

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

**AT TABORA**

**LABOUR REVISION NO. 24 OF 2020**

**WORLD VISION TANZANIA ..... APPLICANT**

**VERSUS**

1. **RUGAIMUKAMU DEUSDEDIT**  
2. **GASPER FIRMIN MGONJA**  
3. **EMMANUEL PAMBA** } .....**RESPONDENTS**

**JUDGMENT**

*Date 17/12/2021 & 18/02/2022*

**BAHATI SALEMA, J.:**

The applicant herein named World Vision Tanzania filed this application under Section 91(1) (a), 91 (2) (a–c) and Section 94 (1) (b) (i) of the Employment and Labour Relations Act, Cap 366 of the laws of Tanzania, read together with Rule 24(1), 24 (2) (a–f) and Rule 28 (1) (a–e) of the Labour Court Rules, 2007, GN No. 106 of 2007, seeking revision of the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute **No. CMA/TAB/IGUNG/65/67/70/2019.**

The background leading to this application stems from the fact that, the three respondents herein named Rugaimukamu Deusdedit, Gasper Firmin Mgonja and Emmanuel Pamba were employees of the applicant,

employed on a fixed term contract but their employment commenced on different dates.

The first respondent, Deusdedit Rugaimukamu was first employed by the applicant on 29<sup>th</sup> June, 2006 on a fixed term contract renewable upon expiry of one year. He kept on renewing the contracts and his last contract was set to expire on 30<sup>th</sup> September, 2019.

The second respondent, Gasper Firmin Mgonja was employed on 08<sup>th</sup> January, 2008 on a fixed term contract which was set to expire after a year. He also kept on renewing contracts until 01 October, 2018, when he signed another 12 month contract which would end on 30<sup>th</sup> September, 2019.

The last respondent, Emanuel Pamba was employed on 9<sup>th</sup> September, 2013 on fixed-term contract renewable after expiry of 12 months, on 01<sup>st</sup> October, 2018 he signed another contract with the applicant, the contract which was set to expire on 30<sup>th</sup> September, 2019.

The respondents claimed that on 20<sup>th</sup> May, 2019 before the expiry of their contracts, they filled out contract renewal forms and submitted them to the applicant, but on 30<sup>th</sup> August, 2019 they received a notice of non-renewal of contract. The notice reminded them of the date of expiry of the contract which was 30<sup>th</sup> September, 2019.

respondents were represented by legal representative Mr. Benjamin Dotto. With the permission of this court, both parties agreed to proceed with the matter by way of written submissions.

In support of the application, Mr. Nicodemus stated that, the Honourable arbitrator erred in law and fact by failing to analyse the evidence adduced by applicant as well erroneous evidence adduced by respondents and their witnesses the evidence that justifies that there was neither breach of contract nor termination of employment. To buttress his argument, Mr. Nicodemus submitted that, all the respondents freely consented to fixed term contract and therefore renewal was never automatic. He added that the respondents brought frivolous claims which were never proved in the trial court that they were assured of renewal of their fixed-term contracts.

As to the expectation of renewal, Mr. Nicodemus submitted that the respondents were duty bound to prove if there were expectations of renewal rather than relying on mere assumptions and that Exhibit RWVT1 states clearly that on the issue of renewal of a fixed term contract, the employer has discretion and if he deems fit to renew the employee shall be notified in writing prior to the end of the contract.

To reinforce his argument, Mr. Nicodemus added that, the applicant served all the respondent a notice of non-renewal of contracts on 22/8/ 2019 a month prior to the expiration of their

contracts, and the respondents were informed of their terminal benefits as they were listed in the said notice.

He cited Regulation 4(5) of the Employment and Labour Relations (Code of Good Practice) Regulations GN No. 42/2007 which states that,

*“Where fixed term contract is not renewed and the 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”.*

The applicant claims that there are no previous contracts that were tendered to demonstrate expectations, no tasks or duties given beyond the fixed term of the contract to any of the respondents.

Moreover, the applicant claims that, arbitrator erred in law and fact in awarding compensation for unfair termination while the claim was for breach of contract. He cited the case of **Mtambua Shamte and 64 others vs Care Sanitation and Suppliers**, Revision No. 154 of 2010 where the court cautioned that the principles of unfair termination do not apply to specific tasks or fixed term contracts which come to an end on a specified time or completion of a specific task.

Finally, he prayed for this court to revise and set aside the award procured before the Commission for Mediation and Arbitration and quash the order given therein.

In reply, the respondents jointly submitted that, due to strong evidence and facts which were adduced by the respondents, the arbitrator did not err; rather, he was right to hold that there was a breach of contract of employment and unfair termination of the respondent.

