

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT MWANZA

REVISION APPLICATION NO. 38 OF 2021

(Originating from Labour Dispute No. CMA/MZ/ILE/219/2019/14/2020)

PAUL TUNGUCHA BUGARIRE APPLICANT

VERSUS

G4S SECURE SOLUTIONS (T) LTD RESPONDENT

JUDGMENT

30/3/2022 & 20/6/2022

ROBERT, J:-

The applicant, Paul Tungucha Bugagire, moves this Court to revise and quash the proceedings and the arbitral award of the Commission for Mediation and Arbitration (CMA) for Mwanza in Labour Dispute No. CMA/MZ/ILE/219/2019/14/2020 dated 23rd July, 2021. The application is grounded on reasons stated in the affidavit sworn by the applicant in support of this application.

The applicant was an employee of the Respondent as Security Compliance Officer on a fixed term contract of one year. The employment contract started from 1st February, 2018 and was expected to terminate on 31st January, 2019. However, the contract was renewed by default after its

expiry as the Applicant continued to work under the same contract until 11th April, 2019 when he was suspended from duty pending investigation on allegations of sexual harassment. He remained suspended until 15th October, 2019 when the employer issued him with a letter uplifting his suspension which he refused to accept. One day after that, he was issued with an end of contract letter dated 16th October, 2019.

The applicant filed a dispute at the CMA alleging breach of contract and unfair termination. He sought to be paid compensation of 12 months remuneration for breach of contract, 1 month remuneration in lieu of notice, three months' unpaid salary (November, 2019 to January, 2020), twelve months remuneration being remedies for expected renewal of contract and damage of the right to work and right to life, and severance pay. The CMA raised three issues in the determination of this dispute. One, whether there was breach of the Complainant's (Respondent's) contract. Two, Whether the Complainant (Applicant) is entitled to relief due to termination of contract of employment. Three, to what relief(s) are the parties entitled. The CMA made a finding that, the Applicant had terminated his employment after his refusal to accept the letter uplifting his suspension and to sign the end of employment contract letter and concluded

that the Applicant herein is not entitled to any relief because the contract was lawfully terminated. Aggrieved, the Applicant preferred this application on two legal issues stated at paragraph 4 of the supporting affidavit as follows:-

- i. That, the trial Arbitrator erred in law and fact by determining issues which were not pleaded by the parties see rule 27(3)(b) of Labour Institutions (Mediation and Arbitration Guidelines) GN. NO. 67 OF 2007*
- ii. That, the trial Arbitrator erred in law and fact to deliver award without assigning parties evidence and arguments see rule 27(3)(d) of Labour Institutions (Mediation and Arbitration Guidelines) GN. NO. 67 OF 2007*

At the hearing of this application, the Applicant was represented by Mr. Ulisaja Kabisa, learned counsel whereas the Respondent was represented by Mr. Moses Kyondo, learned counsel. The application was argued orally.

Highlighting on the first issue, Mr. Kabisa argued that, the Arbitrator based his findings at page 4 of the impugned award on matters which were not raised as an issue for determination of the case. Further to that, he submitted that at page 6 of the award the Arbitrator failed to make a proper interpretation of what amounts to breach of contract and relied on the dictionary interpretation of the word "breach" as a basis for determination of the case. He made reference to the case of Musa K. Msangi Jimmy S.

Malumbo and Lake Cement Ltd, Revision Application No. 229 of 2020 Labour Division, DSM (unreported) at page 6 the Court made reference to the Court of Appeal decision in the case of Serenity on the Lake Ltd vs Dorcus Martin Nyanda, Civil Appeal No. 33 of 2018 (unreported) where the Court held that in fixed term contracts the contract expires automatically. However, in the present case, the Respondent issued termination letter without conducting investigation or disciplinary hearing.

In response, Mr. Kyondo submitted that, the CMA award was based on pleaded issues. He argued that in determining whether the applicant's contract was lawfully terminated, the CMA observed that, the applicant was first suspended, after that he was called in order uplift his suspension but he refused to accept the letter uplifting his suspension. As a consequence, the employer gave him a letter to end his employment contract which he also refused to accept. After that, he left and filed a dispute at the CMA which was dismissed on grounds that he had terminated his own contract. He maintained that this means the CMA based its decision on the framed issues.

