

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB REGISTRY)  
AT IRINGA  
(LABOUR DIVISION)**

**LABOUR REVISION NO. 11 OF 2022**

*(Originating from Labour Dispute No. CMA/IR/MAF/09/2021 before Hon. A. Singo,  
Arbitrator.)*

<b>UNILEVER TEA TANZANIA LIMITED</b> .....		<b>APPLICANT</b>
<b>VERSUS</b>		
<b>ESTHER J. REUBEN</b> .....		<b>RESPONDENT</b>

**JUDGMENT**

2<sup>nd</sup> March & 27<sup>th</sup> April, 2023

**I.C MUGETA, J:**

The applicant filed this application praying for the following order;

- 1. That this honorable court be pleased to call for the record revise and set aside arbitration award which arises from Labour Dispute No. CMA/IR/MAF/09/2021 decided by the Commission for Mediation and Arbitration at Mafinga (Hon. Amosi Singo, Arb.) on 8<sup>th</sup> July 2022 between the above-mentioned parties.*
- 2. Costs of this application to be provided for,*
- 3. Any other relief(s) this Honorable court may deem fit and just to grant.*



The application is supported by the affidavit of Mr. Emmanuel Kyashama, the legal counsel of the applicant. It states the grounds supporting the application. The affidavit contains six grounds of complaints as follows:

Firstly, that the Arbitrator erred in law and fact by holding that fixed term contract of employment for the respondent had been renewed by default following payment of five days salary for work done, one-month salary in lieu of notice and severance pay to the respondent.

Secondly, that the Arbitrator erred in law and fact by making a finding that the respondent's employment contract had been renewed by default in the absence of evidence on record showing that the contract of employment expressly provided for renewal by default or the respondent continued to work after the expiry of the fixed term and the circumstances warranted it.

Thirdly, that the arbitrator erred in law and facts by holding that the respondent continued to work after the expiry of the contract in disregard to the evidence on record that the respondent did not work on the 5 days since she failed to log into her computer system on 23<sup>rd</sup> April 2021 following expiry of her employment contract, that 24<sup>th</sup> and 25<sup>th</sup> April 2021 were Saturday and Sunday respectively and 26<sup>th</sup> April 2021 was a public holiday and on 27<sup>th</sup> April 2021 she was informed the circumstances as to

why she could not log into her computer was due to expiry of her employment contract.

Fourthly, that the Arbitrator erred in law and fact by failing to make a finding that the Respondent's failure to log into a computer system for purposes of working evidenced that the circumstances did not warrant the respondent to continue to work.

Fifth, that the Arbitrator erred in law and fact in making a finding that the respondent's employment contract was renewed by default in the absence of evidence showing that the respondent actually worked on the five days.

Sixth, that the arbitrator erred in law and fact by failing to make a finding that the payments of five days salary for work done, one month salary in lieu of notice and severance pay made by the applicant to the respondent do not amount to circumstances warranting renewal of a fixed term contract by default rather they are compensations for unfair termination of employment.

Essentially, the main complaint by the applicant is based on the holding by the CMA that the respondent's contract had been renewed by default. The respondent resisted the application by filing her counter affidavit where she averred that the respondent's employment contract was renewed by default.

*M. J. G. et al.*

At the hearing, counsel for the respondent was absent. He was reached by phone and hearing continued on loud speaker mode. In the course, the parties' counsel agreed that they have nothing to add on the affidavit and counter affidavit filed. However, they prayed to file lists of case laws on specific issues which they wished the court to consider in its decision. The prayer was granted and the case laws were filed as scheduled.

Case laws filed by Jonathan Wangubo for the applicant are based on, firstly, Section 60(2) (a) of the Labour Institution Act [Cap. 300 R.E 2019] regarding the principle that he who alleges that his/her rights conferred under labour laws has been violated ought to prove. He cited **Barelia Karangirangi Vs. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017, Court of Appeal – Mwanza (unreported). In views of the learned counsel, the respondent had to prove that the fixed term contract was automatically renewed but he failed.

Secondly, that a fixed term contract terminates automatically when the agreed period expires without a need to give notice unless there is a reasonable expectation of renewal per Section 4(2) the employment and Labour Relation (Code of Good Practice Rules) G.N. 42 of 2007. He cited **Alliance one Tobacco V. Nasibu Ngumungu & Another**, Labour

Revision No. 10 of 2021, High Court Morogoro (unreported) to buttress his argument.

Thirdly, that it is a duty of the employee claiming rights on a reasonable expectation of renewal principle to demonstrate reasons for such expectation as required by rule 4(5) of G.N. 42 of 2007. He cited **Paul James Lutume & 4 Others V. Ballore Transport & Logistics Tanzania Ltd**, Labour Revision No 347 of 2019, High Court – DSM (unreported) and **Ibrahim Mginga & 3 Others V. Africa Muslim Agency**, Civil Appeal No. 476 of 2020, Court of Appeal – Kigoma (unreported) to cement this argument.

Mr. Yusuph Luwumba, counsel for the respondent filed a list of authority on the following areas: firstly, that the respondent proved that she had reasonable expectations of contract renewal citing **Herry Ngoitima V Fabec investment Ltd**, Labour Revision No. 896 of 2019, High Court, Labour Division, Dar es Salaam.

