IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA SUB-REGISTRY

AT BUKOBA

LABOUR REVISION NO. 14 OF 2023

(Arising from an Award of the Commission for Mediation and Arbitration for Bukoba in Labour Dispute No.CMA/KAG/BUK/42/2022 delivered on 1st September 2023)

NILE BASIN INITIATIVE/NILE EQUATORIAL LAKES

SUBSIDIARY ACTION PROGRAM/NELSAP CU..... 1ST APPLICANT

RUSUMO POWER COMPANY LIMITED..... 2ND APPLICANT

VERSUS

GASPAR DAMAS MASHINGIA..... RESPONDENT

RULING

29/04/2024 & 05/06/2024
E. L. NGIGWANA, J.

The applicants have moved this court under the provisions of sections 91 (1), (a), (b), 2 (b) and (c), 94 (1) (b) (i) of the Employment and Labour Relations Act, [Cap 366 R.E of 2019] ("ELRA"), Rule 24(1), 24 (2) (a), (b), (c), (d), (e) and (f), 24 (3) (a), (b), (c) and (d) and 28 (1) (c), (d), and (e) of the Labour Court Rules GN. No. 106 of 2007 ("The Rules") seeking for this court to call for, examine, and revise the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No.

CMA/KAG/BUK/42/2022 so as to satisfy itself on the correctness, legality, or propriety of the CMA award delivered on 1st September 2023.

The application is supported by an affidavit affirmed by the applicants' Advocate Mr. Sinare Zaharan. The respondent disputed this application through a counter affidavit sworn by his advocate Mr. Projestus Prosper Mulokozi.

At the hearing of this application, the applicants had the legal service of Mr. Sinare Zaharan from Rex Advocates while the respondent had the legal service of Projestus Prosper Mulokozi from Orbit Attorneys, by consent of the parties, the application was ordered to be disposed of by way of written submissions.

The material background facts of the dispute are not difficult to comprehend. The 1st applicant is an organization with a legal persona with its offices located in Kigali in the Republic of Rwanda and her obligations include the preparation process, managing financial resources, and entering into contracts for continued implementation of the Nile Equatorial Lakes Subsidiary Action Program. The relationship between the 1st applicant and 2nd applicant is based on a Project Implementation Support

Agreement through which the 2nd applicant contracted the 1st applicant to support project implementation in the development and construction of the 80MW Hydro-Electric Power Generation Facility at Rusumo. The project is known as The Regional Rusumo Falls Hydroelectric Project (RRFHP), and its overall objective is to increase the supply of electricity to the National grids of Burundi, the Republic of Rwanda, and the United Republic of Tanzania.

In 2018, the respondent, Gaspar Damas Mashingia, was employed by the 1st applicant as a Social Development and Resettlement Officer (SDRO) under a fixed term contract whereas his last fixed term of employment contract ran from 1st July 2021 up to 30th June 2022. The 1st applicant through the letter with reference number NELSAP/IAA/125/2022 dated 13th day of July 2022, informed the respondent that his employment ended up on 30th June 2022.

The respondent was provoked by the said letter therefore, on the 22nd day of July 2022 he lodged a dispute before the CMA against the 1st applicant alleging that he was unfairly terminated, and through a formal application; the 2nd applicant was joined in the dispute as a necessary party. He

claimed the following reliefs: Payment of 36 months' salary (USD 180,612), unpaid part of salary to equal the level of responsibilities similar to fellow colleagues for 26 months (USD 36,400), demobilization allowance of 100% salary for one month, social security pay for 84 months (USD 92,400), DSA works done lump sum(USD 5,000), Repatriation (USD10,500), Leave for each year of service in 7 years (USD 35,119), Subsistence allowance till repatriation lump sum (USD 11,581.99), Gratuity lump sum(USD 20,000), General damages 15 months (USD 75,255), Outstanding allowances during training in Netherlands (USD 2,500), outstanding refund due to retirements lump sum (USD 3,500), severance allowance 7 days for each completed year of service (USD12,611.50), leave days(USD 1,500), to remain with officer Laptop, to add Rusumo power company Ltd as additional as additional employer since they are owners, Training allowance next 15 years (USD 142,500), and clean certificate. The total amount claimed was **USD 633,939.49.**

On the other hand, the 1st applicant disputed the respondent's claims alleging that the respondent's employment contract terminated automatically due to the expiry of his employment contract and that the 1st

applicant followed all procedures as per the provision of the law and therefore; the respondent had no claims against the 1st applicant in a manner alleged or at all while the 2nd applicant disputed to have an employment relationship with the respondent thus cannot be sued by him.

