

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LABOUR DIVISION AT KIGOMA**

**LABOUR REVISION NO 08 OF 2021**

(Arising from the Award of the Commission for Mediation and Arbitration for Kigoma at Kigoma in Labour Dispute No. CMA/KIG/211/2021/08 by Hon Stanslaus B. (Arbitrator) dated 17<sup>th</sup> August, 2021)

**BETWEEN**

**ANGELUS TUNGARAZA ..... APPLICANT**

**AND**

**PLAN INTERNATIONAL ..... RESPONDENT**

**JUDGMENT**

16/5/2022 & 8/6/2022

**L.M. MLACHA J,**

The applicant filed a revision asking the court to revise the decision of the Commission for Mediation and Arbitration for Kigoma (the CMA) which was delivered on 17/8/2021 made in Labour Dispute CMA/KIG/211/2021/08 (Stanslaus H. Arbitrator). The revision is seeking the following orders.

1. That this honourable court be pleased to call for and examine records of proceedings in Labour Dispute No CMA/KIG/211/2021/08 of the Commission for Mediation and Arbitration for Kigoma at Kigoma revise and set aside the award

therein dated 17<sup>th</sup> August 2021, for it was delivered with illegality and material irregularity involving injustice to the applicant.

2. Any other relief the honourable court deems just and equitable to grant.

The background of the dispute in brief is that, on 30/4/2016, the applicant was employed by the respondent, Plan International for a period of six (6) months with effect from 1<sup>st</sup> May 2016 to 31/12/2016. The contract was renewable by mutual consent of the parties and it kept on being renewed for periods of six (6) months or three (3) months, subject to the availability of work and funds upto 31/12/2020. He had the post of Assistant Case Management but later rose to the post of Case Management officer. His last contract was for three (3) months from 1/10/2020 upto 31/12/2020.

Now, a problem arose in November 2020. He was accused of some professional misconduct. He was interdicted on 19/11/2020 to pave way for investigation. He was restored on 19/12/2020. He could not get the results of the investigation. Instead he was served with a letter showing that the employer had no intention to renew the contract at the end of the contract on 31/12/2020. He worked upto 31/12/2020. He was then paid his salary Tshs 2,221,147/=, leave for 17 days Tshs 1,798,071.38, pension

Tshs 2,069,361/= and transport 410,000/=, total Tshs 4,415,324/=. He received the money and wrote a letter to the respondent dated 22/1/2022 challenging the termination. He thereafter moved to CMA to claim 36 months' salary for unfair termination and damages for mental torture and hardship suffered Tshs. 200,000,000/=. The CMA found no substance in the claim which was dismissed. The applicant is aggrieved hence the application for revisions.

At the hearing of the revision, both parties were represented by counsels. Mr Sileo Mazula advocate appeared for the applicant while the respondents had the services of Rosemary Maajah. Hearing was done by oral submissions. Mr Sileo raised three issues in para 18 of the affidavit supporting the application. He dropped the third issue in the course of his submissions. He started with the second point, whether there was expectations for renewal.

Submitting on whether there was expectation for renewal, counsel referred the court to section 36(a) (ii) of the Employment and Labour Relations Act, cap 366 R.E 2019 and rule 4(4) of the Labour Court Rules, GN. 42 of 2007. He submitted that the applicant had reasonable expectation of renewal of the contract. He said that the applicant was employed in 2016 and kept on

renewing upto 2020 on 3 months basis upto 2020 when he was given a notice of none renewal of the contract.

Counsel submitted that our laws are not very clear on areas to be examined to establish whether there was a reasonable expectation of renewal of the contract. He said that the law in south Africa, The Labour Relations Act No. 66 of 1995 is clear on this aspect and can help the court to reach to a fair decision. The law talks of significance or other wise of any contractual stipulation; where the employee has reached contractional targets. Based on this principle, counsel submitted, the employee has a right of renewal of his contract. He proceeded to say that the respondent never assigned any reason for none renewal of the contract.

Counsel went on to submit that para 2 of the employment contract demanded a notice of termination of 28 days but the applicant was given a notice of 10 days. The termination letter is dated 19/12/2020 while the contract was ending on 31/12/2020. Failure to abide with the requirement for notice, counsel submitted, made the termination unfair. He referred the court to **Asanterabi Mkonyi vs TANESCO**, CAT Civil Appeal No. 53 of 2019, Page 12 for guidance.



In ground one, counsel submitted that the failure to renew the contract was not caused by lack of funds or work as alleged but investigations which were made prior to the issue of the termination letter. Further, the applicant was not given the investigation report. Counsel argued the court to vacate and set aside the decision of the CMA and order compensation for unfair termination as prayed.

Ms Rosemary Maajar prayed to adopt the counter affidavit and the award of the CMA as part of her submission. Counsel submitted that the law on expectation of renewal required the applicant to provide evidence for expectation of renewal. She invited the court to be guided by rule 4(5) of GN 42 of 2007 on this aspect. She went on to say that the applicant did not provide any exhibit or documentation showing the expectation of renewal. She added that a fixed term contract like the contract of the applicant comes to an end at the expiration of the contract. She submitted that forcing the employer to renew the contract defeat the whole purpose of fixed term contracts. It takes away the freedom of the employer to terminate the contract at the end of the contract. She referred the court to **National Oil (T) Ltd vs Dotto Nsensembe**, Revision No. 558/2016 as her authority. She submitted that the contract could be renewed on mutual

consent of the parties. This meant that both parties had to agree. She went on to say that there were other incidences of failure to renew the contract. It happened in 2019. She added that the employer depended on funds from donors. He had no funds to renew the contract. Neither did he had a duty to say so because the contract was coming to an end.

