IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

REVISION APPLICATION NO. 30 OF 2021

(Originating from Labour Dispute No. CMA/ARS/ARS/80/2020)

BETWEEN

RIZIKI SIMBO.....APPLICANT

VERSUS

JUBAILI AGROTEC LTD.....RESPONDENT

JUDGMENT

11.05.2022 & 15.06.2022

N.R. MWASEBA, J.

The applicant, Riziki Simbo, seeks revision of an award of the Commission for Mediation and Arbitration (CMA), Arusha in Labour Dispute No. CMA/ARS/ARS/80/2020. The application is supported by an affidavit sworn by Emmanuel Sood, Counsel for the Applicant.

Facts relevant to this application reveals that, the applicant was an employee of the respondent as a Store Keeper. He was employed under a one-year contract from 11.03.2019 up to 11.03.2020. On 11.02.2020

he received an email with a paragraph containing notification of non-renewal of the contract. Prior to receiving the information about non-renewal of the contract, on 05.12.2019 the applicant received a letter from the respondent (Exhibit P2) alleging that he had committed a misconduct and he replied with an apology letter on 08.12.2020. On 22.01.2020 he was summoned to appear before the Disciplinary Committee where after trial they decided to terminate his employment (see Exhibit P5). Being aggrieved, he successfully appealed to higher authorities (Exhibit P6) and they informed him to report back at work on 11.02.2020 (Exhibit P7). After reporting he was given a notice of non-renewal of the contract the act which dismayed him and that it was out of his expectation as he had no further disciplinary record beyond a warning. Thus, being aggrieved by the notice of non-renewal of the contract (Exhibit P9), He filed a dispute at the CMA claiming that he was having a legitimate expectation that his contract would be renewed.

At the end of full trial, the applicant's claim for legitimate expectation of the employment contact, and that of breach of contract were dismissed for lack of merit. However, the respondent was ordered to pay the applicant his February salary and annual leave at the tune of Tshs. 1,464,000/=

Being aggrieved, he knocked the door of this court armed with three legal issues as follow:

i) *That, the learned arbitrator erred in law and fact by failing to link the disciplinary procedures that were being taken by the respondent against the applicant with the cause of action hence arriving at a wrong decision.*

ii) *That, the learned arbitrator erred in law and fact by making a narrow interpretation in ascertaining whether there was an objective basis for expectation to renewal employment contract, and subsequently making unjust decision.*

iii) *That, the learned arbitrator erred in law and fact by failing to evaluate the evidence on record vis-à-vis the circumstances of the case hence misguiding himself.*

When the matter was called for hearing which was conducted orally, **Mr Emmanuel Sood**, Learned Advocate appeared for the applicant whereas **Mr Kapimpiti Mgalula**, also Learned Advocate appeared for the respondent.

Arguing in support of the application, Mr Sood prayed for their notice of application and their affidavit to be adopted to be part of their submission. Under the first ground of appeal, he avers that there was a connection

between the non-renewal of the applicant's contract and the disciplinary hearing held by the respondent (See Exhibit P4, P5, P6, P7 and P9). He added that the applicant's appeal was successful without him being called to be heard. The employer contravened mandatory requirement of the Employment and Labour Relations Act. The employer failed to prove that there was a hearing of the applicant's appeal as required by the law. He added that even the outcome of the appeal was sent via email address which is against the law (see Exhibit P7).

It was his further submission that the applicant received a non-renewal notice on the same day he reported at work and ordered him to stop working from that day. The same was proved at CMA when the respondent failed to tender the register for the whole month to prove that the applicant was still working. Thus, the Hon. Arbitrator failed to draw the link between the cause of action and the disciplinary hearing done by the respondent.

