IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB - REGISTRY)

AT MOROGORO

LABOUR REVISION NO. 10 OF 2022

(Originating from Labour Dispute No. CMA/MOR/56/2021 for Morogoro, at Morogoro)

BETWEEN

UNITRANS (T) LIMITED.....APPLICANT

VERSUS

TUMAINI MASHOKE.....RESPONDENT

JUDGMENT

29th Sept, 2023 & 22nd March, 2024

M.J. Chaba, J.

The applicant, Unitrans (T) Limited filed the present Application for Revision seeking to revise the Award of the Commission for Mediation and Arbitration (the CMA) delivered on 24th February, 2022 by Hon. Kayugwa, Arbitrator. The Application for Revision has been preferred under Section 91 (1) (a) & 91 (1) (b), Section 91 (2) (b) and Section 94 (1) (b) (i) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (the ELRA) read together with, Rules 24 (1); 24 (2) (a) (b) (c) (d) (e) (f); 24 (3) (a) (b) (c) (d) and Rule 28 (1) (c), (d) & (e) of the Labour Court Rules, GN. No. 106 of 2007 (the Labour Court Rules).

The Application is supported by an affidavit sworn by Ms. Iness Nangali, the Principal Officer of the Applicant. On the other hand, the Respondent, Tumaini Mashoke filed counter affidavit sworn by himself challenging this Application for Revision.

The background to this application as gleaned from the parties' submissions can be recapitulated as follows: The respondent/employee was employed for the first time by the applicant/employer for a specified period/fixed term of 12 months (1 year) commencing from the 28th day of May, 2012 to 30th day of May, 2013 (Exhibit PD1). From there, it appears that on different occasions, the applicant and respondent furnished a fiduciary relationship as they settled an employment contract where the applicant was an employer and the respondent an employee whose position was described and ascertained to be a data entry clerk.

It is on record that, sometimes later on 24th May 2019, the respondent and the applicant entered into an employment contract (Exhibits DD1 and PD2, respectively) and it was so plainly stated that, this employment contract was for a specified period of 24 months (2 years) commencing from the 1st day of June, 2019 to 31st day of May, 2021. According to the employment contract which is the basis of the parties' fiduciary relationship, it is stated under section 1:3 of their employment contact that, the contract shall continue until termination as described under section 1:2 and/or under section 9; or by either party giving one-month notice to the other in writing Section 1:4 of the employment contract states that, I quote; *"that, the employee acknowledges he/she has no right of expectation in this*

contact and has no expectation that the contract will be renewed on expiry. It was agreed in terms of section/clause 3:1 that, the employee's basic salary is TZS. 833,665.58 (In words, eight thirty-three thousand six hundred sixty-five and fifty-eight cents) per month, according to Exhibits DD1 and PD2, respectively.

According to records, when the contract of employment expired on 1st June, 2021, the respondent was officially served with a notice of non-renewal of the employment contract by his employer, the applicant herein. The notice informed the respondent that, the employment contract which he signed on 30th May, 2020 expired on 31st May, 2021. The notice elaborated further that, his employment contract which was set as a fixed term contract for the position of sage data entry, was terminated on 31st May, 2021 and the contract could not be renewed as his position could no longer exists by 1st July, 2021. The notice explained further that, in consideration of their previous work relations, the management officially decided to offer the respondent three months' notice that could expire on 31st August, 2021 and he was allowed to attend his work up to 30th June, 2021 when the company's budget could expire.

On the basis of the notice of non-renewal of employment contract, the respondent was therefore entitled to the following benefits: One; Salary for the days up to the 31st August, 2021, Two; Outstanding leave days if any, on pro rata basis due to him up to 31st August, 2021, Three; Pension benefits through NSSF contributions, Four; Certificate of Services, and Five; Severance pay.

However, the move taken by the applicant/employer triggered and instigated the respondent to interpret that he was unfairly terminated from his employment. His grief paved his way to seek for redress before the CMA. At the CMA, he filed a Complaint which was registered as, CMA/MOR/56/2021, wherein at the height of trial, the CMA decided in favour of the respondent. As his tears was rinsed by a handkerchief of handsome award, on the other hand, it turned a pepper inside an eye of the applicant who immediately on the 28th March, 2021 through the CMA F.10 lodged her notice of intention to seek for revision of the award at the CMA and afterwards on 4th April, 2022 she rushed before this Court and lodged the present application for revision imploring the Court to do the following: One; to revise the proceedings and decision of the CMA, at Morogoro in CMA/MOR/56/2021 (Hon. Kayugwa. H, Arbitrator) delivered on 28th February, 2022; Two; to set aside the award and to declare that there was no employment relationship between the applicant and the respondent; Three; to grant any other reliefs which the Court deems fit and just to grant.