They submitted further that, contract renewal forms were filled out and signed in accordance with Section 8 of the contract of employment (**Exhibit RWVT1**) which provides as follows: -

*"This is a sole discretion of the employer but subject to mutual agreement by the Employee. Should the employer deem fit to renew the Employee's contract; the Employer shall notify the employee in writing prior to the end of the contract. Failure to receive a Renewal notice from the Employer, the contract will be deemed to have ended as per the duration specified in section 3."*

It was further submitted that the evidence and fact that the respondents were provided with Contract Renewal Forms by employer and that was not disputed during the hearing of the matter at the Commission, notice of application and affidavit of the applicant.

Furthermore, the reasoning and holding of the arbitrator is supported by section 2.2.2 of the World Vision Tanzania Employee Manual (Exhibit RWVT 2) which provides that;

*"These contracts may be renewed following a satisfactory staff performance review, excellent individual conduct, organizational need for the position and available Fund. Any contract renewal....." Failure to receive a renewal notice from the employer, the contract will deem to have automatically ended as per duration specified in the present or ongoing contract."*

He added further that, the reasoning by the arbitrator is based on the evidence adduced by both the applicant and respondents before the Commission which clearly proved that the respondents' contract of employment was breached by the applicant.

That, in awarding 12 months' salary compensation, the arbitrator was guided by the requirements of Rule 4(4) of the Employment and Labour Relation (Code of Good Practice) Rules, Government Notice No. 42 of 2007. Also, apart from considering that the respondents' contracts were unfairly terminated by the arbitrator, he was also guided by the provisions of section 36 (a) (iii) of the Employment and Labour Relations Act, Cap. 366 [RE. 2019]. He finally submitted that, the applicant has failed to adduce sufficient and reasonable grounds for the court to revise the CMA award.

In a short rejoinder, the applicant insisted that, before the expiry of contracts, he reminded the respondents in writing of the non-renewal of their contracts and that, the applicant was not obliged to

inform the respondents of the reasons why their contract should not be further renewed.

Having heard the rival submissions and having perused the proceedings leading to the filing of this revision, the court is called upon to determine first, whether the respondents had reasonable expectations of the renewal of their contracts.

According to the record of this case, it reveals that the respondents to this application were employed under a fixed term contract renewable upon its expiry, but their last contracts which were set to end on 30th September, 2019 were not renewed. It is also on record that the respondents filled out contract renewal forms on 20<sup>th</sup> May, 2021 and submitted the same to the applicant.

Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) of 2007 states it clearly 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 submissions made by both parties clearly state that, the respondents' contract was set to expire on 30th September, 2019 whether there was a notice or not, the contracts provided so.

Rule 4(5) of the Employment and Labour Relations (Code of Good Practice) Rules provides that: -

*"Where fixed term contract is not renewed and the employee claims a reasonable expectation of renewal, the employee shall demonstrate that there is an objective basis for the expectation such as previous renewal, employer's undertakings to renew."*

The respondents claim that they had an expectation of contract renewal on the basis that on 20th May, 2019 they filled out contract renewal forms and submitted the same to the applicant. On the other hand, the applicants rejected the claims by stating that the respondents had failed to demonstrate that there was a basis for expectation and that no previous contracts were tendered to prove previous renewals.

In analysing the fact whether the respondents had reasonable expectation of renewal of their contracts, I implore to quote part of paragraph 4 at page 3 of the ruling of the CMA, it reads: -

*"Alipatiwa fomu ya kuomba kuhuisha mkataba mnamo tarehe 20/05/2019 (Contract Renewal Form) kuomba kuhuishwa kwa mkataba wake na kuijaza na kuirejesha kwa mlalamikiwa. Mnamo tarehe 30 August 2019 alipokea barua ya taarifa ya kutohuishwa mkataba wake (Non-Contract Renewal Notice) na*



*kumjulisha kuwa ajira yake ilikuwa imefikia kikomo tarehe 30/09/2019."*

Also, the respondents agreed through their submission that section 8 of their contracts of employment (Exhibit RWVT 1) provides as follows: -

*"This is a sole discretion of the employer but subject to mutual agreement by the employee should the employer deem fit to renew the employee's contract the employer shall notify the employee in writing prior to the end of the contract, failure to receive a renewal notice from the employer the contract will be deemed to have ended as per the duration specified in section 3."*

Considering the two quotations above, the question is, did the respondents create any expectation of renewal for the applicants? As the ruling of the CMA illustrates, the forms that the respondents filled out were request forms to the applicant for renewal, and as per the quotation above as reflected in the contract document renewal is at the discretion of the applicant, not otherwise.

This court's findings that the respondents have failed to demonstrate *that there is an objective basis for the expectation*, as it transpires from the record that they all knew from the very beginning that contract renewal forms are not notices of renewal, thus no expectation of renewal was ever created.

Suppose that on being provided with contract renewal forms made the respondents created expectations of renewal. The same was rebutted by a notice of non-renewal that was supplied to them one month prior to the expiration of their contracts.

