

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

REVISION NO. 375 OF 2019

BETWEEN

KONONDONI MUNICIPAL COUNCIL APPLICANT

VERSUS

MARIA EMMANUEL RUNGWA RESPONDENT

JUDGMENT

Date of Last Order: 07/05/2020

Date of Judgment: 26/06/2020

S.A.N. Wambura, J.

The applicant, **KONONDONI MUNICIPAL COUNCIL** filed the present application under the provision of Sections 91(1)(a), (2)(b)(c) and 94(1)(b) of the Employment and Labour Relations Act, 2004 (Act No. 6 of 2004), 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, 2007 GN No. 106 of 2007 seeking to revise the award of the Commission for Mediation and Arbitration [herein after to be

referred to as CMA] which was delivered on 26/03/2019 in favour of the respondent, **MARIA EMMANUEL RUNGWA.**

The application was supported by the affidavit of Jeremiah Odinga, the applicant's Legal Officer. The respondent, challenged the application through her counter affidavit.

The applicant was represented by Mr. Jeremiah Odinga, applicant's Legal Officer while the respondent was represented by Ms. Janeth Kazimoto, Learned Advocate.

Brief facts leading to the present application are as follows; the respondent was employed by the applicant as an office attendant. The parties had entered into numerous fixed term contracts. The dispute arose after the contract which was entered on 01/04/2016 came to an end on 30/06/2016. Before the contract came to an end the applicant notified the respondent of his intention not to renew the contract on 09/06/2016. The respondent alleged that she had reasonable expectation of renewal of the said contract. She therefore filed a complaint at CMA. CMA decided in her favour by awarding her 33 months salaries remuneration. Aggrieved by the CMA's award the applicant has filed the present application.

With leave of the Court, the matter was disposed of by way of written submission. I thank both parties for their submissions and for adhering to the schedule.

Arguing in support of the application Mr. Odinga submitted on the following legal grounds;

- i. That the respondent was awarded unproved claims of erroneous legitimate expectation of renewal of employment contract as respondent was duly informed of non-renewal of her three months employment contract.*
- ii. That the respondent was erroneously awarded what were not pleaded and prayed in CMA F1 materially contrary with provision of the law.*
- iii. That the Arbitrator erroneously reinstated the respondent indefinitely contrary to the employment contract and prayers in CMA F1.*
- iv. That the Arbitrator erroneously did not realize the respondent had specified time contract of three months for casual works and she (the respondent) was fully aware that it would not be renewed.*
- v. That award is itself problematic for not summarising the evidence of both parties for reaching a sound and just decision.*

Submitting on the first and fourth grounds, Mr. Odinga stated that the respondent was awarded unproved claims of erroneous legitimate expectation of renewal of employment contract. That CMA erred in law and fact to arrive at the said decision as the facts of legitimate expectation were not proved. That the respondent was under a fixed term contract of employment and was duly informed of the termination. That the Arbitrator failed to consider that there was a notice served to the respondent on the intention of not renewing the contract with her.

That the contract with the respondent was automatically terminated after its expiration in accordance with Rule 4(2) of the Employment and Labour Relations (Code of Good Conduct) Rules, GN No. 42 of 2007 (to be referred as GN No. 42 of 2007 in this judgement). That, Rule 4 (5) of GN. 42 of 2007 provides for factors to be considered to establish legitimate expectation of renewal of contract as elaborated in the cases of **Dar es Salaam Babtist Sec. School Vs. Enock Ogala**, Rev. No. 53 of 2009 and the case of **National Oil (T) Limited Vs. Jaffery Dotto Msensemi & 3 others**, HC, DSM Rev. No. 558 of 2016 (unreported). Therefore the Arbitrator's decision was illogical because it was clear that the respondent's

contract was automatically terminated and there was no expectation of renewal.

On the second ground Mr. Odinga submitted that, it is a strict requirement of the law that parties are bound by their pleadings. That in CMA Form No. 1 reliefs sought were notice, unpaid annual leave, compensation for 12 months, severance payment, LAPF, shake hand bonus, overtime and certificate of service. That unfortunately the Arbitrator failed to consider those reliefs and awarded the respondent reinstatement.

As for the third ground Mr. Odinga submitted that, the Arbitrator erred in law by awarding the respondent Tshs. 9,900,000/= as payment for 33 months salaries while knowing that the respondent was under a fixed term contract which legally ended on 30/06/2016. That it was wrong to apply principles of unfair termination to an employee under a fixed term contract. To support his argument he referred to the case of **Mtambua Shamte & 64 Others Vs. Care Sanitation and Suppliers**, HC, DSM Rev. No. 154 of 2010 (unreported).

On the last issue Mr. Odinga submitted that, the award did not summarize the parties evidence to the extent of proving how the

respondent had legitimate expectation of renewal of a fixed term contract of employment. That it rendered the award null and void as it does not meet the cardinal principle of fair justice. Mr. Odinga therefore prayed for CMA's award to be set aside.

