

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

LABOUR REVISION NO. 1 OF 2023

(Arising from CMA/MNR/SMJ/16/22/02/22)

TANZANIA PEOPLE AND WILDLIFE..... APPLICANT

VERSUS

DEBORAH OSWARD..... RESPONDENT

JUDGMENT

14th March & 9th .May, 2024

Kahyoza, J.:

This is a ruling in respect of an application for Revision instituted by **Tanzania People and Wildlife**, seeking this court to revise an award by the Commission for Mediation and Arbitration (CMA) at Manyara. The application raised two issue for determination; **one**, whether the respondent's application was time barred when it was instituted; and **two**, whether it was proper for the CMA to award to award a twelve months compensation for termination of a fixed term or specific term contract.

The background, at the CMA, **Deborah Osward**, the respondent sued **Tanzania People and Wildlife** for breach of contract of employment, and sought several orders, namely; nullification of an incompetent contract and the validation of three years oral employment

contract, the payment of terminal benefits of the remained period of employment, and special damage due to psychological torture.

The record bears testimony that on 01.09.2021, **Deborah Oswald**, the respondent (as employee), entered a contract of employment (on probation basis) for three months with **Tanzania People and Wildlife**, the applicant (as an employer). On 01.12.2021, a further contract of employment was executed between them, for a period commencing from 01.12.2021 to the expire on 30.06.2022 (seven months duration). Before the expiration of the second contract, on 17.06.2022 Deborah Oswald was issued with a letter that reminded her of the coming to an end of her 7 months' contract on 30.06.2022 and the applicant had no intention to renew the contract upon expiration. Then, the respondent decided to file her application at the CMA on 19.08.2022.

It was further admitted by the respondent that upon the expiration of the 7 months' contract, the applicant paid her one-month salary (June 2022), Off days' arrears, transport allowances, certificate of appreciation and others.

Having heard the parties, the CMA declared the 7 months' contract of employment to be unlawful and ordered a compensation of 12 months' salary to the respondent.

Aggrieved, the applicant filed application seeking to fault the said decision on several grounds, including:

1. That the CMA erred not to consider that the matter was time barred.
2. That the CMA erred to award a 12 months' salary compensation, for the matter was not based on unfair termination, also that the relevant contract had already expired.
3. That the CMA erred for not considering the fact that the contract was for specific assignment not a fixed time contract.
4. That the CMA erred for failure to consider documentary evidence tendered by the applicant.

After the recital of the background and the grounds of complaint, I find compelled to begin the ground relating to time limit for the same when established it is capable of disposing the matter at hand. The pertinent issue for determination is,

Was the matter before the CMA time barred?

Ms. Patricia, learned advocate submitted that since the application at the CMA was on breach of contract of employment and not unfair termination, the time within which one is to refer the dispute to CMA is 60 days, citing rule 10(2) of **the Labour Institutions (Mediation and**

Arbitration) Rules, GN. No. 64 of 2007. Thus, since the contract was executed on 01.12.2021, when the cause of action arose-as per section 5 of **the Law of Limitation Act**, [Cap 89 R.E 2019] then the matter was time barred. And the remedy is to dismiss it, citing the rule in **Barclays Bank (T) Ltd vrs. Philisiah Hussein Mchemi**, Civil Appeal No. 19 of 2016 (unreported).

On rebuttal, Mr. Herold, the respondent's personal representative, prayed to adopt his counter affidavit and submitted that the labour dispute was not time barred as per rule 10 and 11 of Gn. No. 64 of 2007, and the time started to run from 30.06.2022.

In a short rejoinder, Ms. Patricia, Adv was emphatic that the dispute was instituted out of time.

In the case of **J Radwa Ltd vrs. Peter Kimote**, Labour Revision No. 52 of 2008, HC Labour Division (unreported) it was held that;-

"Limitation of time is fundamental involving jurisdiction of the court and it goes to the root of dealing with civil claims. Limitation is material in speed administration of justice."

As argued by the applicant's advocate, for "other dispute" apart from those based on unfair termination, the time limit is 60 days. And the time started to run from the time the cause of action arose. The parties'

representatives share the same views that to limit to sue for another matter apart from unfair termination was 60 days from when the cause of action arose. See rule 10(2) of the **Labour Institutional** (Mediation and Arbitration) Rules, G.N. No. 64 of 2007. However, they lock horns on the issue when time commenced ticking. The applicant's advocate was that time started running from on 01.12.2021, when the parties entered a seven months' contract in breach of the law.

The respondent's personal representative argued that time started to run from 30.6.2022, the date when the respondent's employment contract came to an end. He cited the rules 10 and 11 of the **Labour Institutional** (Mediation and Arbitration) Rules, G.N. No. 64 of 2007.

I considered the rules and submissions to say the least the question as to when the cause of action is not cleared out. Much as the respondent's personal representative argued that the law of contract and the limitation period do not apply to labour matters, I feel obliged to refer to the laws. I will commence with the principles of law of contract and borrow a leaf on the issue of what constituted the terms of contract.

It is an established principle of contract that the express terms of the contract, parties freely entered bind them. Thus, parties freely entered an employment contract for seven months. It is a principle of contract be

that of employment or any other contract, that not all terms are written some of the terms may be implied. Terms may be implied by law (statutory terms), customs or usage of the given trade. is bound. Statutory terms are enforceable and their breach renders the contract not enforceable.