Counsel went on to say that investigation was done and the applicant was returned to his job. He was later served with the termination notice. Termination was based on end of contract not the investigations, she submitted. She argued the court to uphold the decision of the CMA.

Mr Sileo made a rejoinder and referred the court to exhibit D4, the notice of none renewal of contract. He said that it prevented him from doing any job. He was barred to enter the office.

I have considered the counsel submissions and tried to reason out carefully. Termination of the contract is provided under clause 10 of the 2016 employment contract. It is also provided under the rules. Clause 10 reads as under:

***"10 Termination***

*Notwithstanding the provisions of Clause 2 above, either hereto may terminate this contract by giving a 7 days' notice if it is given in the first month of probationary period, thereafter **one month's notice shall be required**. Where notice is not given the defaulting party shall be liable to pay one month salary in lieu of notice.*

- 1. Notice of Termination shall not be given during any time of leave taken under this contract or to run concurrently with any such period of leave.*
- 2. Without prejudice to the above, the employment shall be terminated upon the following:*
  - a. Where the Employee attains the age of 60 years which for the purpose of this contract shall be retirement age;*
  - b. Automatic termination: This contract shall terminate automatically when the fixed term contract expires.***
  - c. Termination on Operational ground: The employer may terminate the contract following the organization restructuring, Donor requirement, project phase out and or lack of funding.***
  - d. Upon death of the Employee;*

*e. On medical grounds upon the recommendation of the registered Medical practitioner acceptable to the Employer;*

*f. Resignation*

*g. On dismissal for breach of the disciplinary code or code of Conduct (attached); and*

*h. On any other lawful reason.*

*3. In the event that this contract is terminated for any reason, the Employee will immediately deliver to the Manager responsible for Human Resource all documents together with any copies including notes, records accounts memoranda and papers and any other items or property which came in the Employee's possession, relating to or concerning the business of the Employer or any of its suppliers, agents or customers.(Emphasis added)*

Clause 10 was changed in subsequent contracts. For example, the contract which was made on the 8<sup>th</sup> January, 2018 for a period of six (6) months put the termination clause as clause 12. Clause 10(2) (b) is now seen as clause 12(2) (c). The words are the same. So, there was no change of the termination clause throughout the period.



Unfair termination occurs when an employer fails to prove the circumstances provided under section 37 of the Employment and Labour Relations Act. Rule 3(2) of GN 42 of 2007 provides ways in which an employment contract may be terminated. The rule provides thus:

*"3(2) – A lawful termination of employment under the common law shall be as follows;*

- a) Termination of employment by agreement;*
- b) **Automatic termination;***
- c) Termination of employment by the employee; or*
- d) Determination of employment by the employee; ( Emphasis added).*

The parties in this case had a fixed term contract. A fixed term contract expires automatically when the agreed period expires, unless the contract provides otherwise – See Rule 4 (2) of GN 42 of 2007. Clause 10(2) (b) of the contract provides for automatic termination. Parties are bound by employment contracts – See **Hotel Sultan Palace Zanzibar vs Daniel Leizer and another**, CAT Civil Application No. 104 of 2004.

Rule 4(5) provides that where a 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 and employer's undertakings to renew.

There was no specific provision for renewal in the contract but the applicant claims that he expected renewal because all other agreements had been renewed previously. He bases his contract on previous renewal. The respondent says that the applicant's engagement depended on the availability of work and funds. They could not renew without work and funds. He added that previous renewals were not smooth. Counsel cited an example of the year 2019 where they could not sign contract as expected due to availability of funds.

The applicant has another complaint that he was not terminated due to lack of funds or work but due to investigations which were done following his termination. Further that he was not availed with a copy of the report.

I have examined the law and the circumstances under which the applicant was terminated. The record is clear that the applicant was accused of some misconduct and interdicted to pave way for investigations. The employer made an inquiry into the matter. At the end of one month he formed an opinion that he could not proceed with the applicant. He returned him to work but told him that he could not proceed with him at the expiration of

contract. He could not release the findings. He is now accused of failing to release the report. I think the employer had no duty to release his findings. He could release or simply keep it with him so long as it has helped him to make decisions. The applicant could have a right to get the report if there were some charges against him. that was not the case here.

The employer did not want to prolong the matter. He opted to reserve the finding to himself. I think that he did not offend any law by doing so.

On the expectations of renewal, I don't think that the employer was bound to proceed to sign another agreement by the mere expectation of renewal even where he had an opinion that the applicant did not work in line with organization goals or where he had no work or funds to pay him. The expectation of renew was subject to availability of work, funds and the applicant's fitnesses to work within the organization goals. The circumstances did not call for a renewal.

As was said by my sister, Abood J. in **Rosamistika Siwema (Administrator of the estate of Joseph Mandago) vs ADD International Tanzania**, Revision No. 498 of 2019 page 11, when the agreed fixed period of contract expires, the employer is not liable to follow the stipulated procedures for termination of employment because the

contract and the law provided for automatic termination of contract at the expiration of contract. If he so terminates, the employee must not be heard to complain in anyway because he knew that his contract could expire on the date. He knew the end. He had no right to force another contract on the basis of expectations for renewal. Neither was the employer forced to sign a new contract for doing that could interfere with his right to terminate the contract at the expiration of the contract.

That said, I find no merits in the revision which is dismissed. It is ordered so.



**L.M. MLACHA**

**JUDGE**

**8/6/2022**

**Court:** Judgment delivered. Right of Appeal Explained.



**L.M. MLACHA**

**JUDGE**

**8/6/2022**