At the CMA, the following issues were framed and agreed upon for determination:-(i) whether the CMA has jurisdiction to entertain the matter (ii) Whether the contract expired automatically or was terminated by the respondents (now applicants) (iii) whether the complainant has locus standi to sue the 2nd respondent without having employment relationship, and (iv) what relief(s) are parties entitled to.

After a thorough hearing of both sides, the CMA resolved the 1st, 2nd, and 3rd issues in the affirmative, and as a result, it awarded the respondent a total sum of **USD 364,023** (equivalent to TZS 910,057,500/= at the exchange rate of 1 USD for TZS. 2500/=), as follows;

(1) Compensation of 12 months remuneration for unfair termination of contract; USD 5,017 x 12= 60,204.

(2) Unpaid part of salary for 26 months, USD 1,400 X 26 = 36,400.

(3) Demobilization allowance; USD 4,460.

(4) One month's salary in lieu of notice; USD 5,017.

(5) Unpaid social security benefits for 84 months @ USD 1100=92,400.

(6) Unpaid leave of 7 years USD 5,017 x 7 = USD 35,119.

(7) Gratuity lump sum, USD 20,000.

(8) DSA (Daily Subsistence Allowance) for work done, USD 5,000.

(9) Annual leave allowance, USD 2,230.

(10) Severance pay for 7 years of continuous service, USD 5,017 x7x 7/26 = USD 9,455.

(11) Repatriation for him and his family from Rusumo-Ngara to Dar es Salaam, USD 10,500.

(12) Transportation of personal effects from Rusumo-Ngara to Dar es Salaam, USD 10,500.

(13) Daily Subsistence expenses between the date of termination and the date of repatriation i.e. from 13/7/2022 till the date of actual payment. At

least up to this 1st September 2023 is about one (1) year and two (2) months hence USD 5,017 x 14=70,238. This claim will continue to accrue on a daily basis depending on further delays. The actual amount will be calculated at the time of final payment.

(14) Outstanding allowance during training in the Netherlands, USD 2,500.

(15)He should be given a Clean Certificate of Service.

Aggrieved by the Award of the MCA, the applicants have approached this court armed with eleven grounds of grievances which were formulated in the following manner;

(a) That, the Hon. Arbitrator erred both in law and fact by holding that the Commission had jurisdiction to adjudicate the labour dispute before it;

(b) That, the Hon. Arbitrator erred both in law and fact by holding that the 1st Applicant is an agent of the 2nd Applicant;

(c) That, the Hon. Arbitrator erred both in law and fact by holding that the Respondent's employment contract with the 1st Applicant was

terminated abruptly, whereas the evidence on record conclusively established that the same expired automatically;

(d) That, the Hon. Arbitrator erred both in law and fact by not considering the evidence of admission by the Respondent on record that his contract of employment with the 1st Applicant expired and he refused to accept the new terms of extension;

(e) That, the Hon. Arbitrator erred both in law and fact by holding that the Respondent had locus standi to sue the 2nd Applicant, without an Employer-Employee relationship between them;

(f) That, the Hon. Arbitrator erred both in law and fact by awarding the sum of ***United States Dollars Three Hundred, Sixty-Four Thousand and Twenty-Three (USD 364,023.00)*** *to the Respondent without any basis considering the employment contract [Exhibit C1] terminated automatically;*

(g) That, the Hon. Arbitrator erred both in law and fact by applying his own conjecture in determining the jurisdiction of the Commission;1.2.8 The Hon. Arbitrator erred both in law and fact by holding that the Respondent's employment contract did not refer to

the Headquarters 'Agreement (Exhibit A-1) in any manner in disregard of Clause 14 in the said employment contract (Exhibit A-2);

(h) That, the Hon. Arbitrator erred both in law and fact by relying on Exhibit C1 to confer jurisdiction to the Commission;

(i) That, the Hon. Arbitrator erred both in law and fact by holding that the Respondent was expelled from instituting a dispute in the jurisdiction of Rwanda for lack of work permit without any proof; and

(j) That, the entire award is erroneous in that the Hon. Arbitrator considered matters beyond what the Respondent pleaded in the CMA Form No.1.

