

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
[ARUSHA DISTRICT REGISTRY]**

AT ARUSHA

LABOUR REVISION No. 51 of 2020

(C/f Labour Dispute No. CMA/ARS/ARB/249/19/88/2020)

SUNDA (T) INVESTMENT COMPANY LTD APPLICANT

VERSUS

IVAN ISAAC NGOWO RESPONDENT

JUDGMENT

24th November, 2022 & 23rd February, 2023

TIGANGA, J.

The Applicant seeks revision of the Award from the Commission for Mediation and Arbitration of Arusha, (CMA) in Labour Dispute No. CMA/ARS/ARB/249/19/88/2020 dated 22nd July, 2020 by V. Wambali, Arbitrator.

The application was preferred by chamber summons and affidavit dully sworn by Mr. Rodgers Godfrey Mlacha, advocate for the applicant in which the grounds of the application are narrated. It is brought under **section 91 (1) (a), (2) (a) (b) (c)** and **94 (1) (b) (i)** of the **Employment and Labour Relations Act**, No. 6 of 2004 (the ELRA) and **Rule 24 (1), (2) (a) (b) (c) (d) (f), (3) (a) (b) (c) (d)** and **28 (1) (c) (d) (e)**, of the **Labour**

Court Rules, GN. 106 of 2007 (Labour Court Rules). Respondent contested the application and filed the counter affidavit in which he gave reasons for his contest.

The brief background that led to this dispute is to the effect that, the respondent was employed by the applicant on a one year fixed term contract renewable each year as Store Keeper/Issuing Officer from 2011. The last contract was from 1st May, 2018 to 30th April, 2019. That, sometimes in September, 2018 there was an incident of loss of properties from the applicant's store and the respondent was among the suspects because he was the custodian of the items found missing. He was therefore suspended pending the police investigation but was still paid his salary throughout suspension period. According to the respondent, he was called by the applicant on 4th April, 2019 and was told that the company was in some sort of financial troubles and that they will no longer renew his contract which was to expire on 30th April, 2019. He was given all his dues and his Certificate of Service.

Feeling that he was unfairly terminated, on 2nd May, 2019 the respondent decided to knock at the CMA's doors claiming for unfair termination that his contract was terminated while he was on suspension as the investigation

was still pending, before its finalization on 27th May, 2019. He prayed to be paid 24 months salary compensation for unfair termination tuning Tshs.12,372,000/=.

After hearing, the CMA decided in his favour but only awarded him 12 months compensation tuning Tshs. 6,186,000/=. Disgruntled by the Award, the applicant has preferred this application on the ground that, the Award was tainted with irregularities and it was improperly procured.

This revision was heard by way of written submissions, the applicant was represented by Mr. Rodgers Godfrey Mlacha whereas the respondent was represented by Mr. Samwel Madulanga all learned Advocates.

Supporting the application, Mr. Mlacha submitted that, the concept of unfair termination does not apply to employees with fixed term contracts unless it is established that, there is a reasonable expectation of renewal as held in the case of **Asanterabi Mkonyi vs. Tanesco**, Civil Appeal No. 53 of 2019, CAT at Dsm. He argued that, under **Rule 4 (5) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007**, (Code of Good Practice), the respondent who was a fixed term employee ought to have advanced the ground of a reasonable expectation

of renewal and demonstrate that, there was an objective basis for the said expectation. Also, the same should have been laid out in the CMA F.1. However, such claims were not laid out in the CMA F.1 and in his testimony at the CMA, the respondent did not demonstrate if there was any objective of such expectations.

The learned counsel went on arguing that, the fact that the applicant notified the respondent beforehand that they will no longer renew his contract and gave him all his benefits as well as a Certificate of Service before expiry of his contract, makes the claim of reasonable expectation of renewal plainly implausible and unjustified.

It was Mr. Mlacha's further submission that, according to rule 4 (2) and (3) of the Code of Good Practice, a fixed term contract terminates automatically when the agreed time expires and in the contract of employment between the parties there is a clause stating exactly that fact. According to the rules, the employee's obligation and liabilities is to observe that, the terms of the contract does not attract non-renewal such as letting the employee continue to work after such expiry. He also challenged the Arbitrator's reasoning that, an employee who has been employed on successive renewal of fixed term contracts become permanent employee. On

this he argued that, successive renewal can only create a reasonable expectation but not convert a fixed term contract into a permanent contract.