Coming to the second issue, Mr. Kabisa argued that the Arbitrator did not make reference to the arguments and evidence tendered in Court by the

parties. For example, the Arbitrator did not make reference to the fact that the Applicant was employed in a fixed term contract.

In response, Mr. Kyondo argued that, the decision of the CMA was based on the evidence tendered, parties arguments and issues raised and agreed by both parties.

In a brief rejoinder Mr. Kabisa argued that, the Applicant refused to accept the letter uplifting his suspension because the reasons for uplifting suspension were not stated. Similarly, he did not accept end of employment contract letter because he was not informed about the allegations which were being investigated against him. He maintained that the employer breached the fixed term contract by ending it before its expiration.

Having considered the submissions and records of this matter as well as the issues raised by this applicant it appears to this Court that the question for determination boils down to whether the Respondent breached the applicant's fixed term employment contract and what reliefs the parties are entitled to.

It is not disputed that the applicant's one year fixed term contract having expired on 31st January, 2019 it was renewed by default for another year and was expected to end on 31st January, 2020. However, things took a different turn on 11th April, 2019 when the applicant was suspended from duty on allegations of sexual harassment. However, when the employer decided to uplift his suspension through a letter dated 15th October, 2019 the Applicant refused to accept the letter. As a consequence, the employer decided to end his contract on the following day, that is, on 16th October, 2019. The applicant is now alleging that the Respondent breached the fixed term contract by terminating the contract before its expiry.

At the outset, it should be noted that in instances where an employee is engaged in serious allegations of misconduct it is essential for proper disciplinary procedures to be carried out. In such instances an employee may be suspended on full remuneration pending investigation of the alleged misconduct under Rule 27 of the Employment and Labour Relations (Code of Good Practice) Rules, GN No. 42 of 2017. A suspended employee must be given a letter of suspension and be notified of the terms of the suspension. As soon as investigation is complete and the employer finds no need for a

disciplinary action to be taken against the said employee, the suspension must be uplifted and the employee be allowed to continue with work.

In the present case, it is not disputed that the Applicant refused to accept the employer's letter uplifting his suspension. Whatever the reason for refusal might have been, this Court having looked at the letter uplifting the applicant's suspension (exhibit D5), finds no justification for the applicant to refuse to accept the employer's decision to take him back to work after the investigation. In the said letter the employer informed the suspended employee that:

"This is to inform you that decision has been reached after investigation conducted to uplift your suspension and by this letter report to GAS Mwanza Offices for further arrangements.

We hope that you will continue to cooperate."

That said, the central question for determination in this matter is whether, the Respondent breached the contract of employment by ending the contract before its expiry date. As a general rule, Rule 4(2) of the GN. No. 42 of 20027 provides that, a fixed term contract terminates automatically when the agreed period expires unless the contract provides otherwise. However, under rule 8(1) (a) of GN No. 42/2007 an employer may terminate

the employment of an employee if he complies with the provisions of the contract relating to termination.

I have looked at the terms of the applicant's fixed term contract of employment (exhibit D1). Clause 11 of the fixed term contract allowed either party, during probation, to terminate the contract by giving 24 hours' notice. After confirmation of the employee, the contract allowed each party to terminate the contract by giving the other party 30 days' notice. The contract also allows summary termination without notice at any time as a result of gross misconduct or breach of contract, falsification of documents and information on application forms or where the customer request that the employee be removed from site.

I have also looked at the end of employment contract (exhibit D6) given to the applicant and noted that, the applicant's contract was not terminated on grounds of misconduct. Exhibit D6 indicates that, the employer ended the employee's contract by one month notice as stipulated in the employee's contract of employment with effect from 16th October, 2019. Parties in the fixed term agreement agreed that the employer can terminate a contract if one of the employer's customers rejects the services of the employee and in this case, the employer indicated that the employee's services at Acacia

North Mara site which is the employee's work place was rejected by the customer.


This Court finds and holds that since the applicants employment was terminated according to the terms of the fixed term contract of employment (see clause 11 of Exhibit D1), there was no breach of contract by the employer as alleged by the applicant.

I have also noted that the employer, through exhibits D6, committed to pay the applicant his final benefits including, salary for the days worked in October, 2019, one month notice pay, severance pay for one year, leave days due and certificate of service. This Court orders the respondent to pay the said final benefits, if not paid.

In the end, I find no merit in this application and I hereby proceed to dismiss it for want of merit.

It is so ordered.




K.N. ROBERT
JUDGE
20/6/2022