The learned counsel for the applicants abandoned the eighth (8) ground and proceeded to submit on the remaining grounds as follows;

On the **1st, 7th, 9th**, and **10th** grounds which challenge the jurisdiction of the CMA to entertain the matter, the learned counsel submitted that the respondent's duty station location is that of the 1st applicant's offices in Kirehe -Rwanda. He further submitted that Exhibit A-2 (the employment contract) is governed by the laws of the Host country which according to Exhibit A-1 is the Republic of Rwanda. He added that clause 13.5 of the

employment contract, suggests that in case of disputes, the laws of the Host country shall apply in arbitration. He went on to submit that according to the employment contract, the duty station of the respondent should be at 1st applicant's offices in Rwanda, and therefore; the CMA erred in considering Exhibit C-1 a letter from the Labour Inspector of Rwanda.

On the **3rd** and **4th** grounds, the learned counsel submitted that the respondent's contract of employment with the 1st applicant had expired automatically. To support his stance, he referred to exhibits A-2, C-3, and C-2 and cited the case of **Twaha Said Rajab versus Zuberi Bus Services,** Labour Revision No.25 of 2022, HC-Mwanza (unreported).

It was his further submission that there was no evidence tendered by the respondent at CMA proving indicators of continuance of work by him. He cited the case of **Thomas Nkilijiwa versus Kagera Sugar Limited,** Labour Revision No.61 of 2018, HC -Bukoba to point out that there cannot be an automatic renewal if the new contract of less time was received.

On the **2nd** and **5th** grounds, the learned counsel submitted that the 1st applicant is not an agent of the 2nd applicant. To support his stance, he referred to Exhibit B-1 which defines the relationship between 1st and 2nd

applicants, He further cited section 134 of the Law of Contract Act, [CAP 345 RE 2019] and three cases on locus standi; **Ally Ahmed Bauda (Administrator of the Estate of late Amina Hussein senyange) versus Raza Hussei Ladha Damji and others, Civil Application No 525/17 of 2016 (unreported),** and the case of **Lujuna Shubi Balonzi versus Registrar of Chama cha Mapinduzi (1996) TLR 203** and **Gervas Masome kulwa versus The Returning Officer and Another (1996)TLR 320**, and one case on the necessary party to wit; **Abdullatif Mohamed Hamis versus Mehboob Yusuf Osman and Another, Civil Revision No.6 of 2017 (unreported).**

On the **6th** and **11th** grounds, the learned counsel for the applicants submitted that the relief granted by CMA had no legal basis, if the employee had indeed been unjustly terminated, he would have been entitled to compensation equivalent to the duration remaining on his fixed-term contract. He cited the case of **Joakim Mwinuka versus Golden Tulip,** Revision No.268 of 2013 (unreported), as well as subsequent cases that were influenced by this particular case including **Mobisol UK. Limited, versus Stephen Wilson Kangala versus others**, Labour

Revision No.47 of 2022, HC-Arusha (Unreported), and **Moku Security Services Ltd versus Halima Fadhil Swedi and Another,** Revision No.89 of 2019 HC-DSM (unreported).

He further submitted and contested the award given on page 16 of the CMA decision. He concluded his submission by praying to this court to allow the application and proceed to revise the award of the CMA by setting it aside.

In reply to the question of jurisdiction, the learned Counsel for the respondent submitted that jurisdiction of the CMA in Labour cases is provided for under Rule 22 (1) of the Labour Institution (mediation and Arbitration) Rules, 2007 which states that; a dispute shall be mediated or arbitrated by the commission at its office having responsibility for the area in which the cause of action arose unless the Commission direct otherwise.

Mr. Mulokozi further submitted that the termination of Respondent's employment took place at Rusumo-Ngara in Kagera Region, Tanzania, and the word Host Country in Exhibit A2 meant for those Countries under which the Regional Rusumo Falls Hydroelectric Project operates. To Support his stance, he referred to Exhibit C1, which suggests that the respondent had

no work permit in Rwanda therefore he was stationed in Tanzania and not Rwanda.

He further argued that the respondent through Exhibit C proved that the offer was made in Tanzania therefore Exhibit A1 had no connection to the respondent and also had nothing to do with the project the Respondent was working on which is the Rusumo Falls Hydroelectric project.

