

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

REVISION NO. 17 OF 2023

(Arising from Labour Dispute No. CMA/ARS/ARS/222/22/104/22, the Commission for Mediation and Arbitration at Arusha by Hon. U.N. Mpulla, Arbitrator)

BETWEEN

AULERIA SEVERINE KOMBA..... APPLICANT

VERSUS

MOYO MEDICARE LIMITED @

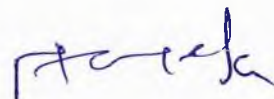
MOYO SPECIALIZED CLINIC..... RESPONDENT

JUDGMENT

29/11/2023 & 26/1/2024

MWASEBA, J.

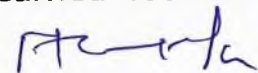
The applicant has filed this application after being dissatisfied with the decision of the Commission for Mediation and Arbitration (CMA) in CMA/ARS/ARS/222/22/104/22 where this court is moved to revise the proceedings and decision of the CMA which gave its award in favour of the respondent on the reason that the applicant's employment was not terminated but it expired by reason of time.



The applicant was employed by the respondent as a Medical Doctor in Dialysis department and outpatient unit from 15/6/2020 for a fixed contract of two years. She worked up to 7/6/2022 when she was served with a letter of termination of her employment showing the respondent's intention of non-renewal of the contract. Aggrieved by the decision of the respondent, the applicant referred the matter to the commission claiming for unfair termination. Thus, she prayed to be awarded payments of 1 month salary (1, 300,000/=), Payments of NSSF for 20 months (5, 200,000/=), payments of Transport and airtime allowance (Tshs. 1, 040,000/=), Severance Pay for 2 years (Tshs. 606,000/=) and Compensation for unfair termination of two years, a total amount of (Tshs. 39,346,000/=). Unfortunately, the award of the CMA was not in her favour.

Being unsatisfied with the award of the CMA, she has filed this application accompanied with the affidavit sworn by herself. From the applicant's affidavit, the main complaint is on evaluation of evidence by the Arbitrator where she alleged that the arbitrator failed to properly evaluate the evidence and hence arrived at an erroneous decision.

On hearing of the application, Mr. Vincent S. Nyange, learned counsel appeared for the applicant whilst Mr. Fredrick I. Lucas, learned counsel



appeared for the respondent. With the leave of the court, the hearing proceeded by way of written submission.

Having gone through the grounds raised by the counsel for the applicant the main issue for determination is whether the award of the Arbitrator was justifiable in law. In determining the raised issue, this court will be governed by the following issues:

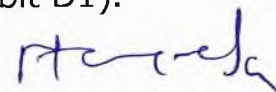
- i. Whether there were valid reasons for the termination of the applicant's employment.*
- ii. Whether the procedures were followed by the respondent.*
- iii. Whether the relief granted was proper.*

Starting with the 1st issue of whether there were valid reasons for the termination of the applicant's employment, the applicant's counsel complained that although the applicant had fixed term contract with the respondent, she had expectation of the renewal of the contract with the respondent that's why a notice of non-renewal of the contract amounted to unfair termination. He submitted further that the act of the respondent to promise the applicant to work with the (ANH) gave her expectation that her contract will be renewed for another term.

On his side, Mr. Fredrick for the respondent argued that since the contract of the employment of the applicant was a fixed term, the

contract by itself is a notice. He submitted further that the allegation that the applicant was terminated on 7/6/2022 is misleading since the respondent did not intend to renew the contract based on the behaviour of the applicant during her time as the employer and they did not have any intention to proceed with their employment relationship. He insisted that the applicant created her own expectation of renewal of contract which arises from the third party instead of the respondent who was her employer. He referred this court to number of cases including the cases of **Ibrahim S/O Mgunga & 3 Others v. African Muslim Agency**, Civil revision No. 476 of 2020 (CAT at Kigoma and **Viettel Tanzania PLC (Halotel) v. Lydia Dominic Massawe**, Revision Application No. 365 of 2022 (HC at Dar es Salaam, (All reported in Tanzlii).

Having revisited the records of this application, it is undisputed fact that the employment of the applicant was for a fixed term contract with no provisions of renewable of the contract at the end of the contract. See Exhibit D1 (Employment Contract). Further to that there was no provisions in their contract that the respondent will be issued with a notice before the expiration of the contract apart from the termination of the contract before the end of the contract as evidenced by paragraph VIII of the employment contract (Exhibit D1).