The grounds for revision relied upon by the applicant are shown at paragraph 4 of the affidavit deponed by Ms. Iness Nangali, the Principal Officer of the applicant which contains statements of legal issues that arose from facts of the matter at hand as hereunder: -

1. That, the Honorable Arbitrator erred in law and facts by holding that there was right of expectation while the contract of employment was a fixed term contract

which terminated automatically, and there was no obligation to write a letter to end the contract;

2. That, the Honorable Arbitrator erred in law and fact by awarding twenty-one (21) months' compensation without exceptional circumstances and/or reasons while the fixed term contract had expired and, if any, the respondent was only working for a new contract of three (3) months;
3. That, the trial Arbitrator erred in law in holding that there was circumstantial evidence that the contract was renewal even after noticing that the respondent has been given new contract, there was new terms different from the original contract hence no renewal of expired contract;
4. That, the trial Arbitrator erred in law and fact by basing TZS. 1,593,427/= as the respondent's last salary to calculate compensation without evidence while his last salary was TZS. 912,938.70 hence arrived at unfair decision.

At the hearing of this application, by consensus, parties agreed to argue and dispose of the same by way of written submissions. Mr. Danstan Kaijage, learned advocate drew and filed submission on behalf of the applicant/employer while Mr. Lwijiso Ndelwa & Ms. Alice Justinian Kahinga, also learned advocates drew and filed submission for the respondent/employee. Both Counsels for the parties submitted at lengthy and I commend them for filling their submissions as per Court's scheduled order.

To kick the ball rolling, Mr. Kaijage first prayed the Court to adopt the applicant's affidavit deponed by Ms. Iness Nangali as well as the reply to counter

affidavit so as to form part of his submission. He argues that, section 91 (2) (a) & (b) and section 94 (1) (b) (i) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019] and Rule 28 of the Labour Court Rules, 2007 provides grounds upon which the Court may set aside an arbitral award and the party who seeks for an order for revision must establish to the Court that such grounds have been met. He said, according to the law, there are important features to be taken on board by the Court in allowing application for revision. Hence, an application of this nature shall only be granted if it is established that, there was a misconduct on the part of the arbitrator, if the award was improperly procured, if an arbitrator appears to have exercised jurisdiction not so vested in it by law, have failed to exercise jurisdiction so vested, have acted in the excess of its jurisdiction illegally or with material irregularity, and if there has been an error material to the merits of the subject matter involving injustice.

Upon highlighting the important features to be taken on board by the Court in allowing application for revision, Mr. Kaijage went on submitting in respect of the first ground that, the applicant's grievance on this ground is that, the Hon. Arbitrator erred in law and facts by holding that there was right of expectation while the employment contract was a fixed-term contract which terminated automatically, hence there was no obligation to write a letter to end the contract. Substantiating his argument, Mr. Kaijage highlighted that, the respondent was employed by the applicant on fixed-term of two years employment contract starting on 1st June, 2019 to 31st May, 2021 with no option for renewal on expiry as evidenced by Exhibit DD1,

Section 1:4 of the employment contract. He said, it is a well-established principle of law that fixed-terms of employment contract normally ends automatically when they reach their agreed finishing point and there is no need for employer to give an employee a notice. He referred this Court to the provision of Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007 and the case of **Paul James Lutome & Three Others vs. Ballore Transport & Logistics Tanzania Ltd,** Revision No. 347 of 2019 (unreported).

Relying on the provision of the law and precedent cited hereinabove, Mr. Kaijage asserted that, with the expiry of the respondent's employment contract on 31st May, 2021, it means that the respondent ceased to work. He stressed that, in as much as the employment contact in question is concerned, there was no right of expectation of renewal of his work as it was held by the trial Arbitrator. He averred further that, the trial Arbitrator was wrong to hold that, the parties had customary practices of renewing the employment contract. He said, the record is clear that, the respondent worked with the applicant for only two contracts, referring the first contract which commenced in 2012 and ended in 2013 with non-renewal expectation, and the second one which contained similar texture but with a fixed-term of two years non-renewable expectation that started effectively from the 1st June, 2019 to 31st May, 2021. To buttress his contention, the Counsel cited the cases of **National Oil (T) Ltd vs. Jaffery Dotto Msensem & Others,** Labour Revision No. 558 of 2016, HCT at DSM (unreported); **Shedrack Haruna & 16 Others vs. Interchick Company Ltd,** Revision No. 198/2013, HCT - Labour

