IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION APPLICATION NO. 61 OF 2022

(Original Dispute No CMA/ARS/ARS/25/2022/27/2022 before the Commission for Mediation and Arbitration at Arusha)

FRANSALIAN HEKIMA SEMINARY

SECONDARY SCHOOL ..... APPLICANT

VERSUS

BARAKA RUBANGULA .....1ST RESPONDENT

ERICK VITUS NANJEA .....2ND RESPONDENT

JUDGMENT

20th April & 15th June 2023

KAMUZORA, J

This is an application for revision brought under sections 91(1)(a), (2)(c), 94(l)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 Cap 366 R.E 2019 (ELRA) and Rules 24(1), (2)(a)(b)(c)(d)(f), (3)(a)(b)(c)(d), 28(l)(d) (e) of the Labour Court Rules GN No. 106 of 2007. The applicant is challenging the award issued by the Commission for Mediation and Arbitrator (CMA) at Arusha in dispute No.

CMA/ARS/ARS/25/2022/27/2022 on the following grounds which are reshaped: -

i. *That, the CMA erred in law and in fact by ordering the applicant to pay compensation for breach of contract to the respondent without noting that the respondents stated in their certificate of clearance that they had no claims against the applicant.*
ii. *That, the CMA erred in law and in fact in ruling that the applicant did not give reason for ending the contract.*
iii. *That, the CMA erred in law and in fact in holding that writing names of the respondents in Academic roster for the 2022 was the reason for extension of employment contract without considering that the applicant issued notice of termination of employment two months before the end of contract.*
iv. *That, the CMA erred in law and facts for failure to properly evaluate the evidence in record.*
v. *That, the CMA erred in law and facts for failure to dismiss the case after the respondents failed to tender exhibits to justify their claims.*

The application was argued by way of written submissions and as a matter of legal representation, the applicant was represented by Mr. Lengai Loita while the respondent was represented by personal representative Mr. Stalon Baraka.

On the 1st ground, applicant referred the evidence before the CMA and submitted that the respondents had no claims against the applicant. That, the respondents voluntarily admitted while signing clearance certificates that they had no claims against the applicant thus, they were bound by their statements. He referred the decision of this court in **Pendo Yona Majigile Vs. John Chimile Lubambe**, Land Appeal No. 27 of 2020, HC at Mwanza to insist that parties are bound by their pleadings. That, it was wrong for CMA to issue an award to the respondents while they were paid all their benefits and they admitted to have no further claims. The applicant was of the view that the respondent's claims were vexatious and frivolous.

In reply, the respondents submitted that the award was for compensation arising out of breach of contract that amounted to unfair termination of the respondents. That, the respondents worked for the applicant for more than three years and they had automatic renewal of employment every year. The respondents conceded to the fact that they had a fixed term contract but claimed that the notice for termination was issued without assigning reasons. That, practically, the applicant used to assign subjects for teaching at every end of the year for the following year. That, since the respondents were assigned to teach

subject for the year 2022, they had reasonable expectation for the renewal of contract. That, as their names were included in the academic roaster for the next year subjects, they reasonably believed on the renewal of their contract. They referred the case of **International School of Tanganyika Vs. Stephen S. Mnubi & Another,** Revision No. 913 of 2019 which also cited the case of **National Oil (T) Ltd Vs. Jaffey Dotto Msensemi & 3 others**, Revision No. 558 of 2016. They insisted that the CMA was correct to order compensation for breach of contract which amounted to unfair termination as provided under section 37 (2) of the Employment and Labour Relations Act.

On the 2nd ground the applicant submitted that the contract ended after it expired. That, one month notice was issued on non-renewal of the contract in compliance with clause 10 of the employment agreement. That, the same was issued two months before the expiry of contract period. That, since the respondents were issued fixed term contracts of one year, the procedures were followed in ending the their contracts after the expiry of contractual period.

The respondents' reply to this ground is that the applicant did not give reasons in the notice issued ending contract. That, the CMA acted

contrary to the law, Rule 4 (5) of GN No. 42 of 2007, the Employment and Labour Relations (Code of Good Practice) Rules. They also referred the decision in **St. Joseph Kolping Secondary School Vs. Alvera Kashushura**, Civil Appeal No. 377 of 2021 and section 41 (3) of the ELRA, Cap 366 RE 2019 on the need to issue notice of termination and reasons for termination.

On the 3rd and 5th grounds the applicant submitted that the CMA erred in holding the inclusion of names of the respondents in Academic roster for the year 2022 as justified reason for extension of employment contract without considering that the applicant issued notice of termination of employment two months before the end of contract. The applicant also claimed that, the respondents were unable to tender exhibits to justify their claims. That, the evidence of DW1 reveals that the school time table was being prepared based on two terms within a year and the school academic schedule did not go beyond academic year 2021. That, as the respondents were issued with notice on October 2021, two months before expiration of contractual period, the issue of time table had nothing to do with the ending of contractual period by 31st December 2021 and that, it was not among the terms in the employment contract. The applicant added that the respondents

tendered copies of timetable which was also refused by the CMA thus they were unable to prove their claims.

The respondents submitted that they were included in the academic roaster and assigned to teach subjects for the next year 2022 and they complied by teaching those subjects before the end of 2021. That, it was normal at the applicant's school for teacher to teach subjects for the next year when they reach the end of the year. That, by including their names in the academic roaster, the applicant had reasonable expectation on the renewal of contract. That, by failure to renew their contracts, there was breach of contract amounting to unfair termination.