Secondly, that the contract was renewed by default. He cited **Paul Simon Bufengu V. The School Board of Kirumba Sec. School**, High Court – Mwanza (unreported) and **Jonas Oswady V. Cost Data Consultation Limited**, Labour Revision No. 3 of 2020 High Court, Mwanza (unreported).

*Mngeta*

At this juncture, I find it pertinent to give a brief background of this matter.

It goes as follows:

The respondent was employed by the applicant as a hospital Administrative Assistant on a fixed term contract of two years. The contract ran from 23<sup>rd</sup> April 2019 to 22<sup>nd</sup> April 2021. On 27<sup>th</sup> April, 2021, the respondent was issued a letter informing her that her contract had been terminated. Consequently, she filed a labour dispute before the Commission for Mediation and Arbitration (CMA) against the applicant claiming that the applicant had breached the contract of employment. She also claimed compensation for the remaining period of contract, damages, benefits and subsistence allowances.

After trial, the CMA found that the respondent's contract was renewed by default as the respondent had expected renewal of the said contract. The applicant was ordered to pay the applicant a total of Tshs. 25,058,275/= being eleven months salaries for the remaining period of contract. The applicant was aggrieved by the said decision, hence, the present application.

From the parties' affidavit and counter affidavit, the following issues are not in dispute; one, that the respondent's employment contract was for a fixed term of two years expiring on 22/4/2021. Two, the respondent was

issued a letter on 27<sup>th</sup> April, 2021 notifying her that her contract came to an end on 22<sup>nd</sup> April, 2021. Three on 23/04/2021 the respondent did not work as she failed to login the office computer system.

The contention between the parties in my view, is on whether there was automatic renewal of the said contract as, allegedly, the respondent continued to work from 23<sup>rd</sup> April 2021 to 27<sup>th</sup> April 2021.

The CMA found that the contract was renewed automatically on account of the fact that applicant paid severance allowance and salary for five days work done. In order to tackle the raised issue appropriately, it is worth discussing the applicable principles for fixed term contracts of employment and their automatic renewal.

The law under Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007 (the Code) provides:

*"where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise".*

Again Rule 8(2) (a) of the Code provides:

*"(2) Compliance with the provisions of the contract relating to termination shall depend on whether the contract is for a fixed term or indefinite in duration, this means that: -*



*(a) where an employer has employed an employee on a fixed term contract, the employer may only terminate the contract before the expiry of the contract period if the employee materially breaches the contract”.*

In **Serenity on the Lake Ltd v. Dorcus Martin Nyanda**, Civil Appeal No. 33 of 2018, Court of Appeal at Mwanza (unreported) it was held as follows:

*“Therefore, the law is clear that, where the contract of employment is for a fixed term, the contract expires automatically when the contract period expires unless the employee breaches the contract before the expiry in which case the employer may terminate the contract”.*

In the present case, the contract ended on 22<sup>nd</sup> April 2021 as provided in the employment contract.

The respondent in her evidence before the CMA testified that on 23<sup>rd</sup> April 2021 she could not log into her computer. When she reported to her supervisor, she was directed to report the matter to the IT section. This shows that the system automatically rejected her as she had ceased to be an employee of the applicant. The respondent was not duty bound under the law to serve the respondent with the notice of non-renewal of their contract because the contract was clear on the duration of contract.



The CMA found that the contract was renewed automatically as the respondent worked five days after its expiry. However, this finding is not founded in evidence. The respondent did not demonstrate by evidence at the CMA if she had reasonable expectation of renewal of her contract and reasons thereof. It is clear from the evidence of both parties that on 23/4/2021, the respondent failed to login the computer system for work. There is no evidence at all that on any date between 23<sup>rd</sup> April, 2023 and 27<sup>th</sup> April, 2021 when she was informed that the contract had expired, she managed to log in the computer system for work. At paragraph 7(c) of the applicant's affidavit it is stated that the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> April, 2021 were weekends and public holiday respectively. This fact is evasively denied by the respondent at paragraph 8 of the counter affidavit. Under section 59(1)(g) of the Evidence Act I find that, indeed, those dates were weekend and public holiday (26<sup>th</sup> April each year is a Union Day).

Another reasons for CMA holding that the contract was automatically renewed is the fact that the applicant paid the respondent a five days salary, a one-month notice and severance allowance. Indeed, these entitlements were paid. According to the affidavit, the same were compensation for unfair termination. I am of the view that there is not unfair termination in this case where the respondent has not proved she

had reasonable expectation of renewal of the contract. The same, in my view, were paid for wrong reasons stated in the affidavit and the CMA erred to consider unlawful payments as a reason for automatic renewal of a contract. Errors on part of the employer in paying employee's entitlements on expired fixed term contract cannot constitute a reason for claiming rights for default renewal of a contract.

Based on the above analysis, I find that the present application is meritorious. Consequently, I quash the decision and set aside the award of the CMA. I make no order for costs since this is a labour matter.



  
**I.C MUGETA**  
**JUDGE**  
**27/04/2023**

**Court:** Judgment delivered in chambers in absence of both parties with notice.

**Sgd. I.C MUGETA**  
**JUDGE**  
**27/04/2023**