

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

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LABOUR REVISION NO.6 OF 2022**

*(Arising from CMA Tanga in CMA/TAN/LUSH/03/2020/12)*

**FRIENDS OF USAMBARA**

**CULTURAL TOURISM ENTERPRISES.....APPLICANT**

***-VERSUS-***

**SALUM Y. MOHAMED.....RESPONDENT**

**RULING**

*Date of last order: 23/06/2022*

*Date of ruling: 16/08/2022*

**AGATHO, J.:**

The background of the case is that the Respondent was employed as driver by the Applicant on six months, a fixed term contract of employment from 12/02/2018 to 10/08/2018. After the expiry of six months period the Respondent continued to work until January 2020. They agreed that he should continue to work while waiting for donor's fund. On 28/01/2020 he asked his employer (the Applicant) to pay him some Money so that he can pay school fees for his children. The Applicant told him that he was never employed by the company. That prompted the Respondent to file a labour dispute at the CMA of Tanga, namely labour dispute No.

CMA/TAN/LUSH/03/2020/12. The same ended in favour of the Respondent. The CMA Arbitrator granted an award in his favour. That aggrieved the Applicant who moved this Court under the provisions of Sections 91(1)(a), 94(1)(b)(i) of the ELR Act, 2004 (Act No. 6 of 2004) and Rules 24(1),(2)(a),(b),(c),(d),(e) and (f), and 24(3)(a)(b)(c) and (d), 28(1)(c)(d) and (e) of Labour Court Rules, 2007 (GN. No. 106 of 2007) seeking orders:

- (a) That the Court call, examine and revise the Award and the proceedings thereof in respect of the Award of the CMA for Tanga at Tanga in respect of Labour Dispute No. CMA/TAN/LUSH/03/2020/12 dated 31/03/2022 by Lomayan Stephano – Arbitrator to satisfy itself on its legality.
- (b) That the Court make any other order(s) as it deems fit and just.

The Applicant filed his chamber application supported by the affidavit of Yasin Madiwa the principal officer of the Applicant company. The Respondent filed his counter affidavit to protest the application. In the present application for revision the Applicant was represented by advocate Switbert Rwegasira, and the Respondent engaged the services of advocate Richard Ernest. The hearing was conducted by way of written submissions.

To dispose the application at hand the Court raised the following issues:

- (1) Whether the contract of employment was for fixed period/time. As visible in CMA proceedings, the answer to this is yes. It was indeed a fixed term contract.
- (2) Whether the employee had reasonable expectation of renewal of the employment contract. As shown below, the contract was renewed by default, which was not an issue in the case of **Ibrahim Mganga and 3 Others v African Muslim Agency, Civil Appeal No. 476 of 2020** the CAT. Therefore, the latter case is distinguished from the case at hand.
- (3) Whether employer had obligation to issue notice of termination? See Rule 4(4) of ELR (Code of Good Practice) GN 42 of 2007. It is my view that even if the employee had no reasonable expectation of renewal of the employment contract in the present case the contract was renewed by default. See Rule 4(3) of GN, 42 of 2007. The Applicant continue to assign work to the employee. They agreed the money will be paid after receiving the donor's fund.



As per **Jonas Oswady v Cost Data Consultation Ltd, Labour Revision No. 3 of 2020, HCT Mwanza District Registry** to allow an employee to continue working after expiry of the contract of employment is default or implied renew of the contract of employment. Rule 4(2)(3) and (4) of ELR (Code of Good Practice), Rules 2007 G.N. 42 of 2007.

(3) Subject to sub rule (2), a fixed contract may renew by default if an employee continues to work after (the expiry of the fixed contract term and contract circumstance warrant it.

Rule 4(2) "a fixed term contract shall terminate automatically when the agreed period expires unless agreed otherwise."

The case of **Jonas Oswady v Cost Data** is relevant to the case at hand. I am saying so because just like in **Cost Data case** in the present case there was renewal by default. From 10<sup>th</sup> August 2018 when the contract expired, the employer (Respondent) continued to work non-stop until 28<sup>th</sup> January 2020 when the employer refused to pay him. And DW1 in his testimony claimed that the Respondent was not employed from Dar es salaam rather he was employed from

Lushoto – Tanga (see DW1 testimony at page 5 of the CMA proceedings).

While the case of **Board of Trustees MSD v Robert Njau Labour Revision No. 621 of 2019 HCT**, emphasized on a need for issuing notice of non-renewal of the contract. There was thus no reasonable expectation of renewal.

In **Ibrahim Mgunga and 3 Others v African Muslim Agency, Civil Appeal No. 476 of 2020** the CAT held inter alia that notice of non-renewal was a mere courtesy of the employer because in a fixed term contract of employment. He is not bound to issue notice of non-renewal as the contract terminates automatically upon the end /expiry of the time fixed. Therefore, **African Muslim Agency case** is distinguished from **Cost Data's case** because in the former notice was issued but in the latter there was default renewal of the contract of employment. The **Cost Data case** is somewhat similar to the case at hand.

The Applicant counsel further faulted. The CMA's application of Rule 4(5) of GN 42 of 2007. Arguing that the Respondent had not addressed the evidence to show that he had reasonable expectation of renewal of the fixed term contract of employed.

A question is how do we establish reasonable expectation of renewal of contract of employment? A main factor taken into consideration as held in **Cost Data case** is whether the employee continued to work after expiry of the fixed term contract of employment. This is what is called default renewal as provided for under Rule 4(3) of GN 42 of 2007. Therefore, the cases of **African Muslim Agency (supra); Dorcas Martin Nyanda and Mohan's Oysterbay Drinks Limited** are distinguished from the case at hand because they did not deal with a situation involving default renewal of the contract of employment.

What is stated in **African Muslim Agency case** (at page 13) is that in a fixed term contract there is no need of notice to be given to the party (employee) and that is a correct position of the law. But there is not an issue of expectation of renewal of contract in the case at hand that is because the employee continued to work after expiry of the contract. It means the default renewal of the contract. Once the contract is renewed then the law has to be followed in the case of premature termination. Since October 2018. Meaning notice has to be issued if the contract has been renewed by default and it terminated prematurely. In the present case it is conspicuous in the

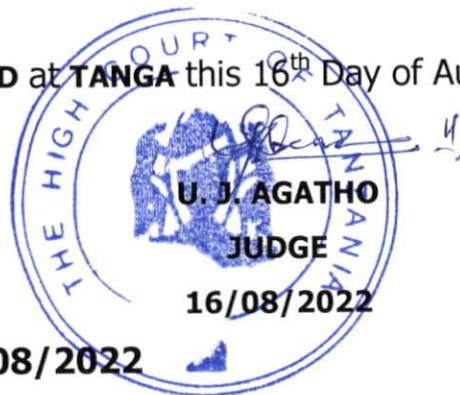


record and award of the CMA that the parties have been renewing the contract by default.

In the end the revision fails for lacking merit. I uphold the CMA Award. This being a labour matter, no order as to costs is given.

It is so ordered.

**DATED at TANGA** this 16<sup>th</sup> Day of August 2022.



**Date:** 16/08/2022

**Coram:** Hon. Agatho, J

**Applicant:** Present

**Respondent:** Present

**B/C:** Zayumba

**Court:** Judgment delivered on this 16<sup>th</sup> day of August, 2022 in the presence of both the Applicant and the Respondent.

  
**U. J. AGATHO**  
**JUDGE**  
**16/08/2022**

**Court:** Right of Appeal fully explained.