Division, DSM Registry (unreported); and **The Registered Trustees of Benjamin William Mkapa vs. Oliver Murembo,** Labour Division – DSM, Revision No. 48 of 2016 [2017] LCCD 1. In line with these authorities, Mr. Kaijage urged the Court to take heed of section 36 (a) (iii) of the ELRA and Rule 4 (4) and Rule 4 (5) of the Employment and Labour Relations (Code of Good Practice), GN. No. 42 of 2007.

On the second ground, the applicant's complaint is that, the Hon. Arbitrator erred in law and fact by awarding twenty-one (21) months' compensation without exceptional circumstances and/or reasons while the fixed-term contract had expired and, if any, the respondent was only working for a new contract of three (3) months. Arguing on this ground, Mr. Kaijage submitted that, the respondent was given a three months contract which he turned down. This means, he didn't work with the applicant's company upon expiring of the said fixed-term of two years as stipulated by the parties' contract. As such, there was no basis for the Arbitrator to award the respondent twenty-one (21) month's salaries in absence of breach of contract. In addition, the pleadings in the CMA, in particular CMA F.1 which forms the basis of respondent's claims, indicates that the respondent appears to challenge termination of his employment and not breach of contract whereas parties are bound by their own pleadings. To reinforce his argument, Mr. Kaijage cited the cases of **Juma Jaffer Juma vs. Manager, PBZ Ltd and 2 Others,** Civil Appeal No. 7 of 2002, CAT sitting at Zanzibar (unreported) and **Knight Support (T) Limited vs. Ibrahim Bwire,** Revision No. 266 of 2015, HCT - Labour Division – DSM (unreported).

It was Mr. Kaijage's argument that, contrary to the normal practice and procedures, the applicant was the first party to adduce or tender her evidence which implies that there was common understanding that the respondent was challenging termination of employment and not breach of contract. He said, looking at page 12 of the award, the arbitrator insisted that the applicant complied with the provisions of sections 37, 38 of the ELRA which provides for unfair termination and procedures for retrenchment and finally ruled that there was unfair termination, something which is wrong. He said, instead of applying section 40 of the ELRA having held that there was unfair termination, the Arbitrator erred in law by awarding the remaining contact period (21 months) without evidence and justifiable cause.

As for the third ground, it is the applicant's grievance that, the trial Arbitrator erred in law in holding that there was circumstantial evidence that the contract was renewable even after noticing that the respondent has been given new contract, as there were new terms different from the original contract hence no renewal of the expired contract. On this ground, Mr. Kaijage highlighted that it is not true that there was circumstantial evidence indicating that the employment contract was renewable. Referring to a pay-in-slip (Exhibit DD2), Mr. Kaijage asserted that, the same clearly unveiled that the respondent's employment contract could not be renewed after its expiry and the applicant did act diligently, hence there was no need to issue a notice as ruled by the Hon. Arbitrator.

As regards to the fourth ground, the applicant is faulting the findings and decision of the CMA to the effect that, the Arbitrator erred in law and fact by basing

on TZS. 1,593,427/= as the respondent's last salary to calculate compensation without evidence while his last salary was TZS. 912,938.70; hence arrived at unfair decision. Arguing on this ground, the Counsel averred that, according to the Terminal Benefits Schedule, which is a document tendered at trial and admitted as Exhibit DD3 bearing the names of the respondent, Tumaini Mashoke the same shows that on leaving the employment, the respondent's last monthly salary was TZS. 912,938.70. However, the trial Arbitrator relied on TZS. 1,593,427.00 as the last salary earned by the respondent which is not true. He said, by so doing, the trial Arbitrator arrived at unfair decision to the prejudice of the applicant and without justifiable cause.

Based on the above submission, the Counsel for the applicant underlined that since the whole award was procured with material irregularities to the detriment of the applicant as substantiated hereinabove, he prayed the Court to quash the proceedings of the CMA and set aside the award and declare that the employment contact between the applicant and respondent expired by effluxion of time, hence this application for revision is justifiable and sustainable. He finally prayed the Court to allow the application.

