

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT MBEYA

LABOUR REVISION NO. 24 OF 2021

(Arising from Labour Dispute No. CMA/MBY/118/2020)

BETWEEN

RENARD GEORGE MSOKILE.....APPLICANT

AND

RIVERSIDE PRIMARY SCHOOL.....RESPONDENT

JUDGEMENT

Date of last Order: 18.05.2022

Date of Judgment: 21.07.2022

Ebrahim, J.

The applicant RENARD GEORGE MSOKILE being aggrieved with the award of the Commission for Mediation and Arbitration at Mbeya in Labour Dispute no. CMA/ MBY/118/2020 dated 06/08/2021, filed the instant application seeking to revise and set aside the award. The application was preferred under **sections 91 (1) (a) and 94 (1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004 (ELRA)**, read together with **Rule 24 (1), (2) (a) – (e), (3) (a) – (d) and 28 (1) (c), (d) and (e) of the Labour Courts**

Rules, 2007 (GN No. 106 of 2007). The application was supported by an affidavit sworn by the applicant himself.

The respondent challenged the application by filing a counter affidavit sworn by Ms. Juliana Marunda, counsel for the respondent.

The brief facts leading to the present application is that, the applicant was employed by the respondent as a teacher since 2014. The employment was on a contract basis. It was alleged that he served for two terms on a two years contract which ended in September, 2019 and a third term for a one-year contract which ended 2020. After the end of the third term, the respondent did not renew the contract. Aggrieved, the applicant instituted a labour dispute before the CMA claiming for unfair termination and prayed to be paid a total of Tshs. 25,866,923 as terminal benefits and compensation.

The respondent protested the claim on the ground that the employment contract reached to an end and that the applicant has been paid all his dues.

Having heard the matter on merits, the CMA pronounced the award in favour of the respondent. It decided that the

applicant employment contract terminated automatically as it reached to an end. Aggrieved, the applicant preferred the instant application.

Under para 16 (i-iii) of the affidavit, the applicant raised three issues to be determined by this court. These are:

- i. Whether it was proper for the Arbitrator to hold that the termination of employment was fair.*
- ii. Whether it was proper for the Arbitrator to ignore the fact that there was no contract of employment.*
- iii. Whether it was proper for the Arbitrator to hold that the Applicant is not entitled to any relief prayed.*

The application was heard by way of written submissions. The applicant appeared in person, unrepresented whereas the respondent was represented by Mr. Ladislaus Rwekaza, learned advocate from RWELA LAW ADVOCATE.

Submitting in support of the application, the applicant adopted the contents of the affidavit to form part of his submission. Arguing the 1st issue, the applicant said that the CMA wrongly decided that the respondent fairly terminated him. According to the applicant after the expiry of the second term

contract of two years in 2019 no other contract was given to him. That he continued working for the respondent without any contract which implies that the respondent renewed the contract by conduct.

Regarding the 2nd issue, the applicant's submissions were essentially similar to what he submitted in the 1st issue. He complained that the Arbitrator was wrong to hold that there was no any contract between him and the respondent after the expiry of the second contract.

Submitting in regard to the 3rd issue, the applicant's arguments were hard to comprehend, this court did not clearly understand in which aspect on the CMA's decision the applicant's complaint relied on. However, he insisted that his termination was unfair and the Arbitrator wrongly decided in favour of the respondent.

In reply, counsel for the respondent reminded this court that **section 91 (2) (a) (b) of the ELRA** provides for two grounds in which the CMA award may be set aside to wit; when there was a Misconduct on the part of the arbitrator, and where the award was improperly procured.

Submitting in regard with the 1st issue, counsel for the respondent faulted the applicant's contention that after the expiry of the second term contract the applicant was not given another contract, thus from October 2019 he was working under implied contract. The respondent's counsel argued that the record is clear that the second term contract ended and the applicant was availed with a one-year term contract which ended on 1st October 2020. He argued further that exhibit R4, a one-year contract was admitted by the CMA without any objection.

Moreover, relying on **Rule 4 (1) and (2) of the Employment and Labour Relations [Code of Good Practice]** G.N. No. 42 of 2007 and the case of **Matumba Shamte & 64 Others vs Care Santation and Suppliers**, Revision No. 154 of 2010 HCT at Dar es Salaam (unreported), counsel for the respondent argued that a fixed term contract terminates automatically when the agreed period expires. On that basis he prayed for this court to disregard the 1st issue since the CMA was correct in deciding that the applicant's contract terminated automatically as it reached to an end.