Mr. Mlacha also argued that, the CMA's Award does not contain summary of the closing arguments as dictated under Rule 27 (3) (d) of the **Labour Institution (Mediation and Arbitration Guidelines) Rule, 2007**. More so, such arguments were not considered in reaching its decision and no reasons were advanced for accepting or rejecting the same which is a mandatory requirement as held in the case of **Tanzania Breweries Limited vs. Antony Nyingi** [2016] TLS LR 99. He also faulted the CMA's Award for considering non-renewal notice signed on 25th March, 2019 and issued on 4th April, 2019 as a termination letter and erred in concluding that, the respondent was terminated due to operational requirement. He added, after the respondent was notified of such non-renewal he requested to be paid all his dues so that he can start looking for another job while facing the criminal case which was pending against him. These facts were never controverted even by the respondent himself who admitted that he was issued with the notice of non-renewal on 4th April, 2019 and not the letter of termination. The counsel prayed that, this revision be merited by quashing and setting aside the CMA's Award.

In reply, Mr. Madulanga submitted that, the reason for respondent's termination was retrenchment/operational requirement as opposed to the reason of non-renewal. However, such termination did not adhere to the procedures enshrined under section 38 of ELRA and Rule 23 of the Code of Good Practice. In his further view, such termination did not consider the fact that, the respondent was still under suspension and he was not supposed to be penalized in any way as the criminal case was still pending in court. He argued that, all these reasons for termination were mentioned in the CMA F.1 and the respondent managed to prove them before the CMA through his testimony and the copy of notice which was admitted as Exhibit D3.

Regarding the fact that the unfair termination does not apply to employees with fixed term contracts, it was Mr. Madulanga's submission that, under Rule 4 (5) of the Code of Good Practice, previous renewals is one of the objective basis for the employee's expectation to renewal of the contract. He asserted that, since there were seven (7) previous renewals from 2011 to 2018 it was obvious that the respondent was expecting a renewal. He added, another expectation for renewal based on the fact that, there was an ongoing investigation and the respondent was under suspension. He cited section 37 (5) of the ELRA which provides that no

disciplinary action in form of penalty, termination or dismissal shall lie upon employee who has been charged with a criminal offence. Under such circumstances, the applicant decided to give the respondent a notice of non-renewal even though the contract was to end automatic because he knew the respondent had some expectation of the renewal thus, he did not want to disappoint him.

Regarding the Award lacking the parties closing arguments Mr. Madulanga averred that, the CMA Award cannot be demeaned for lacking such arguments. Furthermore, under Rule 27 of GN No. 67 of 2007, an Award is supposed to be concise containing the decision and reasons for such decision therefore, since the matter was on a clean-up session, the arbitrator found no need to labour on summarizing parties' legal arguments although the Award was well reasoned.

The learned counsel finally submitted that, the respondent was terminated prematurely as clearly demonstrated by the applicant that they issued the notice and certificate of service on 4th April, 2019 while the contract was to end on 30th April, 2019. He prayed for this court to dismiss this application for lacking merit.

In his brief rejoinder, Mr. Mlacha reiterated his earlier position in the submission in chief and insisted that, the respondent's contract was fairly terminated due to its expiry.

After considering both parties' affidavits, submissions and after a thorough perusal of the records and decision of the CMA, it is undisputed that, the applicant had one-year fixed term contract with the respondent from 2011 and the last contract was from 1st May, 2018 to 30th April, 2019. That, according to clause 2 and 7 of the parties' contract, the same would terminate automatically by the contract end date if there is no contract renewal notice from the employer. That being the position, the question before this court therefore is whether the respondent was unfairly terminated while he was in a fixed term contract.

