

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

REVISION NO. 15 OF 2023

(Originating from Commission for Mediation and Arbitration Application No.
CMA/ARS/ARS/202/22/100/22)

BETWEEN

HAMSON ROBERT MARO..... APPLICANT

VERSUS

MANPOWER SOLUTIONS LIMITED.....RESPONDENT

JUDGMENT

01/11/2023 & 17/01/2024

MWASEBA, J.

The applicant calls upon this court to revise the proceedings and Award delivered by the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/ARS/ARS/202/22/100/22) which dismissed the applicant's complaint for lack of merit.

A short brief of facts giving rise to this labour dispute is as follows; the applicant alleged that; the respondent herein unfairly terminated his employment. He was employed by the respondent on one-year fixed contract from 01/06/2021 up to 30/5/2022 as an Operator. At the end

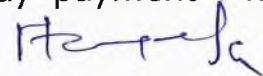


of his contract, he was paid all his entitlement save for notice and leave. The applicant alleged that the respondent did not renew his contract after being absent from work when he was attending his sick child. On his side, the respondent alleged that his contract with the applicant came to an end automatically and he was paid all his entitlements.

Having heard both parties, it was the view of the CMA that the applicant did not persuade the Commission that, he was unfairly terminated on the reason that the contract came to an end automatically and he was paid all his entitlement. Accordingly, the Commission dismissed the complaint for lack of merit. Aggrieved by the CMA Award, the applicant preferred the current application.

When the matter was called on for hearing both the applicant and the respondent appeared in person, unrepresented. With leave of the court the application was disposed of by way of written submissions.

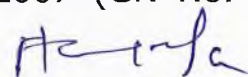
Submitting in support of the application, the applicant complained that the respondent never paid him annual leave payment for all the time he had worked with him since 2016. He stated further that the respondent never paid him holiday payments contrary to what was submitted by the respondent that he had already paid him. He argued further that if the respondent did pay him annual leave and holiday payment why is he



complaining. It was his further submission that the Hon. Arbitrator erred to side with the respondent that he had no claim against him.

The applicant argued further that the respondent did not even give him a one-month notice that he will not renew a contract with him which made him expect a contract will be renewed for another year. More to that, he submitted that the respondent terminated his contract contrary to **Section 40 (1) of the Employment and Labour Relations Act**, Cap 366 R.E 2019. Thus, he prayed for the court to order the respondent to give him a certificate showing all the years he had worked with him, and his entitlements mentioned herein as he was unfairly terminated.

Opposing the application, the respondent supported the award of the CMA. It was his submission that the applicant failed to explain at the CMA he is claiming annual leave of which year while he had already paid him all his entitlements at the tune of Tshs. 2, 016,000/=. As for the claim of unfair termination, the records reveal that the applicant was employed for a fixed-term contract of one year which comes to an end automatically as per **Rule 4 (2) of the Employment and Labour Relation (Code of Good Practice) Rule**, 2007 (GN No. 42/2007).



Therefore, the Hon. Arbitrator was correct for not using **Section 40 (1)** of Cap 366 R.E 2019 as his contract came to an end automatically.

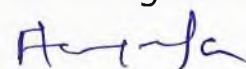
Thus, the respondent submitted that as it was correctly decided by the CMA, the applicant has no genuine claim against the respondent herein. Therefore, the CMA was correct to dismiss his claim for want of merit. He prayed for the application to be dismissed.

In brief rejoinder, the applicant reiterated what had already been submitted in his submission in chief and added that the applicant paid him an extra duty and not annual leave and holiday payments as he prayed in CMA F1.

Having gone through grounds for revision, competing submissions by both parties together with the CMA records, I will now proceed to determine grounds for revision which generally answers three (3) issues.

- i. Whether or not there was valid reason for termination;
- ii. Whether or not fair procedures were followed;
- iii. What reliefs are the parties entitled to.

Starting with the 1st issue, the applicant complained that he was unfairly terminated by the respondent while the respondent submitted that the applicant's contract come to an end automatically. I have gone through



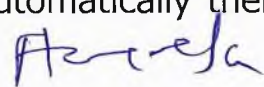
the records of the CMA and noted that the applicant was employed in a fixed term contract of one year from 30/5/2021 up to 30/5/2022. The argument raised by him that he was employed from 2016 does not hold water as he had no proof of the same. Further, when the applicant testified at the CMA, he admitted that "*Ndio nilipatiwa Mkataba wenye ukomo wa muda na uliisha na Ni kweli Mkataba ulifika tamati.*"

Regarding the fixed term contract, **Rule 4 (2) of GN 42 of 2007**, provides that:

"Where the contract is a fixed term contract, shall terminate automatically when the agreed period expires, unless the contract provides otherwise."

Being guided by the cited provision and the admission made by the applicant himself, he was not terminated but the contract came to an end automatically. Further to that, as per exhibit D1 (Mkataba wa Ajira) there is no paragraph indicating that the contract would be renewed for another year. Thus, this court agree with CMA that the contract of the applicant came to an end automatically and he was not unfairly terminated.

Coming to the 2nd issue of whether or not fair procedures were followed, since the applicant's contract came to an end automatically there were

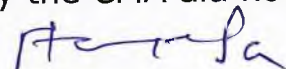


no procedures that were breached by the respondent. Further to that Exhibit D2 proves that the applicant was given prior notice that the respondent has no interest of proceeding with their contract. for that reason, the 2nd issue is also answered in the affirmative.

As for the last issue of relief entitled to the applicant, the applicant complained that the respondent was supposed to give him a certificate of service from 2016 up to 2022 when his contract came to an end. He complained further that he was never paid his annual leave and holiday payment as required by the law. On his side, the respondent submitted that the applicant was paid all his entitlements as per the law at the end of his contract.

Having perused the records of the CMA, this court noted that exhibit D1 (Mkataba wa Ajira) shows that the applicant was employed from 30/5/2021 up to 30/5/2022. The records reveal further that the applicant was given a certificate of service as per exhibit D1. Thus, the argument that he was not given a certificate of service was baseless.

Regarding the claim of notice, annual leave, and holiday payment the applicant claimed a total of Tshs. 5, 400,000/=. This court noted that the respondent was paid Tshs. 2, 016,000/= which includes all his entitlements. The applicant as rightly decided by the CMA did not submit



any proof to prove that he is claiming annual leave of which year and for how many holidays he worked without being paid. Concerning the issue of notice, the same was issued to him as per Exhibit D2 although the contract did not make it mandatory for the notice to be issued at the end of the contract. Therefore, that makes his claim baseless as it stands without any proof. For that reason, this court supports the decision of the CMA that the applicant has no genuine claim against the respondent herein.

In the upshot, the application is found with no merit. The same is dismissed with no order as to costs. The decision of the CMA is left undisturbed.

It is so ordered.

DATED at **ARUSHA** this 17th day of January, 2024.



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

N.R. MWASEBA

JUDGE