As to the 2nd issue, counsel for the respondent urged this court to disregard the complaint by the applicant since there was ample evidence on record that the respondent did not renew contract of the applicant after the expiry of one-year contract on 1st October 2020.

Regarding the 3rd issue, counsel for the respondent submitted that the claims by the applicant which based on **section 44 of the ELRA** were not viable since the CMA basing on Exhibit R5 decided that the applicant was paid his benefits after the expiration of his employment contract. He thus prayed for this court to dismiss the application for want of merits.

I have carefully considered the applicant's affidavit and, rival submissions by the parties. I have as well gone through the records. In light of what has been submitted and upon going through the proceedings of the CMA, I am of the concerted views that the central issue for consideration is whether the respondent terminated the applicant's employment/whether there was unfair termination.

There is no dispute between the parties that the applicant was employed in a fixed term contract basis. There is also no

dispute that the applicant served two terms on two-years contract which ended in September 2019. On that basis the applicant complaint is that after the expiry of the 2nd term, no other contract was availed to him; whereas the respondent is contending that she availed him with a one-year contract which started on 1st October 2019 and ended on 1st October 2020. The answer to this controversy by the parties can be resolved by reverting into the evidence adduced before the CMA.

I have keenly scanned the records. The evidence adduced by the parties is as clear as daylight. The respondent testified that she availed the applicant with a written contract for one year. The same was tendered and admitted without objection as **exhibit R4**. The exhibit shows that it was signed by both parties. In turn, the applicant told the CMA that he requested to be availed with a contract but did not get any. He did not however produce any document to justify that he truly requested the same. In the circumstance, as rightly found by the CMA, the respondent had proved that the applicant was availed with one-year contract and the same terminated/came to an end on 1st October 2020.

Principally, **Rule 4 (2) of GN No. 42 of 2007** provides that:

'Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise'

This follows that, when a fixed term contract expires but an employee continues to work, such contract is said to be renewed by default. Nevertheless, where an employee has expectation of renewal of contract by default and an employer fails to renew it, it then amounts to unfair termination. That is per **subrule (3) and (4) of Rule 4** above. This was also the observation made by the Court of Appeal of Tanzania (CAT) in the case of **Ibrahim s/o Mgunga & Others, vs African Muslim Agency**, Civil Appeal No. 476 of 2020 [2022] TZCA 345 (Tanzlii) at page 10 that:

"..... the principles of unfair termination do not apply to fixed term contract, unless it is established that the employee had reasonably expected a renewal of the contract"

Owing to the above principle in relation to the matter at hand and as I have hinted previously, the applicant's contract reached to an end. He did not continue working when the one-year contract ended. Thus, the applicant cannot be covered by the principle of renewal by default/expectation of renewal.

Henceforth, the respondent did not unfairly terminate the employment contract of the applicant.

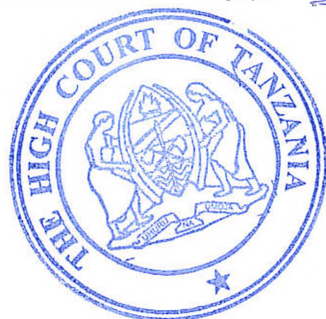
Following the above findings, the remaining two issues have been rendered redundant on the reason that, in the foregone issue it has been resolved that there was a one-year contract. Thus, the complaint relating to the reliefs prayed by the applicant in so far as unfair termination is concerned is unmaintainable since it has been found that there was no unfair termination.

Additionally, the CMA correctly found that the applicant was paid all his terminal benefits after the expiry of the fixed term employment contract. This court has also seen exhibit R5 collectively which shows the payment which was made by the respondent in favour of the applicant.

As above said, the applicant's application is unmeritorious. It is thus dismissed. Being a labour matter, I make no order as to costs.

Ordered accordingly.

MBEYA
12.07.2022



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

R.A. Ebrahim
JUDGE

Date: 12.07.2022.

Coram: Hon. A.P. Scout , Ag-DR.

Applicant: Present.

For the Applicant: Absent.

Respondent: Present

For the Respondent: Mr. Ibrahim, Advocate.

B/C: Patrick Nundwe.

Mr. Ibrahim Advocate for the Respondent who is present and the applicant present. The matter is coming on for judgement we are ready to proceed.

Applicant: I am ready too.

Court: Judgement is delivered in the presence of the Applicant, Mr. Ibrahim Advocate for the respondent and the respondent, Court Clerk in Chamber Court on 12/07/2022.



A.P. Scout

Ag-Deputy Registrar

12.07.2022
DEPUTY REGISTRAR
HIGH COURT OF TANZANIA
MBEYA