For the second ground, it was Mr Sood's submission that the Hon. Arbitrator failed to see that the applicant had an expectation of renewal of the contract. He added further that, the arbitrator was supposed to onside the surrounding circumstances and the purpose to which prove that the applicant had expectation of his contract being renewed. To prove

his argument, he cited the case of **Asanterabi Mkonyi Vs. TANESCO,** Civil Appeal No. 53 of 2019 (CAT-Unreported) in which factors to be considered as to whether there is a reasonable expectation to renew a contract was analysed. So, they prayed for the court to find merit in this ground.

As for the third ground, Mr Sood told the court that he had three points. First, if the employer could have followed all the fair procedures of the disciplinary action against the applicant the process could have ended on 11.02.2020 then the applicant could have chance for his contract to be renewed. Second, the respondent had ill motive against the applicant as he failed to follow proper procedure on the appeal that is why he deliberately opted to give him a non-renewal notice since the applicant could have been successful in his appeal. The last point was to the effect that, the employer banned the applicant from working from 11.02.2020 instead of allowing him to proceed with work until the end of their contract. That action proved that the aim of the respondent's calling the applicant back to work was just to give him a non-renewal notice and not otherwise. Based on their submissions, they prayed for their application to be allowed with costs.

pposing the appeal, Mr Kapimpiti prayed to adopt their counter affidavit nd be part of his submission. On the first ground he argued that, this evision has no merit at all, due to the fact that the applicant is contradicting himself with the procedure of the appeal and a disciplinary hearing. The applicant herein admitted his offence at the disciplinary hearing and after he was found guilty, he successfully appealed to the higher authority as per exhibit P6. The applicant's advocate failed to submit a provision which requires the applicant to attend hearing of an appeal, and thus, after going through the ground of appeal, his appeal was allowed and he returned to work (See Exhibit P7). It was his submission that all the procedures were adhered to by the respondent that is why the applicant returned to his work happily. The applicant is just working against the legal requirement as it was held in a case of **Titus Mwita Matinde Vs Daniel J. Singolile**, Misc. Civil Application No. 3 of 2022 (HC-Unreported) that an afterthought and suspicious application cannot be allowed to go to the Court of Appeal.

Coming to the second issue, Mr Kapimpiti told the court that the applicant did not dispute that he had a one-year contract with the respondent (see Exhibit P1) and that the same will be renewable upon mutual agreement. Since the applicant was aware of the end of his contract it was wrong to

blame the arbitrator that he made a narrow interpretation. He added that even **Section 3 (a) of the Employment and Labour Relation Act**, allows termination of an employment upon non-renewal of the contract. It was his further submission that the respondent also gave the applicant a one-month notice as per their contractual terms (Exhibit P1).

Further to that, he submitted that the applicant failed to narrate any sufficient reasons that could justify his claim of expecting the renewal of his contract. More so, the East African's case is distinguishable in our case as the respondent did give notice to the applicant one month before the end of the contract. Thus, the CMA was right to decide that the termination was fair since all the procedures were adhered to by the respondent.

Coming to the third ground, the counsel for the respondent argued that as long as the applicant never challenged the disciplinary hearing, it is enough evidence that the same was fairly conducted. More so, the applicant failed to narrate the ill motive of the respondent as to why his contract was not renewed. Thus, the employment contract between the applicant and the respondent ended automatically. Further to that, as the applicant pleaded in his CMA F-1 that their dispute arose on 11.03.2020 proved that the was at work on the month of February. In the end, he

prayed for the application to be dismissed and the CMA decision be uplifted.

In his rejoinder, the counsel for the applicant reiterated what was submitted in his submission in chief, he only added that by giving him a notice of non-renewal on the day he reported at work proved that his successful appeal was a mere cheating. More to that, paragraph 13 of GN 42 of 2007 allows the applicant to appear at the hearing of an appeal and that there are no details of the said appeal particularly the number of members, where it was seated and at which day. It was his further submission that the fact that the applicant received a letter (Exhibit P9) does not mean he agreed with its contents and that the dispute was referred at CMA on 11.03.2020 since it was the ending of his contract with the respondent, apart from that his dispute could be prematurely filed.