In reply, Ms. Alice Kahinga, Counsel for the respondent submitted in pattern. Starting with the first ground, the Counsel accentuated that the respondent continued to work after the expiry of the contract on 31st May, 2021 because on the 1st June, 2021 he reported at his workstation and as usual he was assigned work by

his immediate supervisor and performed them. However, to his surprise at even hours same day, he was served with the three months' notice of non-renewal of the contract as shown in Exhibit PD3 dated 1st June, 2021. As such, the said notice was served upon him after the expiry of the contract and the respondent had worked for a single day as evidenced by emails, a documentary evidence - Exhibit PD4. He however, admitted the fact that for the first time the respondent was employed by the applicant for a fixed-term of one year from 28th May, 2012 to 2013 (Exhibit DD1) and argued that the contract was renewed despite of an allegation that it was non-renewable and ended on 31st May, 2021. He said, the contract was automatically renewed by default when the respondent was assigned to perform his work on 1st June, 2021. He said, this fact was not cross-examined by the applicant before the CMA. To bolster her argument, she invited the Court to take cognizance of Rule 4 (3) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 and the cases of **Renard George Msokile vs. Riverside Primary School Labour Revision No. 24 of 2021,** HCT - Mbeya Registry, page 8 (unreported) and **Jacob Mayani vs. Republic,** Criminal Appeal No. 558 of 2016, CAT sitting at Shinyanga.

She denied the fact that, the respondent worked only for two fixed terms that is 2012 - 2013 and 1st June, 2019 to 31st May, 2021. She insisted that, the respondent worked with the applicant for nine (9) years under different fixed terms as it was held by the trial Arbitrator who ruled that, the parties had a custom of renewing employment contract from 2012 to 2021 and not two fixed terms as

submitted by the Counsel for the applicant. Again, the fact that the respondent did not work with the applicant for six (6) years is a misleading argument as this fact was not at all disputed by the applicant before the CMA. She said, the cases of **Paul James Lutome** and **Three Others and National Oil (T) Ltd** (supra) cited by the Counsel for the applicant are irrelevant in this case for a reason that, the respondent continued to work with the applicant even after the expiry of his employment contract.

It was Ms. Kahinga's contention that the respondent did manage to establish the existence of the circumstances warranting reasonable expectation of renewal of the contract as envisaged under section 36 (a) (iii) of the ELRA and Rule 4 (4) of the Code of Good Practice, GN No. 42 of 2007. She said, the fact that the last contract (Exhibit PD2) had different terms from the first contract (Exhibit PD1) does not mean that the respondent had no reasonable expectation of renewal of the last contract. He referred this Court to the case of **Evergreen Mumba & 5 Others vs. New Bantu Morogoro and Another,** Revision No. 15 of 2018 HC Labour Division (unreported) to fortify her argument.

As regards to a notice of non-renewal of the employment contact issued by the applicant to the respondent on the 1st June, 2021, Ms. Kahinga averred that, the same was supposed to be issued before the expiry of the contract. Issuing the same after expiry of the contract was not only mis-normal but also gave the respondent

an impression that his contract could be automatically renewed. He cited the case of **Dennis Kalua Said Mngome vs. Flamingo Cafeteria [2011-2012] LCCD 49.**

Arguing on the second ground, Ms. Kahinga avowed that the Hon. Arbitrator correctly awarded twenty-one (21) months' compensation to the respondent as manifested on pages 11 - 12 of the impugned ruling. Though it seems that, her submission usurps upon her third ground but she continued to argue by citing the case of **Elias Naligia vs. Mbezi Beach Secondary School,** Revision No. 206 of 2010, at pages 8 and 9 to buttress her contention. She insisted that, since the second employment contract (Exhibit PD2) was for 24 months and it was renewed automatically, it follows therefore that, such a contract was renewed under similar terms and when the respondent was terminated from his contract, he was entitled to the payment of salaries for the remaining period of contract. She also argued that, since the notice (Exhibit PD3) issued to the respondent had life span of three months from 1st June, 2021 to 31st August, 2021 and the respondent was allowed to work for the whole month of June, 2021, and taking account that the payments only covered two months, it follows therefore that the contract remained with 21 months. In her opinion, the CMA was correct to award the respondent such payments for the period of 21 months' salary as it was legally mandatory without any exception.

Regarding to the issue of termination and not breach of contract, the Counsel relied upon section 36 (a) (iii) of the ERLA which states that, a failure to renew a fixed-term contract on the same or similar terms if there was a reasonable

expectation of renewal. She argues that, as the respondent's claims is based on failure to renew a fixed term of contract, it means that the applicant's act did amount to unfair termination. This is why in the CMA F.1 the respondent preferred a dispute of unfair termination and not breach of contract. In this regard, it was right for the applicant to first render the evidence since the duty to prove that it was a fair termination lies upon the applicant/employer pursuant to section 39 of the ERLA.