The same is stipulated at **Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN 42 of 2007** to the effect 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 is mine]

In our present application, Mr. Nyange was of the view that the applicant had expectation that the contract will be renewed following the act of the respondent to promise her that she will be working with another company (African Health Care Network Tanzania Limited (AHN) while still working with him. However, there is no proof submitted that the said promise related with the renewal of the contract between the applicant and the respondent. The law imposes the duty to an employee claiming for reasonable expectation of renewal to demonstrate reasons for such expectation. This is provided under **Rule 4 (5) of GN 42 of 2007** which provides as follows: -

"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, employer's undertakings to renew."



In the matter at hand the basis of the applicant's expectation of renewal arose from the promise of the respondent that he will be working with another Company (ANH) while working with the respondent. Generally, reasonable expectation of renewal of the contract is created by the employer through conduct or statements which gives the employee prospective renewal of such contract. However, the relationship of the applicant and the respondent herein does not provide anything which promised the applicant that there was any renewal of the contract between them. Based on the stated reasons, this court do agree with Hon. Arbitrator that the employment relationship between the applicant and the respondent came to an end when a fixed term contract expired.

Coming to the 2nd issue, Mr. Nyange challenged that the proper procedures for the termination of the applicant was not followed. He submitted so, based on the reasons that the applicant were given a 9 days' notice of termination of the contract which was unreasonable. He argued further that although the reason for termination was the intolerable behaviour of the respondent despite of being called in a disciplinary hearing on 10th November, 2021, the result of the said

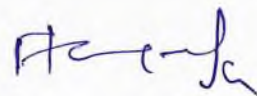


disciplinary hearing was never shared to the applicant, that's why her termination creates a lot of doubts.

On his side, Mr. Lucas replied that as the applicant's employment was a fixed term contract his employment came to an end when the contract expired. Still expressing his dismay, he also challenges the issue of 9 days' notice that it was not the reasons for the respondent's termination, but non-renewal of the contract was also contributed by his behaviour.

After going through the records of the trial commission, and since the 1st issued was answered in affirmative, there was no procedures which was violated by the respondent since the employment contract came to an end at the end of the fixed term contract. As it was well decided by Hon. Arbitrator, even by the absence of the 9 days' notice, the employment could have come to an end automatic.

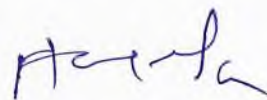
On the last issue as to whether the relief granted was proper, Mr. Nyange complained that it was wrong for the Hon. Arbitrator not to take into consideration the fact that the respondent did not pay to NSSF 20 months contributions of the applicant herein. Further to that he also challenges the act of the Hon. Arbitrator to rule out that since the



applicant's employment was a fixed one, the applicant was not entitled a severance pay.

On the other hand, Mr. Lucas replied that as well argued by Hon. Arbitrator the CMA did not have the jurisdiction to entertain the matter related to Social Security Fund as it has its own way of dealing with it as per **Section 81 (1) of the NSSF Act**. He also referred this court to the case of **Michael Mwinuka and 428 Others v. Tanzania Zambia Railway Authority and 3 Others**, Civil Appeal No. 84 of 2018, CAT at Dar es Salaam (Tanzlii). As for the issue of severance pay, he also supported the argument by the counsel for the applicant that Hon. Arbitrator misled himself by citing **Section 42 (3) of Employment and Labour Relations Act** as the one which exclude a fixed term employer from entitlement of severance pay. He stated that the proper provision was the one submitted by the counsel for the applicant.

Starting with the question of NSSF it is true as submitted by the counsel for the respondent that the CMA has no jurisdiction to determine the same as it is supposed to be dealt with as per **Section 81 (1) of the NSSF Act**. Thus, Hon. Arbitrator was correct by not



determining the same. Coming to the matter of severance pay, **Section 42 (1) and (2)** of Cap 366 R.E 2019 provides that:

"1) For the purposes of this section, "severance pay" means an amount at least equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

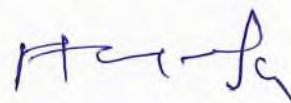
(2) An employer shall pay severance pay on termination of employment if-

(a) the employee has completed 12 months continuous service with an employer;"

Based on the cited provisions, since Hon Arbitrator decided that the applicant's employment come to an end after the expiration of his fixed term, then the applicant was supposed to be given a severance pay as per **Section 42 (2) (a) of the ELRA**. Thus, Hon. Arbitrator's argument that a fixed term employee is not entitled to severance pay is unsubstantiated and against the law.

For that reason, in addition to what was awarded at the Commission, the applicant is also entitled for severance pay at the tune of Tshs. 606,666/=. Hence, the application is partly allowed to the extent explained herein above. No order as to costs.

It is so ordered.



DATED at ARUSHA this 26th day of January, 2024.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R. MWASEBA

JUDGE