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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**REVISION APPLICATION NO. 87 OF 2020**

***Original CMA/ARS/ARB/46/2018)***

**MISANA M. MBASA ..... APPLICANT**

**Versus**

**ELERAI CONSTRUCTION COMPANY LTD..... RESPONDENT**

# JUDGMENT

**25/10/2021 & 24/01/2022**

**GWAE, J**

This is an application for revision whose impugned award, orders and proceedings emanate from the Commission for Mediation and Arbitration at Arusha (CMA) dated 25th August 2020. According to the CMA's record that, the applicant, Misana Marugu Mbassa was employed since 29th November 2013 for two (2) years renewable contract however on the 30th December 2017 his employment was unilateral terminated by the respondent, Eleral Construction Company Ltd through a notice of termination issued on the 21st November 2017 and the termination letter dated 29th day of December 2017.

Upon termination of employment, the applicant was paid his salary for December 2017, Gratuity for the four years of service and transport to the place of recruitment, Dar es salaam.

The applicant was dissatisfied with the termination, he referred the matter to the CMA where his complaint was dismissed on the basis that, the contract of employment between the parties came to an end. Hence, the issue of breach of the contract did not arise. Still aggrieved by the arbitration award, the applicant has brought this application advancing a total of seven (7) grounds however but the same stem from three (3) grounds to wit;

1. That, the arbitrator erred in law and fact by holding that the contract of employment expired automatically
2. That, the arbitrator erred in law and fact by holding that there were reasons for termination
3. That, the arbitrator erred in law and fact by holding that the respondent followed fair procedure

This application is supported by an affidavit of the applicant and it is opposed through a counter affidavit of one Francis Kulwa, the respondent principal officer.

During hearing of this application, the applicant and respondent had legal services from **Mr. Mgalula** and **Mr. Edwin Silayo** respectively. The parties' advocates sought and were accordingly granted leave to dispose of this application by way of written submission.

As to the 1st ground, that, **the arbitrator erred in law and fact by holding that the contract of employment expired automatically.**

Submitting on the 1st ground, the applicant's counsel stated that it was wrong for the respondent to terminate his employment on the 30th December 2017 or on the 29th December 2017 whereas the contract was to come to an end on the 31st December 2017 as required under Regulation No. 4 (2) of the Employment and Labour Regulation No. 42 of 2007. He added that since the respondent terminated the applicant on the ground of sharp business drop, he was therefore duty bound to adhere to provisions of section 38 of the Employment and Labour Relations Act, Cap 366 Revised Edition, 2019 (ELRA).

Admittedly, the respondent's counsel argued that the applicant's employment was to come to an end on the 31st December 2017 and that the reason as why the termination letter was issued on the 29th December

2017 instead of 31st December 2017 as the applicant was SDA believer who could not be available on the 30th December 2017 which was Saturday. Equally on the 31st December 2017 since it was Sunday on which the respondent's office was ordinarily being closed followed by new year.

Examining the parties' arguments and record of the CMA, it is as complained by the applicant and admitted by the parties' counsel that, the parties' contract of employment was indisputably to come to an end on the 31st December 2017 and not on the 30th December 2017 as indicated in the notice of termination (RE2) however the reasons for such situation, in my considered view, was clearly demonstrated by the respondent's witnesses (RW1&RW2) to be that on the 29th December 2017 was Friday followed by Saturday and Monday as well as New year 2018.

Since the applicant was paid all his terminal benefits and since reasons for termination of the applicant's employment were clear and reasonable, I do not legitimately see any reason to fault the decision of the Commission since the applicant's contract had come to an end on the 31st December 2017, reason for termination before one day was given and above all reason for refusal to renewal was also plainly explained. It follows therefore no breach of the contract of employment that was caused by the

respondent as the parties' contract was for a specific period whose termination is automatic upon expiry of the period so agreed by the parties (See Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) G.N. 42 OF 2007). The position was rightly emphasized by this court in **Mtambua Shamte & 64 others vs. Care Sanitation and Suppliers**, Revision No. 154 of 2010 (unreported) by stating;

> ".....Explained principles of unfair termination do not apply to specific tasks or fixed contracts which come to an end on the specified time or completion of a specific task".

Since there are clear reasons as why the applicant's termination of employment was on the 30th December 2017, it follows that, there was neither breach of contract nor was there any unfair termination that had been caused by the respondent against the applicant. Assuming the applicant was not issued with termination letter on the 29th December 2017 and be paid his terminal benefits till on the 2nd January 2018, likelihood of perception of an automatic renewal would be anticipated on the part of the applicant

Even if I could consider that, the termination of the applicant's employment was unfair simply because the applicant had a reasonable expectation of a renewal of the contract yet the applicant had a duty to establish that, there was a reasonable expectation by demonstrating that there was objective basis for the expectation for instance if the respondent or applicant had expressly or impliedly exhibited to that effect that contract would be renewed for at least one month before expiry of the specific term of the cpntract. Rule 4 (4) of the Code of Good Practice (supra) provides and I quote;

> "Subject to sub-rule (3), the failure to renew a fixed-term contract in circumstance where the employee reasonably expects a renewal of the contract may be considered to be an unfair termination"

See also a decision of the court in the case of **Feza Primary School v. WahidaKibarabara**, Labour Revision No. 177 of 2013 reported on Labour Court Digest (2014).

As to the **2nd and 3rd issue** above, I should not be curtailed by these grounds for the sought revision since it is lucidly clear from the arbitral award that, the arbitrator never dwelt into them after he had found the 1st

issue in affirmative, hence, it was wrong for the applicant to complain that the learned arbitrator erred in law and fact by holding that there were reasons for termination and that the respondent followed fair procedures (See page 6 of the typed award).

Before concluding, it is worth noting if, the applicant was terminated on the 18th August 2017, it would follow that, this dispute was plainly hopelessly barred by the law of limitation. Therefore, the assertion that the respondent terminated the applicant's employment on the 18th August 2017 is unfounded and baseless.

That told and done, this applicant's application is entirely dismissed. The CMA's award is hereby upheld. I shall make no order as to costs of this application as this dispute is a labour one and the same is not frivolously filed.

Order accordingly.

***M. R. GWAE***
***JUDGE***
***24/01/2022***

Right of Appeal explained

***M. R. GWAE***
***JUDGE***
***24/01/2022***