He further submitted that Rwanda Government had defined the term "Host Country" through Exhibit C1, and noted that Rwanda was a party in Exhibit A1. He cited the case of **Kennedy Mauga Oming'o and Another versus Kenya Kazi Security** [2015] LCCD 193 and **Bulyanhulu Gold Mine Ltd versus Gasto Myovela** [2013] LCCD 13 which it was held that labour disputes have to be instituted at the CMA where the cause of action arose.

On the ground that the respondent's contract automatically ended, the learned Counsel of the respondent submitted that the Employment Contract between 1st applicant and respondent was not terminated automatically because according to Exhibit C2, the termination date was the 13th day of July 2022 meaning; thirteen (13) days after the expiry of the respondent's employment Contract (Exhibit A2), the respondent

continued working as usual after being permitted by the first applicant. He cited rule 4 (3) of the Employment and Labour Relations (Code of Good Practice) Rules 2007 which is to the effect that subject to sub-rule (2), a fixed term may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrant it. He further argued that Exhibit C3 (warning letter from 1st applicant) informed the respondent that the contract would be renewed for three months due to the mistakes he made, something that categorized the said letter as punishment and not an offer letter because it was given 20 days before the date of expiration of respondent's employment contract. According to Mr. Mulokozi, the letter served as a warning letter and punishment as well against rule 3 (1) (c) of the Employment Labor Relations (Code of good practice) GN 42 of 2007. He also submitted that the case of **Thomas Nkilijiwa versus Kagera Sugar** (Supra) is distinguished as in that case, the applicant accepted a month contract contrary to what the respondent did in this case.

On the ground that the 2nd applicant is not a necessary party, the learned counsel submitted that in terms of Clause 3.b of Exhibit B1, the 2nd

respondent agreed with the 1st respondent to grant all assistance as requested to ensure proper administration of the project and that operating costs shall be remunerated from the proceeds of the project fund which is the same fund that finances the position of the respondent. He further submitted that under the circumstances, the 2nd applicant has to be sued as without his authorization, no fund can be withdrawn from the project fund. He pointed out that Clause 13.04 **of Exhibit B1** imposes rights to any **permitted** assigns to benefit from it and the respondent relied on **Exhibit C5** to prove that the 2nd applicant recognized him as his employee and assigned him with duties without the need for authorization from the 1st applicant. He went on to submit that **Exhibit** C5 is explicitly clear that the 2nd applicant assigned duties to the respondent and the Regional Coordinator of the 1st applicant was copied with that letter.

According to Mr. Mulokozi, in line with the evidence on record, it is apparent that the respondent had locus stand to sue the 2nd applicant as a necessary part and has demonstrated his right and interest over the 2nd applicant. He added that the respondent also demonstrated that in the absence of 2nd applicant in the suit, an award cannot be executed.

It was his further submission that the Arbitrator considered all applicable principles of law and since the applicants in their testimony did not refute them, there was no way they could have not been granted. According to him, the Respondent was awarded 12 months' salary which is accurate to the contract that was terminated and other reliefs such as subsistence allowance and repatriation are in accordance with Section 40 (1) (c), 41, 42, 43, and 44 of the Employment and Labour Relations Act. He further submitted that the Applicants did not prove to have paid the respondent with any incidences of termination as enshrined in Exhibit A2 although the Contract of Employment indicates clearly the place of business of the respondent to be Dar es Salaam -Tanzania. He concluded his submission by praying to the court that this application be dismissed and the Arbitrator's award be sustained.

In his rejoinder submission, the counsel for the applicants reiterated his submission in chief in relation to the issue of jurisdiction and added that the respondent's counsel argued that CMA jurisdiction is determined by where the termination occurred, while the CMA ruled that jurisdiction is based on where the contract was signed. According to Mr. Sinare, the two

conflicting positions highlight the need for clarity in interpreting CMA jurisdiction and the Award itself. To reinforce his argument, he cited the case of **Faisal Haroub versus Mohamed Enterprises Tanzania,** High Court (Labour Revision) Revision Application No. 399 of 2023 (unreported) where the court held that,

"Employees should be ready to work at any duty station they are posted by their employer and they have no option to choose duty stations of their own choice unless it was a prerequisite condition prior to entering into a contract that there will be no transfer. Employers have the right to send employees outside of the location prescribed by the employment contract, in order to perform their duties. On that note, the employee is under obligation despite being stationed at different areas of work to institute employment disputes at the area specified in the Contract or headquarters of the Employer".

