in his reply submission there is no any document showing that he was appointed to represent the Respondent. He averred that the documents filed were not signed by a Principal Officer of the Respondent. The Applicant therefore prayed that Application No. 73 of 2019 be declared illegal for the irregularity highlighted. The Applicant further contended that what he submitted in his submission was in respect of the two Applications, that is No. 73 of 2019 and 76 of 2019. He implored the Court to invoke sections 3A

and 3B of the Civil procedure Code, Cap. 33 [R.E 2019] which cherishes the principle of overriding objective to determine the matter basing on the substantive justice and not procedural technicalities. Regarding renewal of his contract, the Applicant fortified that his employment contract was renewed by default as per Rule 4(3) of G.N 42 of 2007, reiterating his earlier prayers.

I have gone through the CMA record, the affidavits for and against the applications, both for revision No. 73/2019 and that of 76/2019, as well as all the submissions by both parties, the main issues calling for this Court's determination are whether the Applicant's employment was unfairly terminated and whether the award of gratuity renumeration to the tune of TZS 26,455,959/= by the CMA was proper.

Before dealing with the main issues, I find it necessary to comment on what Mr. Mfinanga raised regarding the Applicant's submissions. I note that the submissions by the Applicant and that of the Respondent's advocate covered both applications; that is Application No. 73 and 76 of 2019. Considering the decision made to consolidate the two, it was not necessary for the Applicant to file separate submissions in each application. Determination of the consolidated application will proceed on that understanding.

Having so held, determination of the issues raised shall cover the two applications. According to the evidence on record, the Applicant admitted that he was employed on a three years contract beginning from 1/1/2014

ending on 31/12/2016. That is a contract for a specified period of time as provided under section 14(1)(b) of the Employment and Labour Relations Act, Cap 366 [R.E 2019]. I have scrutinized the said contract (exhibit A1), which shows that the Applicant was employed in the position of Vice Chancelor effectively from 1/1/2014 and it ended on 31/12/2016. Clause 6 of the said contract stipulates that upon expiry of the contract, the employee shall be entitled to terminal benefits as prescribed by law and salaries which shall be in arrears on the date of expiry.

From the wording of the contract, it is nowhere stated that the contract can be renewed by the employee alone in the absence of notice to the other party. Even in the absence of exhibit A3 which is a letter from the Respondent to the Applicant reminding him of the ending of the contract, still there is no law empowering the Applicant to extend the contract as he wishes. As rightly submitted by Mr. Mfinanga, the contract (exhibit A1) is self-explanatory. Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) G.N No. 42 of 2007 provides:

> *"4- (2) Where the contract is a fixed term contract,* ***the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise."*** (Emphasis added)

From the above provision, the employee who works under a fixed term contract performs his/her duties in accordance with the terms of the contract. The life span of such contract is stated in that contract. In our case the life span of the contract it was stated in exhibit A1 that it would come to an end on 31/12/2016. There are no ambiguous terms indicating that there

was legitimate expectation of renewal of the contract, therefore the time it was expected to end it expired automatically. The renewal, if any, in my considered view, was made at the Applicant's own wish, not according to the terms of the contract.

The Applicant seem to seek refuge on subrule 3 of rule 4, stating that the contract was renewed by default. That rule provides:

> *"(3) Subject to sub-rule (2), 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."*** (Emphasis supplied)

At the outset, and from the above deliberation, the Applicant has misconstrued the provision. In the case at hand, the Applicant has not demonstrated circumstances that warranted him to renew the contract after it had expired. In his own evidence, the Applicant admitted to have given a farewell speech to the staff and students of the Respondent in the November 2016 graduation, stating that his contract was coming to an end and there was no expectation of renewal. Further, the term of serving as Vice Chancelor is stated in the MMU Charter to be 10 years, which the Applicant had already served by December 2016. The defence that the charter does not cover him since it became operational in 2009 does not arise. Also, there was no evidence that the Applicant continued working in his capacity as the Vice Chancelor considering the existence of another Vice Chancelor by the name of Dr. John R. P. Mwakyusa. Further, there was no proof that he was actually attending the work place. The above factors make the Applicant's claim untenable, because there are no circumstances warranting him

ewal of the contract be default as he suggests, since the terms of the ıtract are clear and the conduct of the Applicant presupposes that there s no expectation of any renewal.

For the above reasons, I am inclined to agree with the findings of the CMA arbitrator that there was no breach of contract on the part of the Respondent. The contract between the parties herein expired automatically. Thus, since there was no breach of contract the claim of unpaid salaries as brought forward by the Applicant in the CMA could not stand as there was no proof that there was continued employment relationship between the Applicant and the Respondent.

The Applicant also complained that the CMA arbitrator did not consider his testimonies, especially exhibits A1, A2 and A3. This complaint is without justification. The CMA award was solely premised on exhibits A1, A2 and A3 as reflected on pages 5 to 9 of the CMA award. In the circumstance, the first issue is resolved in favour of the Respondent.

The next issue for consideration is the payment of Gratuity by the CMA. In the record of the CMA, it seems that prior to filing his claim of unpaid salaries due to breach of contract, the Applicant filed application for condonation. Mr. Mfinanga was of the view that condonation on the claim of gratuity was not among the prayers that was granted in his condonation application. I agree, but I do not go along with his contention that the Applicant ought to have filed a separate application for condonation seeking gratuity since it

was not included in his previous application. I hold this view because all that was sought by the Applicant in his condonation was payment of his terminal benefits due to what he believed to be unfair termination arising from breach of contract. After all, gratuity was one of the benefits that was sought in the CMA F1, and it was never contested by any of the Respondent's witnesses in the CMA. Above all, it is specifically stated in the contract (exhibit A1) that after successful completion of the contract term, the Applicant will be entitled to gratuity. Therefore, the claim that the dispute in the CMA was time barred is bound to fail.

Regarding the amount of gratuity, Mr. Mfinanga also faulted the amount awarded to the Applicant stating that there was no justification/documentary proof leading to the amount arrived. It is true that the amount of gratuity the Applicant is entitled is not stated in the contract. However, in CMA F1, the Applicant pleaded 25% of his basic salary, and that was never contested by the Respondent in the CMA. In the end result, that is taken to have been admitted by the Respondent since there was no specific formula of calculating the amount awardable. In this regard, I subscribe to the decision of this Court in ***Tanzania Revenue Authority Vs. Andrew Mapunda,*** Lab. Div. DSM, Revision No. 104 of 2014, where it was stated:

> *"However, it is at the discretion of a Judge or Arbitrator to give award that is considered just and fair depending on circumstance of each case,* ***though is restricted to comply by what is or are indicated in CMA F1 as was decided in the case of Power Roads (T) Vs. Haji Omary Ngomero, Revision No. 36 of 2007."*** (Emphasis added)