Moreover, the arbitrator considered a bit at page 1 and 2 of the ruling on the number of previous renewals the respondents had with the applicant. In the case of ***National Oil (T) Ltd vs Jaffery Dotto Msenseem & Others, Labour Revision No. 558 of 2016 HC*** at Dar es Salaam, it was held that: -

*"I must say the question of previous renewal of employment contract is not an absolute factor for an employee to create a reasonable expectation, reasonable expectation is only created where the contract of employment explicit elaborate the intention of the employer to renew a fixed term contract when it comes to an end."*

In the light of the above discussion, the court finds the application has merit and the respondents were duly informed about the non-renewal of their contracts 30 days before the expiry of their contracts. Therefore, I hereby quash the decision and award set by the Commission for Mediation and Arbitration as it is unjustifiable under the law and the application is hereby allowed.

Order accordingly.



**A. BAHATI SALEMA**

**JUDGE**

**18/02/2022**

Judgment delivered under my hand and seal of the court in the Chamber, this 18<sup>th</sup> day of February, 2021 in the presence of both parties.

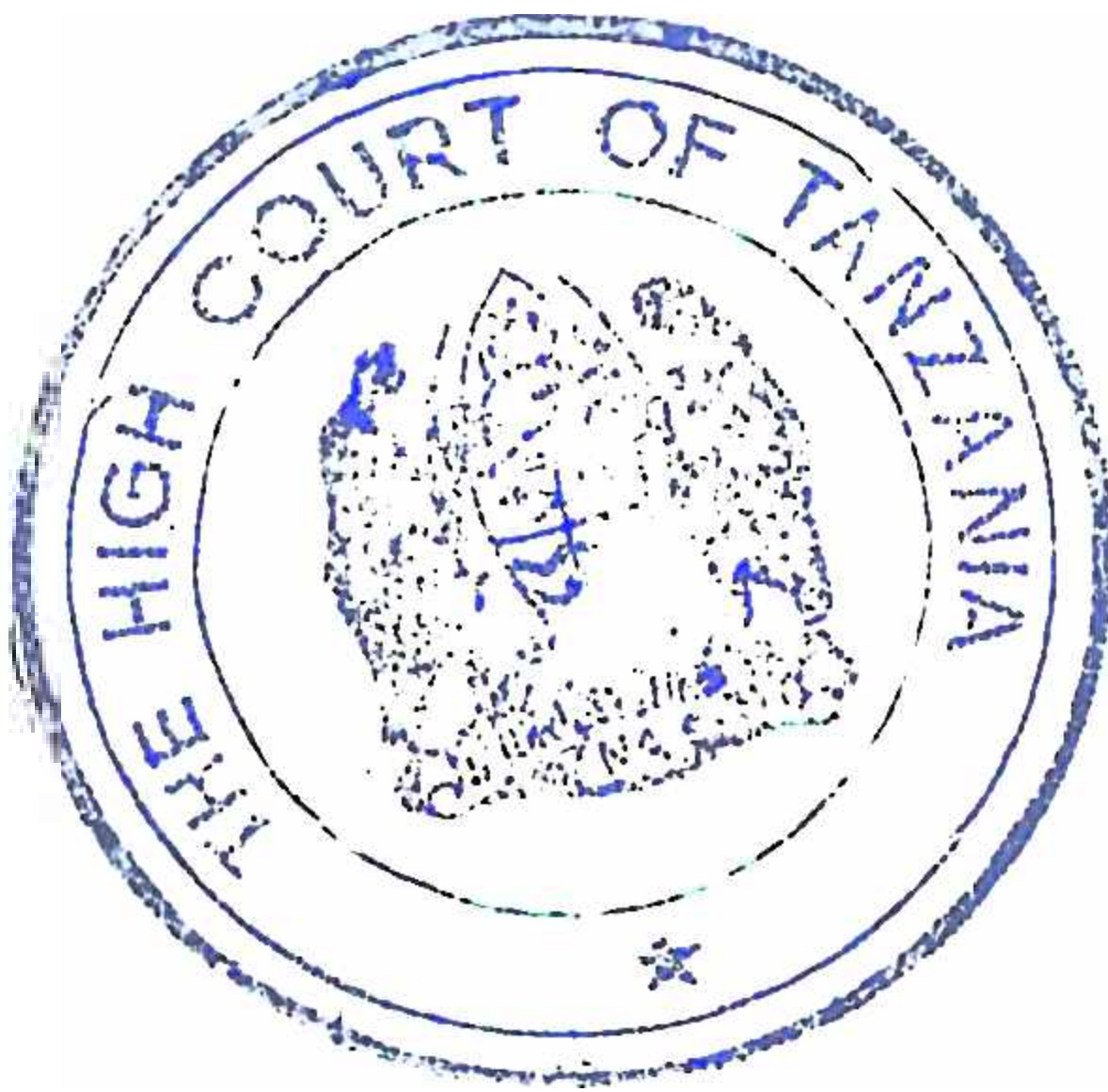


**A. BAHATI. SALEMA**

**JUDGE**

**18/2/2022**

Right of appeal fully explained.



**A. BAHATI SALEMA**

**JUDGE**

**18/02/2022**