She went on submitting that, it is an afterthought and misleading for the applicant to suggest that, the respondent was under a new contract of three months by referring to the notice of non-renewal of employment contract (Exhibit PD3), as opposed to the minimum duration for a fixed-term contract which is twelve (12) months as provided under, Regulation 11 of the Employment and Labour Relations (General) Regulations, 2017. She stressed that, the argument that the respondent was under a new contract of three (3) months, such an argument was not raised before the CMA.

Responding on the third ground, Ms. Kahinga accentuated that, the trial Arbitrator correctly hold that there was evidence to the effect that the contract was automatically renewed. She asserted that, there is unchallenged evidence from the record of the CMA that, on 1st June, 2021 the respondent reported to his workstation and performed his daily duties. She argues that, the notice of non-renewal of employment contract was not a new contract because in law there is no employment contract for three months as hinted above. She reiterated her

contention that, issuing a notice of non-renewal of employment contract after the expiry of contract shows that the contract did not end automatically. As the applicant exhibited that by 1st July, 2021 the respondent's position could no longer exist, it means that the applicant intended to show that the reason for termination was based on operational ground, but did not comply with the requirement of section 38 of the ELRA. As the law requires, the applicant was duty bound to disclose to the complainant the reasons thereof.

Responding to the fourth ground, Ms. Kahinga submitted that, the Arbitrator correctly held that, the respondent's salary was TZS. 1,593,427.00 as shown in the document termed as, payment of terminal benefits (Exhibit PD5) and it was not challenged during cross-examination. She contends that, since the respondent's salary includes normal cash pay, housing allowance, occasional income and other allowances, it was right for the trial Arbitrator to rely on that much instead of TZS. 912,938.70 which is the basic salary. She said, even if the Exhibit DD3 was admitted in evidence without being objected, it does not mean that its contents conclusively proved that the respondent was paid accordingly. To reinforce her argument, the Counsel referred this Court to the case of **Narcis Rukyebesha Mbarara vs. Equity Bank Tanzania Limited & Another,** Civil Appeal No. 04 of 2022 on page 13.

On the basis of the foregoing submission, Ms. Kahinga prayed the Court to dismiss the application and uphold the award of the CMA and declare that, the

respondent's employment contract was automatically renewed and order the payments of TZS. 34,910,767.00 being compensation for the remaining 21 months of the contract and the unpaid amount of transport to the place of recruitment.

By way rejoinder, Mr. Kaijage reiterated his submission in chief and added that, the question whether the respondent had wide choice to choose and opt either to prefer his dispute as unfair termination or breach of contract, was totally wrong. He said, in labour laws there is no alternative to termination and/or breach of contact as the two terms differs and does not correlate. So long as the CMA Form No. 1 shows that respondent's complaint based on unfair termination of employment contract, then the CMA was duty bound to focus to make its findings on fact and evidence tendered before it and not to diverge from parties' pleadings. To cement his argument, the Counsel cited the case of **Mtambua Shamte and 64 Others vs. Care Sanitation and Suppliers,** Revision No. 154 of 2010 (unreported) where the Labour Court was once faced with akin scenario following a dispute over unfair termination by employees who were under fixed-term of contract. It was held that: -

> *"Principles of unfair termination under the Act do not apply to specific task or fixed term contract which come to an end on the specified time or completion of a specific task".*

Moreover, the Counsel vehemently disputed and faulted the computation of an award of compensation done by the CMA basing on respondent's salary, i.e.,

TZS. 1,593,427.00 which included normal cash-pay, housing allowance, occasional income and other allowances. He emphasized that, this is very wrong because compensation is on basic salary and does not include allowances. He said, according to the law, the employee's compensation is based on the basic salary and that the respondent was entitled to be paid the remaining salary of the said months.

In view of the above submission, Mr. Kaijage averred that the arguments put forward by the respondent are without merits and the same does not challenge the instant application for revision. He therefore, prayed the Court to allow the application as prayed.

Having summarized the contending arguments for and against the instant application for revision, and upon carefully considered the rival submissions made by Counsels for the parties, Court records as well as the relevant applicable labour laws and practice, I find the central issue for consideration, determination and decision thereon is whether the applicant had reasonable expectation of renewal of the employment contract.

