

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT MOROGORO

REVISION NO. 37 OF 2019

BETWEEN

JORDAN UNIVERSITY COLLEGE APPLICANT

VERSUS

MARK AMBROSE RESPONDENT

JUDGMENT

Date of Last Order: 11/06/2020

Date of Judgment: 19/06/2020

S.A.N. Wambura, J.

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] delivered on 18th April, 2019 the applicant **JORDAN UNIVERSITY COLLEGE** has filed this application under the provisions of Sections 91(1)(a)(b), (2)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 [herein after to be referred to as ELRA] and Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(a)(b)(c)(d)(e) of the Labour Court Rules, GN No. 106 of 2007 praying for the following Orders:-

1. That this Honourable court be pleased to call for records, examine and revise the proceedings, award and orders of the Commission for Mediation and Arbitration in Labour Dispute No. RF/CMA/MOR/134/2016 by Hon. Hillary N.J. Arbitrator, dated 18th April, 2019.

2. That this Honourable Court be pleased to make any other further orders reliefs as it may deem fit and just to be granted.

The application is supported by the sworn affidavit of **IGNAS KIMARYO**, the Applicant's Corporate Counsel.

The respondent **MARK AMBROSE** challenged the application through his counter affidavit.

The background of the dispute in brief is that the respondents was employed by the applicant under a fixed term contract as a Loan officer from 2013 up to 26th July, 2016 when his contract was terminated by the applicant.

Aggrieved by the decision, the respondents referred the matter to CMA. CMA found in his favor. Dissatisfied by the CMA's decision the applicant has now knocked at the doors of this Court.

At the hearing the applicant was represented by Ms. Esther Shoo Advocate whereas the respondent was represented by Mr. Alex Sikalumba Advocate.

Ms. Shoo prayed for the affidavit of **Ignas Kimaryo** to be adopted to form part of her submissions. She argued on two issues to the effect that:-

- (i). Whether it was proper for the Arbitrator to interpret Rule 13(10) of GN 42/2007 as quoted by Judge Rweyemamu in Revision No. 165/2011.

She argued that the cited case was on a breach of contract while the applicant was praying for compensation for unfair termination. They believed that the Hon. Arbitrator erred in law by awarding the applicant things not prayed in CMA Form No. 1.

She stated that the applicant produced the contract of employment whereby Item 5 provides that any party can terminate the contract. Therefore the issue of unfair termination could not be raised.

(ii). As for place of recruitment, she argued that the applicant was recruited from Morogoro but the Arbitrator awarded him repatriation costs as if the applicant was recruited from Iringa they believe that he was not entitled to be paid the same.

They thus prayed for the award to be revised as the applicant was granted reliefs he had not prayed for.

In response Mr. Sikalumba submitted that:-

i) The award of the breach of contract under Rule 13(10) of GN 42/2007 was properly procured following the case decided by Rweyemamu in Rev. 165/2011. In this matter the respondent's contract was prematurely terminated without any reason being adduced as per MKN 2 and the procedures were not adhered to.

He argued that the law requires that the employer should adduce reasons for termination of an employee as provided for under Section 37 of the ELRA.

Again Rule 8(2) (a) and (b) of GN No. 42 of 2007 provides for procedures in terminating the employment of employees who was under a fixed term contract of employment. Both of them are either adhered when the employer breaches the contract of employment or that it has been

agreed so with the employee and employer. Item 5 is not a reason for termination it is only a procedure to terminate employment.

He further argued that compensation of the remaining salaries of the contract was properly awarded including repatriation cost since applicant's personal details and CV prove he was recruited from Iringa.

He thus prayed for the application to be dismissed.

In rejoinder the applicant retaliated what she had submitted earlier.

After considering the parties submissions, Court records as well as relevant applicable laws and practice, I find the key issues for determination in this case to be:-

- 1) Whether there was breach of contract of contract of employment to justify the use of Rev. No. 165/2011.
- 2) The reliefs entitled to parties.

1. Whether there was breach of contract of contract of employment to justify the use of Rev. No. 165/2011.

It is undisputed that there was a fixed term contract of employment between the applicant and the respondent which was to end on 31st August, 2018. However, the respondent was terminated on 28th June, 2016

as evidenced by the letter of termination (Exhibit MKJ-2) and as provided for under Sections 14(1) and 36(a)(iii) of ELRA read together with Rule 4(4) of the Labour Court Rules, 2007.

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."

Therefore I am of the view that the applicant's allegation that the respondent was terminated basing on provision of Clause 5 the contract of employment lacks legal stance since no reason was adduced for the same. Meaning it was 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 **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 employers wrongful action...."

Therefore the arbitrator was right in applying Rev. 165/2011 in this matter since the respondent was on a fixed term contract of employment.

2. What are the reliefs entitled to parties?

Since there was a fixed term agreement between the parties as evidenced by the employment contract (Exhibit MKJ-1) and the contract was to end on 31/08/2018 yet the respondent was unceremoniously terminated on 28/07/2016, it means, they were 25 months of the contract which remained before the expiry of the contract. Therefore, the Arbitrator was right in awarding 25 months' salary for the breach though the same was not prayed for in CMA Form No.1. This was in the interest of justice as the applicant breached the said contract.

I have noted that in all the letters of employment and termination the respondents address was of Morogoro. It was only in a letter dated 29/07/2016 and infact after termination was the letter addressed to the respondent using the address of Iringa.

It was upon the applicant to produce the personal record of the respondent to challenge his place of domicile as per Section 15(1) (b) of ELRA. This was not done. Failure to prove the same means the respondent was entitled to transport allowance as provided for under Section 43 of ELRA.

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

S.A.N. Wambura

JUDGE

19/06/2020