

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

REVISION NO. 248 OF 2019

BETWEEN

**GIZ DEUSTSCHE GESEUSCHFT FOR
INTERNATIONALE ZUSAMMENABLE (GIZ) GMBH APPLICANT**

VERSUS

VIDA MWASALA RESPONDENT

JUDGMENT

Date of Last Order: 20/05/2019

Date of Judgment: 17/07/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] the applicant **GIZ DEUSTSCHE GESEUSCHFT FOR INTERNATIONALE ZUSAMMENABLE (GIZ) GMBH** has filed this application praying for Orders that:-

- 1. That this Honourable Court be pleased to call for records, revise and set aside the Arbitrator's award 16th day of March, 2018 by*

Hon. Makanyaga, A.A. (Arbitrator) made in Labour Dispute N^o. CMA/DSM/ILA/R.331/16/538 on grounds set forth in the annexed affidavit and on such other grounds which may be adduced on hearing date.

2. That this Honourable Court be pleased to determine the matter in the manner it considers appropriate and give any other relief it considers just to grant.

The application has been supported by a sworn affidavit of one Gwantwa Cheyo who is their Human Resource Manager.

The respondent **VIDA MWASALA** filed a counter affidavit challenging the application.

The matter was disposed of by way of written submissions. I thank both parties for adhering to the schedule and for their submissions.

The brief facts of this matter is that the respondent was employed by the applicants predecessor as of 01/01/2004 on a two (2) years terms of contract which were renewed up to December, 2011. In January 2012 the applicant entered into a two (2) years fixed term contract with the respondent. The contract was to end on 31st December, 2013 as per

Exhibit R2. On 11/12/2013 the said contract was extended to 31/03/2016 as per Exhibit R1. The respondent concedes to have been notified by the applicant that her contract will not be renewed on 18/02/2016. That her complaint was because she had legitimate expectations of her contract being renewed. That though her position was not in the new structure her duties were there in provided for and other employees were employed to handle them. She thus prayed for twenty four (24) months' salary as compensation for unfair termination. CMA found in her favour and awarded her twelve (12) months' salary as compensation. Aggrieved the applicants have now knocked at the doors of this Court.

In support of the application, the applicant submitted that the Arbitrator erred in law and fact:

- (i). By failing to evaluate the evidence adduced by the applicant who proved that the contract of the respondent ended and there was no expectations of renewal.
- (ii). In disregarding all of the applicant's documentary and oral evidence thus reached an erroneous conclusion that there was expectation of

renewal of the contract hence the respondent was unfairly terminated.

- (iii). In holding that Exhibit R6 dated 23/02/2016 was a notice to remind the respondent about the end of her contract but not a notice of non-renewal. Thus holding that the applicant did not issue a notice of non-renewal.
- (iv). In holding that an agreement reached through Exhibit R6 of not renewing the respondent's contract was not enough notification; notice to the respondent that there will be no renewal of the contract.
- (v). In basing her decision on matters not proved by the respondent.
- (vi). In holding the structural change to be invalid. That if there was structural change; the applicant ought to have been retrenched by the respondent.
- (vii). In disregarding the contractual rights of the applicant.

They thus prayed for the revision of the award.

In response, the respondent submitted that:-

- (i). The respondent's contract was extended by the applicant on 11/12/2013 to come to an end on 31/03/2016 as per Exhibit R1.
- (ii). That there were expectations to renew the contract because the respondent was assigned additional duties, had fourteen (14) years of unbroken employment record; had progressive salary increments and excellent performance.
- (iii). Applicant had an obligation of issuing reasons for termination.
- (iv). That the change in the organizational structure was invalid as the respondents responsibilities were still in the new structure and other persons were assigned her duties.
- (v). That the Arbitrator properly evaluated the evidence only that it was the applicant who failed to defend the case by not calling the relevant witness. That Exhibit R6 was not addressed to the respondent and Exhibit R7 was just reminding the respondent when here contract was coming to an end.

Having gone through the record and submissions herein, this Court has the following findings:-

1. There is no dispute that the respondent was employed by the applicant's predecessors organization without interruption on various fixed terms of contracts since 01/01/2004 as per Exhibit R2.
2. There is also no dispute that the last contract of the respondent which was entered to in January, 2012 came to an end on 31/03/2016 as per Exhibit R1.
3. It is on record that on 18/02/2016 the respondent was notified that her contract would not be renewed. The same was put in writing in a letter dated 23/02/2016 and tendered as Exhibit R3. So as of 18/02/2016 the respondent was notified and was aware that her contract would not be renewed. This means the parties had discussions on the same before the respondent was officially so notified on 23/10/2016. Exhibit R6 was merely a reminder to the respondent who already knew that the contract would not be renewed.

It was thus wrong for the Arbitrator to hold that the respondent was not notified of the same.

4. Section 36(a)(iii) of ELRA provides for termination of employment where there is failure to renew a fixed term contract on the same or similar terms if there was reasonable expectation of renewal. This may be considered to be unfair termination as per Rule 4(5) of ELRA Code of Good Conduct. Under sub Rule (5) of the same the respondent was duty bound to prove that there was an objective basis for such expectations. Now just as much as there were previous renewals, it is on record that the applicant in this case had notified the respondent of non-renewal of the same which was due to organizational structure.

The respondent has challenged this reason as though her position was not there her duties were assigned to other employees. The record is silent on the duties of the said employees.

5. It is my observation that the fact that there were former renewals of the respondents contract it was not a justification for the applicant to renew the same. The non-renewal had

been so indicated as of December, 2016 in that before the last contract came to an end it was extended for some twenty seven (27) months and not renewed for two (2) years as normally done. It was sufficient cause to figure out the prospect of the renewal of the said contract.

But again a notice was issued a month before the contract came to an end. Therefore the expectations had to wear out.

So in so long there was no renewal clause in the contract and the respondent was notified of the same, I see no reason to believe that the respondent still had the expectations of renewing her contract which had in actual fact been extended and not renewed.

I would conclude by saying that the contract automatically came to an end on 31/03/2016. The respondent was fully aware of the said fact. It can thus not be said that the respondent had legitimate expectations of renewal of the

contract. The email dated 10/03/2016 is proof that respondent was aware and ready to handover her duties by 31/03/2016.

6. There is no justification of paying the respondent twelve (12) months' salary as compensation; nor one (1) month salary as notice as she was notified of the same on 23/02/2016. The grant of severance pay is also set aside because an employee on a fixed term of contract is not entitled to the same. It can only be paid where there is proof that parties have agreed to it being paid.

The respondent is entitled to the benefits as stipulated in the contract (if any) only.

The application is thus herein granted and the award of CMA is set aside accordingly.

S.A.N. Wambura
JUDGE
17/07/2020

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VERSUS

VIDA MWASALA RESPONDENT

Date: 17/07/2020

Coram: Hon. S.R. Ding'ohi, Deputy Registrar

Applicant:

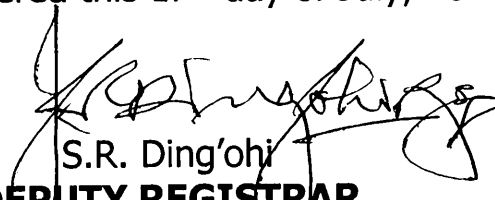
For Applicant: Mr. Elipidius Philemon Advocate for Advocate Godfrey
Ngasa

Respondent:

For Respondent: Mr. Elipidius Philemon Advocate for Advocate Arbogast
Mseke

CC: Lwiza

COURT: Judgment delivered this 17th day of July, 2020.


S.R. Ding'ohi
DEPUTY REGISTRAR
17/07/2020