Rule 4 (2) of Code of Good Practice 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**".*
(Emphasis mine)

This implies that, the applicant was not duty bound to issue any notice to the respondent because their contract had a specific time of expiry. In the

case of **Dar es Salaam Baptist Sec School vs. Enock Ogala**, Revision No. 53 of 2009 HC Labour Division at Dar es Salaam (unreported), Rweyemamu, J. (as he then was) held that;

"...where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise or there were no expectation of renewal, the contract would have expired automatically with no need to write a termination letter".

On the other hand, Rule 4 (4) of the Code of Good Practice provides that, failure to renew a fixed term contract in a circumstance where the employee reasonably expects renewal of the contract may be considered to be unfair termination. However, the reasonability is created and has to be proved by the employee such as previous renewals or promise to renewal but the same is cut short without proper justification. A reasonable expectation created by employee is provided under **Rule 4(5) of the Code of Good Practice** that;

"Where a 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."

In his CMA F.1 and even during trial at the CMA, the respondent never demonstrated how he was expecting his contract to be renewed due to the previous renewals or any other reasons whatsoever. Facing similar scenario in the case of **National (T) Oil Limited vs. Jaffery Dotto Msensemi @3 Others**, Revision No. 558 of 2016, HC at Dar es Salaam (unreported), my learned sister Nyerere J. had this to say;

"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 came to an end."

I fully persuaded and I adopt the above position due to the fact that, despite there being pending investigation in which the respondent was suspended for 8 months, he was fully remunerated each month. Also, despite the fact that notice is not required on a fixed term contract and there was previous renewals, the applicant opted to notify the respondent that they will no longer renew his employment contract so as to not give him hope of renewal. Such notice was issued on 4th April, 2029, 26 days prior to his contractual expiry date. According to the applicant after notifying the

respondent that the contract will no longer be renewed, he requested for all his dues which he was given including the Certificate of Service a fact which was never controverted by the respondent.

With all this on the table, it is my considered view that, the applicant was more than generous to the respondent, by patiently waiting for 8 months paying him his monthly salaries while he was under suspension, just to notify him in the end that they will no longer need him after the expiry of his contract. The notice sufficed to show that the applicant no longer needed the respondent and this court does not see how that can be considered as an expectation of a contract renewal while he was just paid salaries without working for 8 good months. I therefore find that the CMA to have erred in holding that there was an expectation of a renewal when deciding that the respondent was unfairly terminated. So holding constructively meant that, the employer who is the applicant herein had no right to decline renewing the contract which is wrong conception.

More so, respondent's argument that, he was unfairly terminated because he was still under suspension due to the ongoing criminal investigation against him is also a misconceived. As rightly argued by the

applicant, an ongoing investigation, presumption of innocence or conducts of an employee cannot automatically renew a fixed term contract. In that regard, even if the notice stated about letting the respondent go due to operational requirements, I am of the profound view that, respondent's contract officially terminated automatically on 30th April, 2019 when it expired and no notice was needed to that effect.

Nonetheless, the principle of unfair termination does not apply to fixed term contracts unless the employee establishes a reasonable expectation of renewal as provided under Section 36 (a) (iii) of ELRA. As analysed hereinabove, the respondent failed to prove this fact which is the main requirement of the law giving the employee a right in demanding the renewal of the fixed term contracts. This was also the position in the case of **Mtambua Shamte and 64 Others vs. Care Sanitation and Suppliers**, Revision No. 154 of 2010 ad Dar es Salaam (unreported) that;

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

In light of the above, I find the revision to have merit to the extent explained hereinabove. The CMA's Award is hereby quashed and set aside.

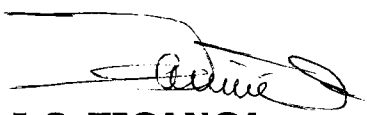
Since the respondent's employment was of a fixed term which came to an end automatically after expiry of contractual period of twelve (12) months which was ending on 30th April, 2019 and the employer took initiative of giving the employee a notice of the intention not to renew. I find the applicant to have done than what was required of him.

Consequently, this application is allowed, the Award by the CMA is hereby quashed and orders issued thereunder are set aside with no order as to costs.

It is so ordered.

DATED and **delivered** at **ARUSHA** this 22nd day of February, 2023




J.C. TIGANGA
JUDGE