On the nature of the respondent's employment, he submitted that the 1st Applicant's decision to issue a warning letter with a notification of the end of the employment contract was not abrupt. He added that evidence provided in **Exhibit C-2 and C-3** demonstrates that the 1stApplicant's

offer of a three-month extension was contingent upon the Respondent's demonstrated improvement in behavior, considering previously admitted grave misconducts. Therefore, it would have been unreasonable for the respondent to expect the renewal of the contract on similar terms.

He drew the attention of this court that the Commission cannot compel the employer to reinstate an employee on terms solely favorable to the employee. To support his stance he cited the case of **Sebastian** Jeremiah versus **Kusekwa Memorial Secondary School (Labour Revision No.13 of 2023) [2024] 1TZHC 189 (26 January 2024) (Unreported)** which stated that ".... *to say otherwise, is to force someone to employ you even if he does not wish to work with you upon the expiry of the contractual period. So long as the fixed term contract is concerned, its renewal is not automatic; and the reply to the renewal application is not time framed, the applicant has no good base to challenge it..."*

In response to the joining of the 2nd Applicant, he reiterated his stance that the respondent has failed to provide any evidence indicating that the 1st Applicant is incapable of satisfying the award independently, meaning; there is no proof that the award could not be executed in the absence of

the 2nd Applicant, particularly considering the consistent payment history of the 1st Applicant in fulfilling the respondent's salaries and other benefits since 2015.

He concluded his rejoinder submission by reiterating the prayers he made during submission in chief.

Having carefully gone through the grounds for this application for Revision and submissions by both parties, the issue for determination is whether this application is meritorious.

Grounds number 1st, 7th, 9th, and 10th challenges the jurisdiction of the Commission for Mediation and Arbitration to entertain Labour Dispute No. CMA/KAG/BUK/42/2022. It is trite law that jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests. See **Mwananchi Communications Limited & others versus Joshua K. Kajula and 2 others, Civil Application No. 126/01 of 2016, CAT.** Emphasizing the question of jurisdiction, the erstwhile East African Court of Appeal in the case of **Shyam Thanki and Others versus New Palace Hotel** (1971) EA had this to say;

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

As far as labour disputes are concerned, the Jurisdiction of Commission for Mediation and Arbitration has outlined and stated Rule 22 (1) of the Labour Institutions (Mediation and Arbitration) Rules, 2007. The same provides that;

*"A dispute **shall** be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose **unless the Commission directs otherwise**"*

Similarly, in the case of **Francis Kuringe versus Singita Grumeti Reserve, Rev. No. 37 of (2013) LCCD 1**, the court stressed that;

"It is the established position in law that a dispute shall be mediated or arbitrated by the Commission at its office having responsibility for the area in which the cause of action arose unless the Commission directs otherwise"

There was no dispute that before the respondent's contract of employment came to an end, he was working at Rusumo – Ngara district of Kagera in Tanzania. The applicant's counsel contended that Exhibit A-2 (the respondent's employment contract) contains a clause that grants jurisdiction over disputes to the laws and/or institutions of the host country.

However, upon careful examination of the Exhibit, it is apparent that the same fails to specify the host country. The lack of a clear definition of the "Host country" invites an interpretation granting concurrent jurisdiction to the countries involved in The Regional Rusumo Falls Hydroelectric Project (RRFHP) which includes Tanzania and Rwanda.

Again, after careful examination of Exhibit C-1, which was not contested during admission during the trial at CMA, I found that the same omitted Rwanda from being involved in this matter. Consequently, instructing the Respondent to proceed to pursue the matter in Rwanda, despite being aware of Rwanda's stance as stated in Exhibit C-1, would essentially deprive him of his rights. To that extent, it goes without saying that 1st, 7th, 9th, and 10th challenging the jurisdiction of CMA are devoid of merit.

The third and fourth grounds pertain to the question of whether the respondent was terminated while still under contract or after the contract had automatically terminated.

