IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LABOUR DIVISION]
AT ARUSHA

REVISION APPLICATIONS NO. 70 OF 2021

(Originating from Labour Dispute No. CMA/ARS/ARS/91/2021)

ELIBARIKI LOTASARWATI MOLLEL ..... 1ST APPLICANT

EMMANUEL BARNABAS KISIRI ..... 2ND APPLICANT

Versus

TRUST ST. PATRICK SCHOOLS (TSPS) ..... RESPONDENT

JUDGMENT

Date of last Order: 30th September, 2022

Date of Judgment: 4th October, 2022

MALATA, J.

In the Commission for Mediation and Arbitration for Arusha (the CMA), **Elibariki Lotasarwati Mollel and Emmanuel Barnabas Kisiri**, the Applicants herein, instituted labour dispute against the Respondent herein, claiming for unpaid leave, overtime dues, holiday pay and off days payments arising unfair termination by the Respondent. The Applicants secured an Ex-parte Award before the Arbitrator following failure of the Respondent herein to attend the scheduled hearing by CMA.

Having heard the Applicants and scrutinized the exhibits tendered, the CMA in its ex-parte award delivered on 30/07/2021 dismissed the application for being devoid of merits.

Aggrieved thereto, the Applicant filed Application for revision supported by joint affidavit deponed by the Applicants. The Respondent, on the other hand, contested the application through a counter affidavit deponed by Mr. Mike Patrick Khanya, principal officer of the Respondent.

Before delving into what was argued by the parties in respect of the application, it is resourceful to demonstrate facts of the dispute leading to this application, albeit briefly. The Applicants were employed by the Respondent as security guards on diverse dates. While the first Applicant was employed in 2016, the second Applicant was employed on 17/01/2016. The Applicants were employed on one-year fixed term contract, renewal at the pleasure of the parties. The Applicants were terminated from employment vide a letter dated 18/12/2020, which notified them that the Respondent had no intention of renewing the contract upon expiry on 31/12/2020.

It is allegedly that, upon termination, they were not paid leave, off days, holiday pay and overtime, which they calculated to the tune of TZS 5,450,000/= for each Applicant. The Respondent defaulted appearance in the CMA, hence the case was heard ex-parte. After hearing the Applicants, the CMA dismissed the case for lacking merits. That prompted the instant application for revision.

At the hearing of the application, the Applicants appeared in person, unrepresented, while the Respondent was represented by Mr. James George, learned advocate.

Submitting in support of the application, the first Applicant who submitted on behalf of the second Applicant contended that they approached this Court for reconsideration after their case at the CMA was dismissed. Submitting on behalf of both Applicants, first Applicant, argued that their claims are rooted from non-payment of holiday pay, leave pay, off pay and overtime. He further submitted leave was paid for only one year.

On his part, Mr. James strenuously opposed the application stating that the matter in the CMA went on ex-parte, but still the Applicants failed to adduce evidence to prove their claims. He added that what the Applicants did in the CMA is just mentioning the claims without proving the same as required by the law, hence the CMA Arbitrator had nowhere to base in awarding the claims. Moreover, he submitted that, in the application, the Applicants are praying for orders that the CMA be directed to determine the matter on merits. Mr. James, submitted that, such prayer is unmaintainable because the matter was heard on merits in the CMA and the Applicants were given right to adduce evidence in support of their

claims and award thence the *Ex parte* Award. He thus argued the Court to decline the Applicants' prayers.

By way of rejoinder, the Applicants had nothing to add in what they submitted in their submission in chief but went on acceding that it true that in the CMA, the claims were just mentioned but not proof was given show what is it and how it was arrived at.

I have gone through the CMA record, the affidavits for and against the application, as well as all the submissions by either side. The main issue calling for this Court's determination is only one; *whether the decision by the CMA is justifiable.*

Notwithstanding the fact that the said employment contracts were not tendered and admitted in evidence, still from the evidence of the Applicants it is undisputed fact that they were employed on one-year fixed term contract. Even in the absence of exhibits D1 and D2, which are letters from the Respondent to the Applicants reminding that the contracts would not be renewed, still there is no law empowering the Applicants to extend the contract on their own wishes. The law is clear and unambiguous that where a contract is a fixed term the contract terminates automatically when the agreed period expires. This is clearly provided under Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) G.N No. 42 of 2007, which provides:

"4- (2) Where the contract is a fixed term contract, ***the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise."*** (Emphasis added)

From the above provision, the employee who works under a fixed term contract performs his/her duties in accordance with the terms of the contract. The life span of such contract is provided in the contract, in our case it was stated in exhibits D1 and D2 that it would come to an end on 31/12/2020. There are no ambiguous terms indicating that there was legitimate expectation of renewal of the contract, therefore the time it was expected to end, it expired automatically.

The above position also finds support in the case of **Feza Primary School vs Wahida Kibarabara,** Lab. Div., DSM, Revision No. 117 of 2013 (unreported), where my sister Aboud, J. held:

"It is my view that the applicant complied with the clause agreement to notify the respondent one month before the end of the contract that they do not wish to renew the contract for further period. It is a position of the law under Rule 4 (5) of the GN. 42 of 2007 that; ***4(5) where fixed term contact is not renewed and employee claims a reasonable expectation of renewal, the employee shall demonstrate that there is***

an objective basis for the expectation such as previous renewals, employer's undertakings to renew."

Circumstances of this application entails that the Applicants were notified of the Respondent's intention to end the contract on 31/12/2020 when its life span would come to an end. Exhibits D1 and D2 are self-explanatory. Even in the absence of that notice, the Applicant's claims were not proved in the CMA. There was no evidence led to prove that the Applicants were only paid one year leave. Similarly, the complaint that they worked for over-time hours, was at any rate not proved. Off days as claimed, were also not substantiated in evidence by the Applicants. As correctly submitted by counsel for the Respondent, in the absence of sufficient evidence to prove the Applicants' claims, there was no basis upon which the CMA could rely in awarding the claimed amount.

It is elementary principle of the law that, he who alleges, has the burden of proof. In the case of **Hamid Mfaume Ibrahim vs KBC Tanzania Limited,** Lab. Div. DSM, Misc. Lab. Appl. No. 245 of 2013, while citing the reported case of **Abdul-Karim Haji vs Raymond Nchimbi Alois and Joseph Sita Joseph [2006] T.L.R 420**, this Court held inter alia that:

"It is an elementary principle that he who alleges is the one responsible to prove his allegation." (Emphasis added)

For the above reasons, I am inclined to agree with the findings of the CMA that there was no breach of contract on the part of the Respondent. The contract between the parties herein expired automatically, as stated in the terms of the contract itself. Thus, since there was no breach of contract the claim of unfair termination in the CMA could not stand as there was no proof that there was continued employment relationship between the Applicant and the Respondent. Undoubtedly, there was no evidence adduced to prove the Applicants' claims in the CMA. In the circumstances, the decision of the CMA was justified.

Guided by the above analysis and reasoning, this application is devoid of merits, it is bound to fail. The same is hereby dismissed. The award by the CMA is justified and stands unaltered. This being a labour dispute, each party shall bear their own costs.

Order accordingly.

DATED at ARUSHA, this 4th, October, 2022.

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G. P. Malata
JUDGE.
4th, October, 2022