

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION AT ARUSHA

REVISION APPLICATION NO.50 OF 2020

(A rising from Labour Dispute No. CMA/ ARS/ARS/256/20)

TENGERU BOYS SECONDARY SCHOOL..... APPLICANT

Vs

DAUDI EZEKIEL MMBAGA.....RESPONDENT

JUDGMENT

Date of last Order:23-11-2021

Date of Ruling:15-2-2022

B.K. PHILLIP, J

The applicant herein lodged this application under the provisions of section 91(1) (a), 91(2), (b), (c), and 94 (1), (b), (i) of the Employment and Labour Relations Act and Rules 24(1), (2) (a), (b), (c), (e), (f), (3) (a), (b), (c), (d) , and 28 (1) (c) ,(d) ,(e) of the Labour Court Rules, G.N.106 of 2007 praying for the following reliefs;

- i) That this Honourable Court be pleased to call for the records of the Commission for Mediation and Arbitration at Arusha in Labour Dispute No. CMA/ARS/ ARS/A256/20 before Hon. Mourice (Arbitrator) to examine the records , proceedings and award of the said Commission in order to satisfy itself on the legality

and propriety of the proceedings and award in the said Labour Dispute.

- ii) That this Honourable Court be pleased to quash the said proceedings, award and orders contained thereof and determine the rights of the applicant.

The application is supported by an affidavit sworn by the applicant's principal officer, Mr Gaudence Joseph Mtui. The respondent filed a notice of opposition to the application supported by a counter affidavit sworn by the respondent's advocate, the learned advocate Upendo Nelson Merinyo. The applicant was represented by the learned Advocate Muhamadou Evarist Majura. I ordered the application to be disposed of by way of written submissions. Both Advocates filed their written submission as ordered by the Court.

Before embarking on the determination of the merits of this application, let me give a brief background to this application for the better understanding of the coming discussion.

At the CMA, the respondent's case was as follows; That the respondent was employed by the applicant in the position of a teacher. His first contract of employment with the applicant was for period of two years, commencing from 1st September 2017 to 31st August 2019. Upon

the expiry of that contract, there was a renewal of the contract by default because the respondent continued working with the applicant. In February 2020, the applicant served the respondent with a letter for termination of the contract of employment. Consequently, the respondent decided to lodge his complaints at the Commission for Mediation and Arbitration at Arusha ("CMA") seeking to be paid compensation for the remaining duration up to 1st September 2021. That dispute was settled amicably and it was agreed that respondent would be reinstated with effect from March 2020 .After reinstatement the applicant assumed that the respondent had a one year contract, but he never signed a one year contract and his employee's identity card indicated that it was supposed to expiry in December 2021. However, on 24th October 2020 , he was served with letter for termination of his employment. He contended that the applicant breached the contract of employment as the same was supposed to expiry in December 2021. The same date was also indicated in his employee's identity card.

On the other hand, the applicant's defence at the CMA was as follows; That the applicant started working with respondent in 2017.His first contract of employment was for two years from 2017 to 31st August

2019. Thereafter he was issued with another contract of employment for one year commencing from 1st September 2019 to 30th September 2020. (Exhibit D1). In July 2020 the applicant served the respondent with a letter notifying him that his contract of employment was going to expiry on 30th September 2020 and the respondent had no intention to renew it. The applicant attended to work up to 30th September 2020. From 1st October 2020 the respondent did not attend to work. The attendance register was tendered in evidence and admitted as exhibit D2. The applicant processed the respondent's final payment and issued a cheque in favour of the respondent. On 24th October 2020 the respondent appeared at the applicant's office. He took the cheque for the payment of his terminal benefits and the certificate of service. The respondent deposited the cheque at the bank and the payment of his terminal benefits was effected.

At the CMA, the Arbitrator framed two issues, to wit;

- i) Whether the respondent breached the complainant's employment contract.*
- ii) What are the reliefs.*

In its decision the Arbitrator made the following observation. That the evidence adduced by the parties and the documentary evidence tendered before the CMA (exhibit D1) showed that the parties agreed to sign a one

year contract which was effective from 1st September 2019 to 30th September 2020. Any application for renewal was supposed to be made three months before the expiry date. On 21st July 2020, the respondent was served with notice of non-renewal. (exhibit D4). The respondent's claims that his contract of employment was automatically renewed was not supported by any evidence and the attendance register (Exhibit D2) proved that the applicant stopped attending to work on 30th September 2020. The applicant did not contravene any law by serving the respondent a notice of non-renewal of the contract of employment. That according to Rule 4(2) of G.N. No. 42 of 2007 the general rule is that the fixed term contract expires automatically, with exception where there is legitimate expectation of renewal, and a notice stating a valid reason is necessary. Relying on the case of **Ahobwile Yesaya Mwalugaja Vs M/s Shield Security (T) Ltd Revision No. 333B of 2013** (unreported) The Arbitrator made a finding that since the applicant provided that respondent with an identity card which indicated that it was supposed to expiry in December 2021, the respondent had legitimate expectation of renewal of the contract of employment. That terminating an employee with legitimate expectation of the renewal of the contract amounts to unfair termination. To bolster his findings he cited the case of **Christina Christopher Vs Board of**