The counsel for applicants argued that the respondent was given an offer to renew his contract for three months and he turned it down hence when his previous contract expired, it was apparent that the employment contract had automatically terminated. The learned counsel for the respondent cited a case of **Twaha Nkilijiwa versus Kagera sugar** (supra) but it was contested by respondent counsel to be distinguishable as in the cited case, there was acceptance of a month contract.

When addressing the issue of whether the contract expired automatically or was terminated by the applicants the CMA stated clearly that the contract commenced on 01/07/2021 and was to expiry on 30/06/2022 but the respondent continued to be in service until he was notified about the termination of the contract by the letter dated 13/07/2022. On that ground, the CMA ruled that the contract did not expire automatically. The Arbitrator relied on rule 4 (3) of the Employment and Labour Relations (Code of good practice) Rules 2007 which is to the effect that subject to

sub-rule (2), a fixed term **may** be renewed by default if an employee continues to work after the expiry of the fixed term contract and **circumstances warrants it.**

In the case **Asanterabi Mkonyi versus TANESCO**, Civil Appeal No.53 of 2019 CAT, the Court of Appeal when faced with a situation when a fixed-term contract terminates, the Court had this to say;

"We are cognizant that while in terms of rule 4 (2) of the Code a fixed-term contract terminates automatically when the agreed period expires, in line with rule 4 (3) of the Code the contract may be renewed by default if the employee continues for work after the expiry of the agreed term and if circumstances warrant it. Nevertheless, we think that in the instant case, the appellant's undisputed abscondment from work conducted which was inconsistent with the alleged expectation"

Similarly, in the persuasive decisions **Stephen M. Kitheka versus Kevita International Limited (2018) eKLR, Amatsi Water Services Company Limited versus Francis Shire Chachi (2018) eKLR** and **Cleopatra Kama Mugyenyi versus Aidspan (2019) eKLR** it was held that fixed-term contracts cannot be renewed automatically and

that claimants can therefore not claim that they had an automatic legitimate expectation of renewal.

In the matter at hand, the condition in Exhibit A-2 (Employment contract) was coached as follows;

*"The employee **shall** perform the services within a period of 12 months **commencing from 1st July 2021 to 30th June 2022.** This contract **may** be renewed based on satisfactory performance and availability of funds"*

Reading the employment contract (Exhibit A-2), it is apparent that the employment contract between the 1st applicant and the respondent automatically terminated on 30/06/2022. Exhibit C-2 revealed that prior to the expiry of the contract employment, the 1st applicant offered a three (3) months extension but he declined.

In the case of **Jonas Oswady versus Cost Data Consultation Ltd** (Labour Revision 3 of 2020) [2020] TZHC 1781 (12 June 2020) it was held that;

"In case the employer will allow the employee to continue working and the employer assigns the applicant work to do it is renewed by default. In the instant application, the employee was working and he was assigned duties until a month later the employer terminated him without stating any good reason. In my view the same amount to a renewal of contract by default as stipulated under Rules 4(2), (3), and (4) of the Employment and Labor Relations (Code of Good Practice) Rules, 2007, G.N No.42 of 2007 which state that:-

As far as the case at hand is concerned, it was also agreed in exhibit A-2, as follows;

"The employee shall perform the services as specified in Job Descriptions attached, (Annex A) ***which is made an integral part of this contract*** *(the services"*

From the above, it means the respondent's job descriptions which were integral to the employment contract automatically terminated on 30/06/2022. It is the trite position of the law that in civil cases, the one who alleges has to prove his allegation. As the respondent alleged before the CMA that he went on working after the expiry of the contract, it was

his duty to prove by cogent evidence that after the expiry of the employment, the applicants allowed and assigned him the work to do.

Indeed, there is no cogent evidence on record to the effect that after the expiry of the contract; the applicants allowed the respondent to continue working and that the applicants assigned him work to do. It should be noted that legitimate expectation is proved, where termination of employment occurs after an employee is permitted to work beyond the expiration date of a past contract. There is no proof that there was such permission in the case at hand.