To begin with, I find it apt to highlight the principle of law governing burden of proof in civil matters. In civil matters it is settled that, whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist and the burden of proof lies on that person. That the burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side. The law articulates

further that, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person. (See – Sections 110 - 112 of the Evidence Act [CAP. 6 R.E. 2022]) and the case of case of **Hemed Said vs. Mohamed Mbilu [1984] TLR 113.**

In this application for revision, it is undisputed fact that the employment of the respondent was for a fixed-term contract non-renewable upon its expiry as it is manifested on the employment contract (Exhibits DD1 and PD2, respectively) entered between the parties. According to the record, the contract commenced effectively from 1st June, 2019 and ended on 31st May, 2021, leave alone the first employment contract which commenced on 28th May, 2012 and expired on the 30th May, 2013 (Exhibit PD1) of which the same has no dispute whatsoever. It is on record that, on 1st June, 2021 the respondent was formally served with the notice of non-renewal of the employment contract, one day after the expiry of his employment contract (Exhibit PD3).

As hinted above, the last contract was entered by the parties on 24th May, 2019 and formally began to operate on 1st June, 2019 after the parties agreed on the terms and conditions to carry out and put into effect. It is evident that, the employment contract entered by the parties was for a specified period of 24 months (2 years) commencing from the 1st day of June, 2019 and its expiry date was on the 31st day of May, 2021. According to the terms and conditions of the contract, parties

agreed among other things that, the contract shall continue until its termination (section 1:3) as described under sections 1:2 and 9; or by either party giving one-month notice to the other in writing. Further, section 1:4 of the employment contract shows that the employee, Tumaini Mashoke did acknowledge that within the contract he had no right of expectation in his contract and further that he had no expectation that the contract could be renewed on expiry date. It was further agreed under section 3:1 of the employment contract that, the employee's basic salary was TZS. 833,665.58 as indicated by Exhibits DD1 and PD2, respectively, though the respondent's salary slips (Exhibit DD2), dated 25th May, 2021 indicates that, the respondent's normal earnings and/or normal cash pay was (is) TZS. 912,938.65.

Now, reverting to the law applicable in this case, it is trite law that the fixed term of contract shall automatically come to an end when the agreed time expires. Under Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) Government Notice No. 42 of 2007, the law says: -

> *"Rule 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".*

Under section 36 (a) (iii) of the ELRA the law says: -

> *"For purposes of this Sub-Part;*
>
> *(a) "termination of employment" includes: -*

(iii) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal".

Looking at the genesis of the dispute between the parties, it is undeniable fact that, the last employment contract entered by the parties herein expired on 31st day of May, 2021. On the following date on the 1st day of June, 2021 the respondent was served with the notice of non-renewal of the employment contract by the applicant as reflected on Exhibit PD3. Applying the above provisions of the law, it is clear that, where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise. The law further provides that, termination of employment includes, a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal.

Similarly, the employment contract (Exhibits DD1 and PD2) entered by the parties, is not far from the guiding principles of law. The employment contract unveils that, when the parties entered into the employment they agreed to adhere to the terms and conditions stipulated therein. For instance, under section 1:3 of the employment contact entered on the 24th May, 2019 which came into effect on the 1st June, 2019, parties agreed among other things that, the contract shall continue until its termination as described under sections 1:2 and 9; or by either party giving one-month notice to the other in writing. Again, it is also apparent on the

employment contract as specified under section 1:4 that, the respondent, Tumaini Mashoke did acknowledge that he had no right of expectation in the contract and further that, he had no expectation that the contract could be renewed on expiry date. Looking at the provision of the law under Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) Government Notice No. 42 of 2007 and section 1:3 of the employment contract the word used is shall which is imperative. Under section 53 (2) of the Interpretation of the Laws Act [CAP. 1 R.E. 2019], the law provides that:

> *"Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed".*

Applying the wording of section 53 (2) of the Interpretation of the Laws Act (supra), it is crystal clear that, as the contract entered by the parties was couched in fixed-terms contract and expressed in words that it, shall continue until its termination, I am at one with the Counsel for the applicant that the contract terminated automatically upon expiring of the agreed period. As to the question whether the contract provided otherwise, my scrutiny on records has revealed that, there is nowhere in the contract expressing that due to some peculiar reasons or conditions such a contract could continue automatically. I also find that, the position of the laws highlighted by the Counsel for the applicant, including Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007, and

the case of **Paul James Lutome & Three Others vs. Ballore Transport & Logistics Tanzania Ltd** (supra) and section 36 (a) (iii) of the ELRA are relevant in this case.