progressive Islamic Education Foundation , Revision No.16 of 2016 , (unreported) and rule 4(5) of GN. No. 42 of 2007 .He awarded the respondent herein 12 months remuneration which was equal to a sum of Tshs 10,800,000/=.

Mr. Majura's submission in support of the application was to the effect that the contract between the applicant and the respondent was a fixed contract whose expiry date was 30th September 2020 and on 21st July 2020, the applicant served the respondent with notice of non-renewal of the contract of employment (Exhibit P4) which stated categorically that the contract's expiry date was 30th September 2020.Citing the provisions of Rule 4(2) and (3) of the Employment and Labour Relations (code of Good Practice) G.N No. 42 of 2007 and the case of **Harrison Olang Vs Mount Meru University , Consolidate Revision Application No.73 & 76 of 2019**, (unreported), he argued that a contract of employment for a specified time expires automatically unless there is expectation of renewal. Expounding on this point Mr. Majura submitted that in the circumstances of this case there was no any expectations of renewal of the contract as the respondent was served with a notice of non-renewal of the contract earlier before the expiry date of the contract. Thus, the

respondent's contract of employment terminated automatically on 30th September 2020.

Another argument raised by Mr. Majura was that the Arbitrator erred to entertain the respondent's complaint because it was time barred. He contended that evidence adduced proved that the respondent stopped attending to work on 30th September 2020 and in his ruling the Arbitrator made a finding to that effect relying on Exhibit D2.(The attendance Register).Therefore , the respondent was required to lodge his complaint at the CMA thirty (30) days from 30th of September 2020, but to the contrary he lodged his complaint on 6th of November 2020, beyond thirty days from the date of the termination of his contract.

Moreover, Mr. Majura submitted that the Arbitrator misdirected himself for failure to put into consideration the undisputed fact that the respondent stopped to attend to work on 30th of September 2020.The whole of the month of October he did not attend to work. He came to the applicant's office on 24th October 2020 to collect the cheque for payment of his terminal benefits. He insisted that it is not in dispute that stop attending to work without permission amounts to gross misconduct since the employee's duty is to attend to work. Closing eyes on the respondent's decision to abscond from work will send a very wrong signal to the

business community and the society at large on the principal objective of the ELRA which is stipulated in section 3 (a), of the ELRA , that is, promotion of productivity and economic efficiency of enterprises. To cement his argument he cited the case of **Mahamud Sabala Vs Ausdrill (T) Ltd , Revision No. 59 of 2013**, (unreported)

Lastly , Mr. Majura submitted that the Arbitrator erred and misdirected himself by putting into consideration the respondent's identity Card and ignored the employment contract (exhibit D1) which was signed by the parties which indicated clearly that the contract was for one year. Citing the case of **Sluis Brothere (E.A) Ltd Vs Mathias Tawari Kitomari (1980) TLR** and section 123 of the Law of contract Act, Mr Majura submitted that a party to contract is always bound by his signature. Mr Majura invited this Court to set aside the award made by the CMA.

In rebuttal Ms. Merinyo, submitted that the respondent's complaint was not time barred. Citing the provisions of Rule 10 (1) and (2) of the Labour institutions (Mediation and Arbitration,) Rules G.N. No 64 of 2007, Ms Merionyo argued that the respondent's complaint was lodged within the time prescribed by the law that is sixty days from the date the dispute arose as the same was based on breach of contract not unfair termination of employment. She contended that the dispute on the breach of contract

arose on 24th October 2020 when the respondent was served with the cheque for payment of his terminal benefits. The respondent's complaint was filed at the CMA on 6th November 2020, before the expiry of sixty days from 24th October 2020.

