IN THE HIGH COURT OF THE UNITED REPLIC OF TANZANIA

[LABOUR DIVISION]

AT ARUSHA

REVISION NO. 03 OF 2022

[Arising from the decision of the Commission for Mediation and Arbitration at Arusha, Ref: No. CMA/ARS/ARS/24/2021]

BETWEEN

MRF INTERNATIONAL EDUCATIONAL

INSTITUTIONS LIMITED..... APPLICANT

VERSUS

ANDREW MLAY.....1ST RESPONDENT

EMMANUEL MMBAGA.....2ND RESPONDENT

JUDGMENT

03.08.2022 & 31.08.2022

MWASEBA, J.

The applicant herein is seeking for a revision by this court after the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/ARS/ARS/24/2021 ruled out that that the respondents were unfairly terminated. The application is supported by an affidavit sworn by Mr Halil Server Sahin, the school director of the applicant and

strongly resisted by a counter affidavit sworn by Mr Gabriel Aidan Malyampa, the advocate for the respondent herein.

The gist of the CMA dispute was that; way back in January, 2020 the respondents were employed by the applicant in a fixed term Contract, commencing on 1st January, 2020 and ending on 31.12. 2020 as per exhibit D1 Collectively. The first respondent was employed as a teacher while the 2nd respondent was an accountant. On 30.11.2020 they were notified that their contract will come to an end with no intention of renewal, See exhibit D2 Collectively. At CMA the respondents claimed that they were unfairly retrenched which was full of bias and immediately after their retrenchment the employer trained other staffs to take over their positions. The CMA Arbitrator after evaluating evidence tendered, he concluded that the respondents were unfairly terminated procedurally and ordered the applicant to pay compensation to them at the tune of Tshs. 9,757,032 for the 1st respondent and Tshs. 14,523,186/= for the 2nd respondent. Being dissatisfied with the said award the applicant preferred the present revision.

When the application was called on for hearing, Mr Fredrick Musiba, learned counsel represented the applicant whilst Mr Gabriel Aidan Malyampa, learned counsel represented the respondents. Parties agreed

to dispose of the application by way of written submission and the court granted their prayer.

After carefully considering parties submissions, court records and relevant applicable labour laws the pertinent issues for determination are:

i) Whether the respondents were employed under a fixed term contract.

ii) Whether or not the award relief awarded is justifiable in law.

On the first issue of whether the respondents were employed under a fixed term contract, the applicant submitted that the respondents were employed under a fixed term contract of one year (12 Months) as per exhibit D1. It was wrong for the Arbitrator to rule out that the respondents were employed under permanent contract. It was his further submission that Section **36 (iii) of the Employment and Labour Relation Act**, Cap 366 R.E 2019 provides that:

> "*Failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal.*"

Thus, it was his submission that the respondents were justifiably terminated after their contract come to an end. To support his

arguments he cited the case of **Mtambua Shamte Vs Care Sanitation and Suppliers**, Revision No. 154 of 2010 and prayed for the application to be allowed and the CMA's award to be quashed and set aside.

In his reply to what was submitted by the counsel for the applicant, Mr. Malyampa argued that **Rule 9 (5) of the Employment and Labour Relations (Code of Good Practices) Rules,** 2007 requires an employer to terminate an employee based on fair and justifiable reasons. He added that Exhibit D1 (Employment Contract) had no term of 12 months it only had a commencing period which is January, 2020 that's why the respondents believed they had a permanent Contract. For the said reasons, the respondent contravened **Section 37 (2) of ELRA** Which Puts the burden on the Employer to prove the termination was fair. He buttresses his argument with the case of **Amsons Industries (T) Ltd Vs Mashaka Marusu**, 2019 (HC- Unreported). It was his further submission that, Hon. Arbitrator ruled out based on evidence placed before him and the exhibits tendered. In the end he prayed for the application to be dismissed.

Having revisited the records of the trial tribunal particularly exhibit D1 Collectively revealed that Article 2.1 of the Employment Contract reads:

> *"The Employment of the employee shall commence on the 1st day of January 2020, provided that the term of employment shall not restrict the Employer to terminate this agreement, without prejudice to the governing provisions of this Agreement"*

And paragraph two of Schedule "A" which reads together with the said contract reads:

> *"DURATION (FULL TIME/PART TIME/ TERMINATION DATE) 01 JANUARY TO 31 DECEMBER 2020'*

The cited paragraph proves that the respondents were employed under a fixed term contract and not permanent contact as alleged by the Commission and the respondent herein. And for that reason, **Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice)** GN 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."*

The law went further under Rule 4 (4) of GN 42 of 2007 that where the employee reasonably expects for renewal of the contract his termination may be considered to be unfair termination. However, in our application

the respondents were issued with a Notice of termination of contract one month before the end of their contract which nullify the expectation of renewal of contact if there was any.

In **Dar es Salaam Secondary School Vs Enock Ogala**, Revision No. 53 of 2009 (HC-Unreported) it was stated that:

> *"Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise or there was no expectation of renewal, the contract would have expired automatically with no need to write a termination letter."*

Thus, this court finds the respondents' claim for unfair termination is baseless because the principle of unfair termination under the ELRA do not apply to fixed term contract unless the employees establish a reasonable expectation of renewal as provided under **Section 36 (a) (iii) of the ELRA**. Thus, the first issue is answered in affirmative.

As for the second issue, there is no relief ought to be granted to the respondents since their contract was a fixed term contract which came to an end after the completion of the agreed period which is twelve months (12).

For the foregone reasons, the application is allowed for being meritorious. The CMA award is hereby quashed and set aside accordingly. Each party to bear own costs.

Ordered accordingly.

DATED at **ARUSHA** this 31st day of August 2022.

N.R. MWASEBA

JUDGE

31.08.2022