

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION NO. 113 OF 2019

BETWEEN

AZAMA RAJABU MBILANGA..... APPLICANT

VERSUS

SHIELD SECURITY SERVICES LTD..... RESPONDENT

JUDGMENT

Date of Last Order: 24/06/2020

Date of Judgment: 03/07/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] which was delivered on 25/01/2019, the applicant **AZAMA RAJABU MBILINGA** has filed this application under the provisions of Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(c)(d)(e) of the Labour Court Rules GN No. 106 of 2007 and Sections 91(1)(a)(b), (2)(a)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 [herein referred to as ELRA] praying for the Orders that:-

- (i). *That, this Honourable Court be pleased to revise and quash Arbitration proceeding and award issued by Hon. Amos, H. (Arbitrator) in Labour Dispute No. CMA/DSM/TEM/R.214/95/2018 dated 25th day of January, 2019.*
- (ii). *That, the Honourable Court may, having quashed the arbitration proceeding and award, then determine the dispute in the manner it considers appropriate.*
- (iii). *Any other relief that the Honourable Court may deem fit and equitable to grant.*

The brief background of the dispute is that at CMA the hearing proceed ex-parte as the respondent defaulted to enter appearance. In deciding the complaint the Arbitrator found that the applicant's termination was substantively and procedurally unfair and proceeded to grant the applicant the 15 days of her remaining contract as salary compensation.

Aggrieved the applicant who is now faulting the whole decision on mainly three reasons as articulated under paragraph 2 of the supporting affidavit. That;

- a) The arbitrator erred in law for admitting that the applicant was employed for a specific period of time of six months and at the same time she admitted that the applicant went leave for three months.
- b) The arbitrator erred in law and fact for admitting that the applicant never received any salary for a period of three months after the annual leave.
- c) The learned Arbitrator erred in law and fact for awarding notice to the applicant on the ground that the termination was unfair.

The application before this Court was heard ex parte on the ground that the respondent did not file a notice of opposition, counter affidavit or any reply to the applicant's submissions as ordered by the Court on 7th May, 2020.

In support of the application regarding the award, Mr. Hemed Omari the applicant's personal representative submitted that Rule 4(3) of GN No. 42 of 2004 provides for a situation in which a fixed term contract may be renewed after having expired. That Section 37(2) of ELRA provides that termination of employment by an employer is unfair if she/he fails to prove

that there was a valid reason for termination and it was done in accordance with a fair procedure.

Mr. Omari further averred that Section 40 of ELRA provides for the remedies available when the arbitrator finds out that the termination was unfair. That in this matter it is undisputed that the applicant's termination was both substantively and procedurally unfair. Therefore the Hon Arbitrator was duty bound to award what was prayed for by the applicant in CMA F.1 and in accordance with Section 40 of ELRA. To support his submissions he referred this Court to the case **Isaac Sultan v. North Mara Gold Mines Limited** (HC) Consolidated Rev. No 16 and 17 of 2018 at Musoma.

In rejoinder the applicant reiterated his submission in chief, though there was no need for the same as the respondent did not challenge the submissions in chief.

Now what this Court is called upon to determine is:-

- i) Whether Section 37(2) and Section 40 of ELRA are relevant provisions to be applied in a fixed term contract.

ii) Whether the award was properly procured by the Arbitrator?

1. Whether Section 37(2) and Section 40 of ELRA are the relevant provisions to be applied in a fixed term contract.

In reply to this question I am of the view that both Sections are not. The relevant provisions are; Section 36(a) (iii) of the ELRA No. 6/2004 and Rule 4(4) of GN No. 42 of 2007 which provides that:-

"Section 36 (a) Termination of employment includes

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

[Emphasis is mine].

Rule 4(4) of GN No. 42 of 2007 provides that:-

"Rule 4 An employer and employee shall agree to terminate the contract in accordance to agreement.

(4) Subject to sub-rule (3), the 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."

I have gone through the record and noted that the applicant's contract was signed on 20th March, 2016 and ended on 21st March, 2017 as evidenced by Exhibit P-1. This means the contract was for a specific term of one (1) year. Therefore the applicant was not covered by Sections 37 (2) and 40 of ELRA, since she was under a specific term of contract as provided under Section 14(1) (b) of ELRA. Section 14(1)(b) provides that:-

"Section 14(1) A contract with an employee shall be of the following types-

(b) a contract for a specified period of time for professionals and managerial cadre."

In the case of **Mtambua Shamte & 64 others Vs. Care Sanitation and Suppliers**, Rev. No. 154/2010 at Dar es Salaam, the Court held that:-

".....the principles of unfair termination do not apply to specific tasks or fixed term contracts which come to an end on the specified time or completion of a specific task. Under specific tasks or fixed term, the applicable

principles apply under conditions specified under Section 36 (a) (iii) of the Employment and Labour Relations Act, No. 6/2004 read together with Rule 4(4) of GN 42/2007."

2. Was the award properly procured by the Arbitrator?

It is on record that the applicant alleged that she was terminated on 06th March, 2018 as evidenced at page 2 on 1st paragraph of CMA's award and the contract was to come to an end on 21st March, 2018, which means there was a reasonable expectation of renewal as the applicant continued to render her services to the respondent up to 06th March, 2018 when their relationship turned sour. On such basis the last contract came to an end on 21st March, 2017. Therefore the salary which remained unpaid was for the period of 15 days.


It was thus a breach of the employment contract as was held in the cases of **Benda Kasanda Ndassi Vs. Makafuli Motors Ltd**, Rev. No. 25/2011 HC Labour Division DSM (unreported), and **Hotel Sultan Palace Zanzibar vs. Daniel Laizer & Another**, Civil. Appl. No. 104 of 2004, where it was held that:-

"It is elementary that the employer and employee have to be guided by agreed term governing employment. Otherwise, it would be a chaotic state of affairs if employees or employers were left to freely do as they like regarding the employment in issue."

Since the applicant was under a fixed term contract she was entitled to be paid the remaining salary of the said month. This is as evidenced by Exhibit P-1 (employment contract) which also indicates that the applicant was paid a salary of Tshs. 165,000/= per month including other allowances as agreed by both parties. This was so emphasized in the case of **Good Samaritan Vs. Joseph Robert Savari Munthu**, Rev. No. 165/2011 HC Labour Division DSM (unreported) where the Court held that:-

"When an employer terminates a fixed term contract, the loss of salary by employee of the remaining period of the unexpired term is a direct foreseeable and reasonable consequence of the employer's wrongful action...."

In the circumstances, I find nothing to fault the Arbitrator's award. I hereby uphold CMA's award and dismiss the application for want of merit.

S.A.N. Wambura

JUDGE
03/07/2020

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION NO. 113 OF 2019

BETWEEN

AZAMA RAJABU MBILANGA APPLICANT

VERSUS

SHIELD SECURITY SERVICES LTD RESPONDENT

Date: 03/07/2020

Coram: Hon. F.A. Mtarania, Deputy Registrar

Applicant:

For Applicant:

Respondent:

For Respondent:

} Absent all

CC:Lwiza

COURT: Judgment delivered in absence of the parties.


F.A. Mtarania
DEPUTY REGISTRAR
03/07/2020