Moreover, Ms. Merinyo supported the award and argued that Mr. Majura's contention that the Arbitrator failed to consider the applicant's evidence is misconceived. The Arbitrator's findings that there was breach of contract was based on the legitimate expectation of renewal of contract and the argument on automatic expiration of contract is irrelevant. She insisted that the principle on legitimate expectation of renewal of contract is provide in Rule 4(4) (5) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007. She agreed with the Arbitrator's findings that the respondent's identity card which indicated that its expiry date was December 2021 constitutes objective basis for expectations and added that the Exhibit P1 , the contract of employment which expired on 31st August 2019 shows that it was renewed, thus demonstrates the objective basis for expectation of renewal. To cement her argument on the legitimate expectation of renewal she cited the case of **Shedrack Haruna & 16 others Vs Interchick Company Ltd (LCCD), No.108 (2014).**

Furthermore, Ms. Merinyo submitted that the parties mediated their first dispute and the applicant agreed to reinstate the respondent. This means that the applicant was willing to work with the respondent otherwise there was no point of reinstating the respondent if the applicant knew quite well that he was not interested in continuing working with the respondent. Also, she contended that the case of **Harrison Olang** (Supra) cited by Mr Majura, supports the findings made by the Arbitrator on the legitimate expectation of renewal of the Contract.

With regard to Mr Majura's contention that the respondent absconded from work, Ms Merinyo was of the view that the same is misplaced because the applicant served the respondent with a notice of non – renewal of the contract. On the same line of argument, she was of the view that the case of **Mahamud Sabala** (supra) cited by Mr. Majura was irrelevant in this matter.

In conclusion of her submission, Ms. Merinyo submitted that the Arbitrator considered both the respondent's identity card and the contract of employment (exhibit D1) and came up with a finding that there was legitimate expectation of renewal of the contract. She invited this Court to dismiss this application.

Having analyzed the submissions made by the learned advocates appearing herein and perused the court's records, it is my settled legal opinion that the issue for determination in this application is whether or not the Arbitrator erred in law and fact by making a finding that there was legitimate expectation of renewal of the respondent's contract of employment. I join hands with Mr Majura that a contract for a fixed term automatically terminates upon the lapse of the agreed period, unless where there is legitimate expectation of renewal. The Law under Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) G.N. 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 provided otherwise*".

With the regard to the arguments raised by Ms. Merinyo ,I find them to have no merits .The fact that parties had mediated their first dispute and the respondent was reinstated to his employment does not in any way make the terms of the contract ineffective or redundant. The terms of the contract had to be adhered to. As I have said earlier, the respondent's contract was a fixed term contract, thus it was covered by the provision of Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007 , quoted herein above.

Coming to the application of the doctrine of "*legitimate expectation of renewal of contract*", the position of the law is that ,the same is applicable where contract of employment explicit elaborate the intention

of the employer to renew a fixed term contract when it comes to an end.
(See the case of **Gerald Majura na Wenzake 19 Vs Tanzania Trade Development Authority, (2017) LCCD 306.**) In this case, as it was correctly found by the Arbitrator the evidence adduced proved that the contract between the respondent and the applicant was for fixed term and expired on 30th September 2020. I have perused the contract of employment in question. The contract does not contain any explicit explanation to the effect that the employer had intention to renew the contract. On top of that the applicant notified the respondent that the contract was not going to be renewed and from 1st October 2020 onward, the respondent did not attend to work.

As I have alluded earlier at the beginning of this ruling the Arbitrator made a finding that there was legitimate expectation of renewal of the contract because the identity card that was issued to the respondent indicated that it was supposed to expiry in October 2021. With due respect to the Arbitrator, when it comes to the terms of employment and the rights of an employee, the relevant legal document to be looked into is the contract of employment. The employee's identity card is not part of the contract of employment. Therefore, it cannot be used to determine the rights of an employee as far as her /his rights of employment are

concern. In the case of **Feza Primary School Vs Wahida Kibarabara, (2014) LCCD 34 (Part I) ,** Hon Aboud J, was confronted with a similar situation to the case in hand whereby the Arbitrator had made a finding that the employee had legitimate expectation of renewal of fixed term contract of employment because the employer had issue him with an identity card whose expiry was beyond the expiry date of the contract, notwithstanding the fact that the employer had notified the employee that the contract will not be renewed. Hon Judge Aboud, set aside the decision of the Arbitrator and had this to say;

"... therefore I do not agree with the Arbitrator's findings that the respondent's expectation of the employment was terminated unfairly. The Arbitrator ought to have directed his mind and decision on what was agreed by the parties as discussed, that is to give one month's notice. Had the applicant failed to notify the respondent on the termination within the time prescribed in the contract I would have held otherwise, however the circumstances are different."

Likewise, in the instant case, the arbitrator was supposed to direct his mind to the terms of the contract between the parties and the fact that the applicant notified the respondent on the non-renewal of the contract, and that the respondent stopped working with the applicant on 30th of September 2020.

In the upshot this application is dismissed. This being a labour case I give no orders as to costs.

Dated this 15th day of February 2022




B.K.PHILLIP

JUDGE.