

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

MWANZA SUB-REGISTRY

AT MWANZA`

LABOUR REVISION NO. 41 OF 2021

*(Originating from commission for mediation and Arbitration Mwanza,
Employment Dispute No. CMA/MZ/ILEM/47/2021)*

PAUL SIMON BUFENGU COMPLAINANT

VERSUS

THE SCHOOL BOARD OF KIRUMBA SEC. SCHOOL RESPONDENT

JUDGMENT

11th March & 17th May, 2022.

KAHYOZA. J.:

Aggrieved, **Paul Simon Bufengu** instituted the present application seeking this Court to revise the award of the Commission for Mediation and Arbitration (CMA) in favour of **the School Board of Kirumba Secondary School**. **Paul Simon Bufengu** complained to the CMA that **the School Board of Kirumba Secondary School** unfairly terminated his employment. The **School Board of Kirumba Secondary School** never appeared to defend **Paul Simon Bufengu's** claims.

The CMA found that **Paul Simon Bufengu's** employment contract was a specific period contract and that after it expired on 31/12/2009 it was not renewed.

Paul Simon Bufengu raised six grounds of complaint some of which are baseless as they do not emanate from the CMA's award. Having considered the grounds of revision raised, I am of the firm view that only one issue is raised, that is whether the CMA did properly analyze and consider the evidence on record.

Paul Simon Bufengu was employed by the respondent temporarily for 6 months from 01/07/2009 to 31/12/2009. It was a fixed term contract. After it expired the respondent renewed the same. **Paul Simon Bufengu** claimed that he worked until March, 2016 when the respondent terminated the contract. It is on record that the respondent employed **Paul Simon Bufengu** temporary for a term of six from January, 2009. It was a fixed time contract. He worked until March, 2016. The CMA found that **Paul Simon Bufengu** did not tender evidence to establish that the respondent renewed the contract after the expiry of the first fixed time contract. Indeed, there is no such evidence. The only evidence is that he worked until March, 2016. Since **Paul Simon Bufengu** continued working after expiry of a fixed

term contract it implies that the respondent renewed his contract was by default.

There is no doubt that **Paul Simon Bufengu's** contract was renewed after 31st December 2009, when the first written contract expired by the fact that he continued working. Rule 4(3) of the **Employment and Labour Relations** (Code of Good Practice) **Rules**, G.N. No. 42 of 2007 (the Rules) provides that-

*"Subject to sub-rule (2), a fixed term contract **may be renewed by default if an employee continues** to work after the expiry of the fixed contract and circumstances warrants it."*

I find that the CMA erred to hold that there was not contract between Paul **Simon Bufengu** and the respondent after the expiry of employment contract on 31.12.2009. I find that the respondent did renew **Paul Simon Bufengu's** contract by default. However, I am of the firm view that the respondent's contract never changed its status, it remained a fixed term contract.

I hold that **Paul Simon Bufengu's** employment contract was renewed by default and it did not change its status, it remained a fixed term contract. **Paul Simon Bufengu's** employment contract was a contract for six months, thus, it ceased automatically at the end of six months and renewed by

default, thereafter until March, 2016. The law is very clear. Rule 4(2) of the Rules, 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".

There is ample evidence that **Paul Simon Bufengu's** employment ceased in march, 2016. **Paul Simon Bufengu's** was employment was terminated before it automatically expired at the end of six months period. It is on record that **Paul Simon Bufengu's** first contract commenced January, 2009 for six months up to 30th June, 2009. Thus, **Paul Simon Bufengu's** employment contract was expiring every 30th June and 31st December each year and renewed by default on the day following the expire date. **Paul Simon Bufengu's** employment contract, which the respondent terminated in March, 2016 would have automatically expired on **30th June 2016**. Hence, the respondent terminated **Paul Simon Bufengu's** employment contract before it expired.

There is no evidence that the respondent followed a fair procedure to terminate **Paul Simon Bufengu's** employment contract before the contract period agreed by default expired. No doubt the documents Paul supplied to this Court show that the respondent terminated **Paul Simon Bufengu's**

employment contract to engage a company to provide security services. The respondent's business had expanded. I find therefore, that **Paul Simon Bufengu's** employment contract was unfairly terminated. Thus, it was substantively fair and procedurally unfair to terminate was substantively and procedurally fair to terminate the applicant. He is entitled to be compensated for the remain period of the fixed time contract that is the period from March to June. He is entitled to Tzs. 360,000/= being the remuneration for three months.

Paul Simon Bufengu's claimed for unpaid leave during the period of employment. I find no justification for claiming unpaid annual leave pay as his contract was for a fixed term contract. Even if, he was entitled to a paid annual leave pay, there is no evidence that he was not paid.

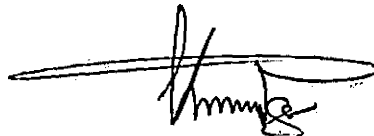
Paul Simon Bufengu further claimed for severance pay. Severance pay is available for an employee who has completed a period of 12 months continuous service with an employer. See section 42 of the **Employment and Labour Relations Act**, [Cap. 366 R.E. 2019] and rule 26 of **the Rules**. **Paul Simon Bufengu's** employment was a fixed term contract for a period of six months. He has therefore no right to claim severance pay. He claimed for payments for work he performed out of his service contract. I did not

find evidence to prove that the respondent assigned **Paul Simon Bufengu** duties outside his contract. I dismiss the claim.

In the upshot, I find the application for revision meritorious to the extent shown. I revise the CMA findings and set aside the award. I find that **the School Board of Kirumba Secondary School** terminated **Paul Simon Bufengu's** employment unfairly before a six months term contract expired. The **School Board of Kirumba Secondary School** is ordered to pay Tzs. 360,000/= as the remuneration for three months, a period, which remained before the contract expired automatically on 30th June, 2016.

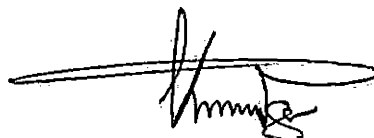
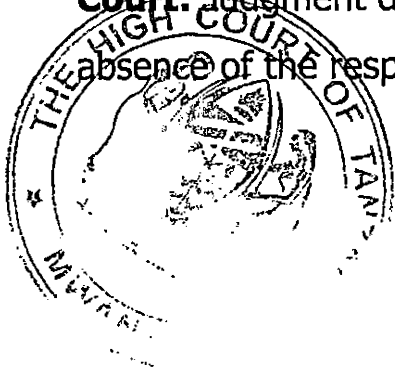
I order accordingly.

Dated at Mwanza, this day of 20th May, 2022



**J. R. Kahyoza
JUDGE**

Court: Judgment delivered in the presence of the applicant and in the absence of the respondent. B/C Jackline (RMA) present.



**J. R. Kahyoza,
JUDGE
20/5/2022**