On the 4th ground the applicant submitted that there was no proper analysis of evidence by the CMA. It was contended that the applicant submitted evidence proving that the contract between the parties came to an end by expiration of contractual period and that there was no breach of the employment contract by the applicant. That, under section 41 of the Employment and Labour Relations Act, Cap 366 RE 2019, a party had right to discharge the agreement upon issuing a one-month notice. That, a notice was issued and the respondent

admitted in their clearance forms that they had no further claims against the applicant thus, the claims lodged before CMA was frivolous and vexatious. The applicant concluded with a prayer that the application be granted by revising the CMA award.

The respondents submitted that the evidence was clearly evaluated by CMA and was satisfied that there was reasonable expectation for renewal of contract for the respondents. In concluding the respondents prayed for the application to be dismissed for it is of no merit.

From the grounds of revision and submissions by the parties, three issues need to be determined by this court;

1. *Whether there was reasonable expectation for renewal of contract,*
2. *If No. 1 above is in affirmative, whether there was unfair termination,*
3. *Whether there was proper analysis of evidence by the CMA.*

Starting with the first issue, there is no dispute that the respondents had fixed term contract of one year. There is no dispute that a notice on non-renewal of contract was issued by the applicant. What is alleged here is unfair termination based on failure to renew the contract as there was reasonable expectation for renewal of contract.

The said expectation was based on the fact that the respondents were assigned to teach subjects planned to be taught for next year. It was testified by DW2 that teaching subjects for the next year was within school procedures. This was also admitted by the respondents who agreed that it was normal at the applicant's school for teacher to teach subjects for the next year when they reach the end of the year. This is what happened, at the end of 2021 the respondents were assigned to teach subjects for the year 2022. The issue is whether such assignment created expectation for renewal of contract.

In my view, that kind of assignment cannot be construed to raise any reasonable expectation. The respondents performed their normal teaching duties as per school procedures within the period of contract. Thus, I do not see how performing their teaching duties in the well-known schedule could have raised reasonable expectation for renewal of contract. It must be noted that the respondents' contracts were fixed term contracts and notices for non-renewal of the same were issued before expiry of contractual period. Thus, the respondents were aware of non-renewal of contracts even before they expired.

It was argued by the respondents that the applicant did not assign reasons for non-renewal of contract hence unlawful termination. I understand that there is requirement to assign the reason for termination but that is more necessary were the contract is termination prematurely as it was held in the case of **St. Joseph Kolping Secondary School** (supra). In that case the employer was terminated before the contractual period ended. That circumstance is different from the circumstance of this case where the respondents were not terminated before the contractual period ended rather there was notice of non-renewal of contracts. Since there was no proof of reasonable expectation for renewal of contract, the applicant was not bound to assign any other reason for non-renewal rather than informing the respondents that they intended not to renew the contract with them. In that regard, there was no proof of unfair termination of the respondents and that answers the second issue.

Concluding with the third issue, I agree with the applicant that had the CMA considered the evidence in totality and the circumstance of this case, it would have come to a different conclusion that there was no reasonable expectation for the respondents to claim unfair termination. Non-renewal of contract is the discretion of the employer much as the

procedures are followed. In this matter, there is no doubt that the procedures were followed sufficient enough to end the employment relationship between the parties. The respondents were informed two months before that their contracts were coming to an end. In those letters, the applicant did not indicate any intention to renew their contracts. A month later, another notice was issued to each respondents informing them that the applicant did not intend to renew contracts with them. They were further informed of their entitlements associated with non-renewal including; severance pay, leave pay and certificate of service. Although the applicant contended that the respondents admitted in their clearance certificates that they were paid all their entitlements and had no further claims against the applicant, that was not reflected in their evidence. The alleged clearance certificates were part of the applicant's defence before the CMA and was admitted collectively as exhibit D3. They indicate clearly that the respondents admitted to being paid some of the claims but they had other unpaid/unfulfilled claims. For instance, Baraka Rubangula indicated in his clearance form that he was paid some of claims but had claims for leave for 2018 to 2020, repatriation costs and certificate of service. Similarly, Erick Vitus Nanjea admitted to be paid NSSF deduction,

severance and salary but indicated that he had claim for annual leave for 2019 and 2020. Now the question is whether the respondents were entitled to such claims. For the claim of repatriation, it could not stand as their recruitment address were herein Arusha. For the claim of annual leave, it is my view that, as the respondents raised the claim for unpaid leave, the applicant was bound to prove that such claim was paid and they had no claims. It is unfortunate that no evidence presented by applicant before CMA to prove that all those entitlements were paid to the respondents. The testimony by applicant's witness DW1 and exhibit D4 referred leave for the year 2021 but the respondent's claims as indicated in their clearance forms were unpaid leave for the years 2018 to 2020. Since there was no dispute that for those years the applicant worked with the respondents, the applicant was liable to prove if the respondents were paid their claims for leave. Since the burden of proof in labour dispute is that of the employer, I find that upon a conclusion that the applicant no longer intended to renew the contracts with the respondents, they were under duty to pay all their entitlements including unpaid leave for previous years. I therefore award two years annual leave for each of the respondents based on their monthly salary. The employments contracts indicates that Baraka Rubangula was being paid

Tshs. 753,000 as monthly salary thus, he will be entitled to 735,000x2 equal to 1,470,000/= and Erick Vitus Nanjea was paid Tshs 600,000 monthly salary thus, will be entitled to Tshs 600,000x2 equal to Tshs. 1,200,000/=. The respondents should also be issued with employment certificate if not yet issued.

In the final analysis, I find merit in this application. I therefore proceed to revise and set aside the CMA award based on compensation and substitute thereof with the award for leave payment and employment certificates to the respondents. Since this revision emanates from labour dispute, I make no orders as to costs.

DATED at **ARUSHA** this 15th day of June 2023

HIGH COURT OF TANZANIA

D.C KAMUZORA

JUDGE