

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA
LABOUR REVISION NO.10 OF 2021

(Originating from Labour Dispute No.CMA/MTW/LD/25/2020)

BENEDICT BUTHOBHE & 10 OTHERS.....APPLICANTS

VERSUS

AQUINAS SECONDARY SCHOOL.....RESPONDENT

JUDGMENT

MURUKE, J.

Applicants were employed by respondent on a fixed term contract of one year as teachers. On 28th November, 2019 applicants were addressed with letter of non-renew of employment contract. Applicants were dissatisfied, with the letters, they decided to file labour dispute No. CMA/MTW/25/2020, claiming for unfair termination and other terminal claims. After CMA fully hearing, applicant's claims were was refused. The decision dissatisfied the applicants, thus filled present revision application, praying the following orders: -



- (i) This court to revise, quash, and set aside the award/judgment delivered by Hon Kweka, A.J (Arbitrator) on 13th August,2021 in labour dispute No. CMA/MTW/25/2020.
- (ii) Any other orders this honourable Court deems fit to grant.

On the date set for hearing, the applicants appeared in persons, while the respondent was represented by Alex Mselenge advocate. By consent, hearing was ordered to be by way of written submission. Only 7 applicants out of 10 adhered to the court order of filing submission. I have careful read the submission by each applicant. For the purpose of this judgment, I will not reproduce what was submitted by each party (applicants and respondent) in their written submission. However, all the submission centered in one issue of unfair termination. The applicants did not file any rejoinder.

Having gone through both parties' submissions, CMA records, issue for determination before this court are: -

- (i) Whether the applicants had a fixed term contract or permanent contract.
- (ii) Whether the applicants were fairly terminated.
- (iii) What are the reliefs to the parties.

On whether the applicants had a fixed term contract or permanent contract. I have reviewed the evidence on record, the records speak lauder, there is no any evidence provided by applicants to prove that, the applicants had a permanent contract. According to exhibits KM1(Letter dated 30th November,2012), KM2(Letter dated 3rd December,2015), KM7(Contract of employment) and KM8(Notice of non-renewal of contract), proves that the applicants were employed under a fixed term contract of one year subject


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to renew upon consent of both parties. Moreover, the applicant never objected the admissibility of the exhibits named above during the trial.

Exhibit KM8 (notice of non-renewal of contract) issued by the respondent to inform the applicants that he had no intention to renew their contracts reads as follows: -

Please take note that your contract is ending on 31 December 2019.

According to the contract section 16.5 states that:

“The contract can be renewed with the consent of both parties. An employee will write an intent of renewing a contract one month before the end of the contract.”

Unlike permanent contracts, a fixed term contract normally has a specific time and in the present case the end date of employment was 31st December, 2019.

The law is very clear that a fixed term contract will automatically terminate when the agreed time expires. This is provided for under Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007 that:

“Where a contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise.”

The applicants complained that, they had previous oral contract which is still intact that is why they are claiming for unfair termination of contract. It is a principle of law that, if a person is claiming that a certain fact exists, it is a duty of such person to prove that such facts exist. This position of the law was stated by this court in the case of **Mshamu Salum Vs. Rashidi Abdala, Land Appeal No. 13 of 2019**(unreported) when referring the

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decision of **Lamshore Limited and Another Vs. Bizanje K.U.D.K [1999]**
TLR 330, the court stated that;

“The duty to prove the alleged facts is on the party alleging its existence.”

I have reviewed evidence on records to see if there is any evidence that there is existence of oral contract between the applicants and the respondent. There is no any single witness proved the existence of oral contract. What I discovered from the record is only that there is a fixed term contract of one year. Under the provision of section 36(a)(iii) of the Employment and Labour Relation Act, Cap 336 R.E. 2019, termination of a fixed term contract becomes unfair if it is established that there was a reasonable expectation of renewal when the contract comes to an end. In this case, renewal of the contract demanded first consent of the parties. The contract did not create circumstances that after the end of the contract then a renewal is expected as it was clear that if one party of the contract does not consent to renewing the contract then automatic comes to an end. For easy reference clause 16.4 of the applicant contract of employment is reproduced for easy of reference:

the contract can be renewed with the consent of both parties.

An employee will write an intention of renewing a contract one month before the end of the contract.

The respondent had no intention to renew applicants' contract, so, he issued a notice of non-renewal of the contract. Normally parties are bound by their terms in the contract/ agreement. This position was stated by The Court of Appeal in the case of **Miriam Maro Vs. Bank of Tanzania, Civil Appeal No. 22/2017**(unreported) where it was stated that: -



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It is the law that parties are bound by the terms of the agreement they freely enter into. We find solace on this stance in the position we took in Univeler Tanzania Ltd Vs. Benedict Mkasi t/a Bema Enterprises, Civil Appeal No. 41 of 2009(unreported) in which we relied on a persuasive decision of the supreme Court of Nigeria in Osun State Government V. Dalami Nigeria Limited, sc. 277/2002 to articulate:

“Strictly speaking, under our laws, once parties have freely agreed on their contractual clauses, it would not be open for the courts to change those clauses which parties have agreed between themselves. It was up to the parties concerned to renegotiate and to freely rectify clauses which parties find to be onerous. It is not the role of the courts to re- draft clauses in agreements but to enforce those clauses where parties are in disputes.”

First issue is answered in the affirmative in that, applicant had fixed term contract of one year.

Among others claim in the CMA F1 filed at the CMA, applicants claimed for unfair termination of employment and other terminal dues. As resolved in the first issue that, the applicants had a fixed term contract of one year. The said contract ended on 31st December, 2019 and the respondent issued notice on non-renewal of the contract to the applicants. More, so, all other benefits had already paid before the contract came to an end. Thus, the applicants were not entitled to any compensations thus, issue number two and three has been answered in the negative. This application had no merit. It is dismissed, ordered accordingly.



Z.G. Muruke
Z.G. Muruke

Judge

18/08/2022

Judgment delivered in the presence of Joshua Palango, Moses Chembele, Prosper Vitus and Zakayo Chang'a the applicants and Advocate Alex Msalenge for the Respondent.



A handwritten signature in blue ink, appearing to read "Z.G. Muruke".

Z.G. Muruke

Judge

18/08/2022

HIGH COURT OF TANZANIA - Mtwara