It was one of the issues before the CMA and before this court, whether the respondent's employment contract for a fixed term or specific assignment contract. Without much ado, I state that the parties contract was time bound contract. I had an opportunity to read clause 2 of the contract, which reads-

"2. Duration of the contract

*This contract shall commence on December 1, 2021 and **will expire June 30, 2022.**"*

It is obvious that the contract was a fixed time contract and not specific task contract. I was not moved by the applicant's advocate that the respondent's employment was a specific task contract. The contract specified duration and not an assignment or task the respondent was required to execute. Like the arbitrator, I did not see clause 10 of Exhibit D3. **Exh. D 3** was an email from Yusuph Kaaya to Deborah, the respondent. The employment contract was admitted and marked Exh. D4.

For argument's sake, I examined Exh. D4 to find out whether it prescribed the nature of the assignment. Unfortunately, the contract marked exhibit D4 does not contain clause 10. However, managed to find another copy of the contract which was not marked by the arbitrator which contained clause 10. Both are copies of the employment contracts. I opted to rely on the copy the arbitrator marked as exhibit D.4. It does not contain exhibit D.4. It is my firm view that the contract was time bound contract.

A fixed time contract under the labour laws is subject to express and implied terms like any other contract. One of the implied terms is the statutory implied term under rule 11 of the **Employment and Labour Relations** (General) Regulations, 2007, G.N. No. 47 of 2007. It reads-

"A contract for a specified period referred to under section 14(1) (b) of the Act shall not be for a period of less than twelve months."

It was a term of the parties' contract though not specified that the contract was for 12 months. It is a principle of law that an employer cannot override statutory term(s) with an express term.

Basing on the above principles of contract, I am of the view that much as the parties contracted for period of seven months, in law the duration was 12months as the duration period of 12 moths was implied.

The applicant could not override the statutory terms as to the duration of the period with the written term regarding duration of seven months.

Having found that the employment contract was fixed time contract for the duration of 12 months, the conclusion that the applicant violated the contract for terminating it after the expiry of seven months is obvious. For that reason, the cause of action commenced to run on the date of termination and not on the contract was entered into. I wish to emphasize that the parties contract was for a term of 12 months although it was written seven months. The applicant, the employer, cannot override statutory term that a fixed time contract shall not be for a period less than 12 months with an express term that the fixed time contract was for seven months. The applicant cannot be heard to argue that the respondent voluntarily to contract for a period less than 12 months. It is a principle of contract that parties cannot contract against the law.

It is my finding that the respondent's claim was not time barred as time started running from of her termination.

Is the award of 12 months' salary compensation justifiable?

The applicant's advocate submitted that the CMA was wrong to award the respondent a 12 months' salary compensation as her claim

was not based on unfair termination. She argued that section 36, 39 and 40 of the **Employment and Labour Relations Act** [Cap. 366 R.E. 2019] (the **ELRA**) refer unfair termination. She added that the remedy for unfair termination is compensation for not less than twelve months' salary and that the law does not provide the remedy for breach of contract.

The applicant's advocate argued further that breach of contract may be considered unfair termination only where there exists a reasonable expectation for renewal of contract. To support her contentions, she cited section 36(1) (a) (iii) of the **ELRA** and the decision of the Court of Appeal in **Asanterabi Mkonyi vs TANESCO** (Civil Appeal 53 of 2019) [2022] TZCA 96 (7 March 2022). In the Court of Appeal upheld the decision of this Court in **Mtambua Shamte & 64 Others v. Care Sanitation and Suppliers**, Revision No. 154 of 2010 (unreported) where it was held: that-

"Now, the principles of unfair termination under the Act do not apply to specific tasks or fixed term contracts which come to an end on the specified time or completion of a specified task. Under the latter, such principles apply under conditions specified under section 36 (a) (iii) read together with Rule 4 (4) ... of the Code. Such conditions are said to exist where an employee reasonably

expects a renewal Where such expectation exists; termination of employment must be fair as defined under the whole of section 37 of the Act.

The Court of Appeal observed that-

*"In view of the foregoing, it is our view that the High Court was correct in its holding in this matter, premised on its earlier decision in **Mtambua Shamte** (supra), **that the principles of unfair termination do not apply to a fixed-term contract (or even a special task contract) unless it is established that the employee reasonably expected a renewal of the contract.** (Emphasis added)*

Having found that the employment contract between the parties, was time bound contract and without reasonable evidence that the respondent expected for renewal, breach of it could not amount to unfair termination. The respondent contended that the applicant had orally promised to give her a three years' contract. Unfortunately, there was no evidence to anchor the contention and ground a conclusion that she reasonably expected renewal of her contract.

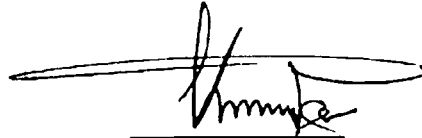
I am of the view that the applicant breached the contract for bringing to an end a fixed time contract after seven months of the respondent's service which was required by law to be 12 months' contract.

The respondent was entitled for compensation equivalent to the remaining period of five months.

In the end, I set aside the award of compensation of 12 months' remuneration and substitute for it compensation of five months' remuneration for implied breach of fixed time contract. The applicant breached the implied statutory term of contract that fixed time contract cannot be for a period of less than 12 months. An employer cannot override statutory term(s) with an express term.

It is ordered accordingly.

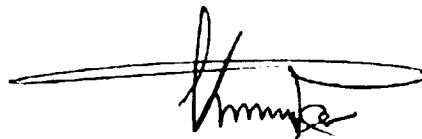
Dated at **Babati** this 9th day **of May**, 2024.



J. R. Kahyoza

Judge

Court: Judgment delivered in the absence of the parties who could not link to the virtual court. B/C Ms. Fatina Haymale (RMA) present.



J. R. Kahyoza

Judge

9/05/2024