Besides, I find no justifiable reasons for the respondent to rely on the notice of non-renewal of employment contract dated on 1st June, 2021 (Exhibit PD.3) for a reason that the same has nothing to do with the last employment contract (Exhibit DD.1 and PD.2) entered by the parties as the notice just informed the respondent that his contract signed on 24th May, 2019 and terminated automatically on 31st May, 2021 could not be renewed. See – the case of **Matumba Shamte and 64 Others vs. Care Sanitation and Suppliers**, Revision No. 154 of 2010 - HCT at DSM (unreported).

However, the Counsel for the respondent strongly contended that, although the contract expired on 31st May, 2021 the respondent on the following date on 1st June, 2021 reported at his work and continued to work until evening hours where he was served with notice of non-renewal of employment contract. As such, he said the notice was duly served upon him after the expiry of contract as exhibited by emails, a documentary evidence - Exhibit PD4. She contended that, since the parties created a fiduciary relationship from the beginning upon entering into a fixed term contract for one (1) year starting from 28th May, 2012 to 30th May, 2013 and afterwards continued to work with the applicant for nine (9) years under different fixed terms as it was held by the trial Arbitrator, it means that the parties had a

custom of renewing the contract from 2012 to 2021, and not two fixed terms (2021-2013 and 2019-2021) as submitted by the Counsel for the applicant. She insisted that, these chain of events shows that the respondent did manage to establish the existence of the circumstances warranting reasonable expectation of renewal of the contract as envisaged under section 36 (a) (iii) of the ELRA and Rule 4 (4) of the Code of Good Practice, GN No. 42 of 2007.

I have read the proceedings of the CMA, submissions made by the Counsels for the parties and the applicable laws, and the following are my observations: One; it is true that law imposes legal obligations to an employee who claims to have reasonable expectation for renewal of his or her fixed term contract to demonstrate reasons for such expectation. Rule 4 (3) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007 provides that: -

> *"Rule 4 (3) - 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 term contract and circumstances warrants it.*
>
> *Rule 4 (4) - Subject to sub-rule (3), failure to renew a fixed term contract in circumstance where the employee reasonably expects a renewal of the contract may be considered to be an unfair termination.*

Rule 4 (5) - 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, employers under takings to renew".

In the matter under consideration, the respondent's reason for expectation of renewal of his employment contract is backed up by the findings of the Hon. Arbitrator as denoted in the impugned ruling in particular on pages 6 and 9. Generally, reasonable expectation of renewal of the contract is created by the employer through conduct or statements which guarantees the employee prospective renewal of such a contract. According to the CMA records or proceedings in particular on pages 15, 16, 17 and 18 of the typed copy of proceedings, during examination in chief, the evidence adduced by the respondent shows that when the fixed term contract expired on 31st May, 2021 on the following day/date he went to his work station expecting that he could renew his contract. He said, whenever his contract expired, the employer through the Human Resources Manager used to inform him that he had to continue performing his duties and later on the two entered into a fixed term contract. However, his testimony is silent on which date in particular, his employer used to notify him or had a tendency of notifying him to continue doing his work (before or after expiry of the fixed term contract) from 2012 to 2021. Even though the respondent claimed that he worked

with the applicant for nine (9) years under different fixed terms but at trial he produced and tendered in evidence the first and last contracts that had fixed terms contract of 12 and 24 months respectively. With this piece of evidence, I find it hard to rely on the same to justify the decision of the trial Arbitrator that the parties had a custom of renewing the contract from 2012 to 2021.

In the circumstance of this case, I have no flicker of doubt that, the respondent totally failed to demonstrate to the satisfaction of this Court that, either his contract was renewed by default or that due to the surrounding circumstance the respondent reasonably expected to renew his contract as there was an objective basis for the expectation based on previous renewal of his contract and that the applicant's / employer's under takings to renew such a contract was inevitable. I say so because, my scrutiny of the terms and conditions stated in the last employment contract entered by the parties clearly specified under section 1:4 of the contract that, the respondent, Tumaini Mashoke signed the same and accordingly acknowledged that, first he had no right of expectation and second, that he had no expectation that the contract could be renewed on the expiry date. Bearing that in mind, it is vividly clear that from the date of entering the employment contract on the 24th May, 2019 (Exhibits DD1 and PD2) the respondent had the knowledge that once the contract could come to its end, there was no room for renewal and the contract itself had no such a gap mission portion. On this aspect, I am aligned and inspired as well, by the holding of this Court (My Sister Hon. A. Nyerere, J., as she then was) in the case of **National Oil (T) Limited vs. Jaffery Dotto Msensemi**

and 3 Others, (supra) where she was confronted with akin scenario. At the end of the day, the Court held *inter-alia* 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".*