He submitted further that the disciplinary hearing against the applicant caused him not to have any agreement with the respondent concerning the renewal of his employment contract. He alleged further that the respondent gave the applicant a notice of non-renewal of the contract while the disciplinary procedures had not come to an end. The respondent came to court with his dirty hands. Thus, the act of an applicant not being heard by an appellate board was enough to justify bad intention of the

respondent's not renewing the applicant' s employment contract. So, he maintained his prayer for the revision to be allowed.

Having considered all parties' submissions, court records as well as relevant applicable labour laws and practice with eyes of caution, I find the key issue for determination is whether the applicant had reasonable expectation of the renewal of his contract.

In this application it is an undisputed fact that the employment of the applicant was for a fixed term contract and one of its termination factors was upon its expiry of the contract period (See Paragraph 8.1.1 of the employment contract). The Court noted that, before the expiry of his contract in issue on 11/02/2020 the applicant was served with the notice of non-renewal of his contract which was a requirement of the said contract.

It is a settled law that, a fixed term contract shall automatically come to an end when the agreed time expires. This is the position of the law provided under **Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice)** GN 42 of 2007 (herein GN 42 of 7 2007) which is to the effect that:

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

The applicant is strongly contending that he had reasonable expectation of renewal of his contract. The law imposes the duty to an employee claiming for reasonable expectation of renewal to demonstrate reasons for such an expectation. This is provided under **Rule 4 (5) of GN 42** of 2007 which provides as follows:

> *"Where fixed term contract is not renewed and the employee claims a reasonable expectation of renewal, the employee shall demonstrate that there is an objective basis for the expectation such as previous renewal, employer's undertakings to renew."*

In the matter at hand the basis of the applicant's expectation of renewal arose from his arguments that he had never been called to any disciplinary hearing apart from the one he was called in January, 2020 where he admitted the offence and apologized for his offences. Further to that, his counsel alleged that although the applicant won the appeal it was just cheating since he was served with a notice of non-renewal of employment contract the day he arrived at work after winning his appeal (See Exhibit P9).

Generally, reasonable expectation of renewal of a contract is created by the employer through conduct or statements which gives the employee prospective renewal of such a contract. In my considered view in this application, I do not see any expectation created by the respondent to make him be expectant of his contract being renewed. The act of winning an appeal does not suffice to prove that the employment contract would be extended since the applicant as an employer had already suspected the respondent of misusing power which signalled bad behaviour to the applicant (See Exhibit P2).

Further to that even if the respondent created any expectation of renewal to the applicant the said expectations were rebutted by the notice of non-renewal (see Exhibit P9). The employer (respondent herein) clearly expressed that his contract would not be renewed for another term.

As discussed above, fixed term contracts come to an end when the agreed term expires. The same was held in the case of **National Oil (T) Ltd Vs Jaffery Dotto Msensem & Others,** Lab Rev No. 558 of 2016 (HC-Unreported) where it was held that:

> *"I must say the question of previous renewal of employment contract is not an absolute factor for an employee to create a reasonable expectation, reasonable expectation is only created where the contract of employment explicit elaborate the*

intention of the employer to renew a fixed term contract when it comes to an end."

On the basis of the discussion herein, the Court finds that the applicant was duly informed about the non-renewal of his contract one month before it expired as rightly decided by the Arbitrator. Thus, I have no reason to fault the Arbitrator's findings that the applicant did not demonstrate any reasonable expectation of renewal of his contract as claimed before this Court.

Thus, for the foregone reasons, the present application has no merit because the applicant failed to demonstrate reasons for his expectation of renewal of the contract in question. Consequently, the Arbitrator's award is hereby upheld and the present application is dismissed accordingly. Each party should bear its own costs.

Ordered accordingly.

DATED at **ARUSHA** this 15th day of June 2022.

N.R. MWASEBA

JUDGE

15.06.2022