Reading Exhibit C2 dated 13th July 2022 and C3 dated 10th June 2022, between lines, I agree with Mr. Sinare that it cannot be said that there renewal of the contract since the respondent declined the extension even before the date of the expiry of the employment contract. In absence of the evidence that after the expiration of the employment contract, the applicants allowed the respondent to continue working and that the applicants really assigned him to work to do before being given the letter on 13/7/2022, it cannot simply be said that because respondent was issued a letter 13 days later after the expiry of the contract it is in itself final and

conclusive proof that there was renewal of the employment contract as alleged by the respondent. I would like to borrow the wisdom of the Court of Appeal in the case of **Hotel Sultan Palace Zanzibar versus Daniel Laizer & Another,** Civil. Appl. No. 104 of 2004 (unreported), regarding employment contracts where it was held that:

"It is elementary that the employer and employee have to be guided by agreed terms governing employment otherwise; it would be a chaotic situation if employees or employers were left to freely do as they like regarding the employment in issue."

Principally, each case has to be considered and determined by its own peculiar facts and circumstances. Considering the circumstances of this case, it is my considered view that the contract of employment automatically terminated on 30/06/2022 thus Rule 4 (3) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007, does fit in the matter at hand.

Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007 is 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 provides otherwise. In the case at hand, Exhibit A-2 (Employment contract) did not provide otherwise.

The complaint in the 2nd and 5th grounds touches the joining 2nd respondent in the suit as a necessary party. In the case of **Juliana Francis Nkwabi versus Lawrent Chimwaga (Civil Appeal No. 531 of 2020) [2021] TZCA 645 (4 November 2021)** it was held that;

"Starting with the first issue, the term necessary part is defined in the Black's Law Dictionary, 8th Edition to mean: "a party who, being closely connected to a lawsuit should be included in the case if feasible, but whose absence will not require dismissal of the proceedings." It is also common ground that, over the years, courts have made a distinction between necessary and non-necessary parties"

After reviewing the evidence provided by the respondent in Trial proceedings pages 27, 28, and 29, I am convinced that the 2nd respondent is a necessary party and meets the criteria outlined in the aforementioned case. The respondent confirmed that he was assigned tasks by the second applicant and further supported his statement by submitting Exhibit C-5.

Additionally, the termination letter was copied to the 2nd applicant, and it is evident that the respondent worked on a project owned by the 2nd applicant.

On the 6th and 7th Grounds, The applicants' counsel raised objections regarding the approach taken by CMA in granting relief to the respondent, asserting that it lacked legal foundation.

Clause 13 of Exhibit A-2 (Employment contract) is about the Termination of the contract. Clause 13.4 (i) of Exhibit A-2 provides that;

"Upon termination or ***expiration*** *of this contract, all rights and obligations of the parties* ***shall cease****, except all such rights as may have accrued on the date of the termination or* ***expiration"***

In the matter at hand, the CMA found that there was unfair termination and thus awarded the respondent a total of USD 364,023. However, this court has found that the contract automatically terminated on 30/06/2022 and that there was no renewal. In the case of **Msambwe Shamte and 64 Others versus Care Sanitation and Supplies,** Revision number 154/2010 page 8, Hon. Rweimamu, J held that:-

*"**Principles of unfair termination under the Act, do not apply** to a specific task or **fixed term contract which came to an end on the specified time** or completion of a specific task, under the letter, such principles apply under conditions specified under section 36(a)(iii) read together with Rule 4 (4) of the code."*

In the upshot, considering the fact this court has found that the employment contract between the 1st applicant and the respondent terminated automatically contrary to the findings of the CMA, and the fact that respondent had not been repatriated to Dar es Salaam and no proof that he had already been paid his gratuity or given transportation of personal effects, and for the interest of justice, I set aside reliefs of the CMA and order the applicants to issue a clean certificate of service to the respondent and pay him as follows;

(a) *Gratuity lump sum USD 20,000.*

(b) *Repatriation for him and his family from Rusumo-Ngara to Dar es Salaam, USD 10,500, and*

(c) *Transportation of personal effects from Rusumo-Ngara to Dar es Salaam, USD 10,500.*

Since this is a labour matter, I make no order as to costs. It is so ordered.

Dated at Bukoba this 5th day of June, 2024.

E. L. NGIGWANA

JUDGE

05/06/2024

Judgment delivered on this 5th day of June 2024 in the presence of Mr. Projestus Prosper Mulokozi learned counsel for the respondent, Mr. Charles Magesa-Principal Officer of the 2nd applicant, Hon. A. A. Madulu-JLA, and Ms. Queen Koba, B/C.

E. L. NGIGWANA

JUDGE

05/06/2024

Court: Right of appeal explained.

E. L. NGIGWANA

JUDGE

05/06/2024