From the above holding of this Court, which I subscribe to, I would to end up my discussion on this facet that, it is my finding that the respondent's impression regarding expectation for renewal of the fixed term contract upon expiry, was not only an imagination and an afterthought on the side of the respondent, but also it was intensified by the words from the bar. As stated earlier on, the Hon. trial Arbitrator failed to analyze both the evidence adduced by the respondent before the CMA and the documentary exhibits tendered to rely on in a bid to prove his claims. I also find that the Hon. Arbitrator failed to take heed of the relevant provisions of the law in respect of the matter under consideration. In same vein, the respondent disastrous also failed to prove that there was such a custom practice of the parties to automatically renew their employment contract, something which entailed a serious violation of the settled principle of the law regarding burden and standards of proof as alluded to above. See also the case of **Anthony M. Masanga v.**

Penina (Mama Mgesi) and Lucia (Mama Anna), Civil Appeal No. 118 of 2014, CAT sitting at Mwanza, page 9 (unreported).

Next for consideration are grounds two, three and four which I find it appropriate to discuss them altogether. It was Ms. Kahinga's contention that, the Hon. Arbitrator correctly awarded twenty-one (21) months' compensation to the respondent as manifested on pages 11 - 12 of the impugned ruling, and that he correctly held that there was evidence to the effect that the contract was automatically renewed. In addition, the Counsel submitted that the Arbitrator also correctly held that, the respondent's salary was TZS. 1,593,427.00 as indicated in the Exhibit PD5 (Documentary evidence called Payment of Terminal Benefits of the respondent).

Concerning grounds two and three, the same are devoid of merits for reasons which I have demonstrated hereinabove, which I find no reason to echo my findings. On the fourth ground, I agree with the submission made by the Counsel for the applicant that, computation of an award of compensation done by the CMA basing on respondent's salary, i.e., TZS. 1,593,427.00 which included normal cash-pay, housing allowance, occasional income and other allowances was wrong and unfounded in law. It is trite law that computation of an award of compensation is normally based on the basic salary of an employee, in this case the respondent. Such computation does not include other allowances as held by the Hon. Arbitrator. In this regard, the respondent was entitled to be paid the remaining salary in

accordance with the notice for non-renewal of employment contract. For these reasons, I am fortified with the Exhibit DD2 tendered in evidence by the Gasper Ibrahim Mwakatuna on behalf of the applicant which explicitly mentioned the respondent's salary amounting to TZS. 912,938.65 and clearly elaborated in detail all benefits of the respondent in connection with his employment contract.

Thus, I find worthy to fault the Arbitrator's findings that the respondent had demonstrated reasonable expectation of renewal of his employment contract as claimed before the CMA.

In view of what I have endeavored to demonstrate hereinabove, I find and hold that, the respondent's fixed term of contract was legally terminated automatically when the agreed fixed term contract expired as per Exhibits DD1 / PD2. I am also convinced by the evidence taken and recorded by the CMA that the respondent has nothing left as his claims from the applicant. In other words, respondent left no dues to the applicant as there is abundant evidence showing that through Exhibits PD5 (Terminal benefits schedule) he was paid all his claims.

In the premises, this application for revision is allowed. I thus, proceed to quash the proceedings of the CMA and set aside the Arbitral Award and any other orders that stems therein, issued by the Commission for Mediation and Arbitration for Morogoro, at Morogoro in Labour Dispute No. CMA/MORO/56/2021 and delivered on 28th day of February, 2022 by Hon. Kayugwa, H., Esq. Arbitrator.

It is so ordered.

DATED at **MOROGORO**, this 22nd day March, 2024.

M.J. CHABA

JUDGE

22/03/2024

Court:

The Judgment delivered under my hand and Seal of the Court, this 22th day of March, 2024 through video conference in the presence of Mr. Danstan Kaijage, Learned Counsel for the Applicant and Ms. Alice Justinian Kahinga, also Learned Counsel for the Respondent.

S. P. Kihawa

DEPUTY REGISTRAR

22/03/2024

Court:

Rights of the Parties to Appeal to the Court of Appeal of Tanzania fully explained.

S. P. Kihawa

DEPUTY REGISTRAR

22/03/2024