Responding to the application Ms. Kazimoto submitted that though the applicant submitted that the contract was for a fixed term but the same was not provided in the agreed terms of the contract. She stated that the respondent had a reasonable expectation of renewal as she worked for the applicant for more than a year.

Ms. Kazimoto further argued that, the applicant terminated the respondent without following proper procedures. That the applicant contravened clause 10.1 and 10.2 of the employment contract.

In regard to the award, she submitted that the Arbitrator awarded the respondent based on the law. That the Arbitrator is not bound by the prayers in CMA Form No. 1. To support her argument she cited the case of **A-One Products and Bottles Ltd Vs. Abdallah Almas & 25 Others**, Rev. No. 201 of 2015 (unreported). She therefore prayed for the application to be dismissed.

Having gone through the parties submissions, Court's records as well as applicable labour laws, I believe the issues for determination in the present application are as follows;

- i. Whether or not the respondent was terminated from employment.**
- ii. Whether the respondent had reasonable expectation of renewal of the said contract.**
- iii. Whether the respondent was properly awarded.**

1. Was the respondent terminated from employment?

The record reveals that parties to this application had entered into numerous fixed terms of contracts, as per Exhibit M.E1. The last contract entered by the parties commenced on 01/04/2016 and came to an end on 30/06/2016, which is the gist of the present application.

In my view when the agreed period of contract expires the employer is not liable to follow the stipulated procedures for termination of employment because the contract itself provides for its termination, which is automatic termination. The same is provided for by the law under Rule 3(2) of GN No. 42 of 2007 which is to the effect that:-

"Rule 3(2) A lawful termination of employment under the common law shall be as follows;

- (a) Termination of employment by agreement;*
 - (b) **Automatic termination;***
 - (c) Termination of employment by the employee; or*
 - (d) Determination of employment by the employee;"*
- [Emphasis is mine].*

It is settled law that, a fixed term contract shall automatically come to an end when the agreed time expires. This is in accordance with Rule 4(2) of GN No. 42 of 2007 which provides that:-

"Rule 4(2) Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise".

On the basis of the above analysis it is my findings that the respondent was not terminated from employment. Her fixed term contract with the applicant came to an end automatically due to the agreed time on 30/06/2016. I have also gone through the terms of the disputed contract

and it is not specifically provided that the contract will be subjected to renewal.

2. Did the respondent have a reasonable expectation of renewal of the contract?

The Arbitrator found that the respondent had a reasonable expectation of renewal of the disputed contract due to the fact that the parties had previously entered into numerous fixed terms of contracts. The law requires an employee claiming for reasonable expectation of renewal of contract to demonstrate basis for such expectation. This is in accordance with Rule 4(5) of GN. No. 42 of 2007 which is to the effect that:-

"Rule 4 (5) Where fixed term contract is not renewed and the employee claims a reasonable expectation of renewal, the employee shall demonstrate that there is an objective basis for the expectation such as previous renewals, employer's undertakings to renew".

From the record, the respondent's basis of reasonable expectation of renewal was on renewal of previous contracts. However on 09/06/2016 the respondent was duly informed that the existing contract shall not be

renewed (Annexure 2). Under the circumstances, I have failed to grasp the respondent's expectation of the said renewal because she was duly notified that the contract would not be renewed.

In her submissions Ms. Kazimoto argued that the applicant did not follow the procedures provided under clause 10 of the parties existing employment contract. The said clause provides as herein quoted:-

"10. UKOMO WA AJIRA

10.1 Mkataba huu unaweza sitishwa na upande wowote kwa kuupatia upande mwingine taarifa ya mwezi mmoja.

10.2 Taarifa itotolewa kwa maandishi kwa muda usiopungua kipindi kilichotajwa kwa kueleza sababu za kusitisha ajira na tarehe ambayo taarifa imetolewa".

The above clause provides for termination of employment where the parties agreed that the party intending to terminate the existing contract shall serve the other party with one months notice as well as stating the reasons for the intended termination.

In my view such a provision does not apply to the circumstances at hand because the applicant's notice to the respondent was not about terminating the existing contract, but rather it was notifying the respondent

that there would not renew the said contract. Hence the applicant was not bound by the condition of issuing a one month's notice.

Basing on the nature of contract the notice served to the respondent of non-renewal of the contract was reasonably served within twenty one (21) days before the said contract came to end. Hence the respondent was aware that there would be no other contract with the applicant. Therefore the respondent has failed to demonstrate on how she reasonably expected the renewal of the same.

3. What are the reliefs entitled to the parties?

The Arbitrator awarded the respondent 33 months' salaries as compensation upon the conclusion that the respondent was unfairly terminated.

As it was proved that the respondent was not terminated from employment, it is my view that the Arbitrator erroneously awarded the respondent. The respondent is not entitled to compensation as she was not terminated.

But again it is on record that the respondent was employed on a fixed term contract of three months. Therefore she is not covered under

Part E of ELRA which provides for unfair termination of employment. This is provided under Section 35 of ELRA which is to the effect that:-

"Section 35 The provision of this sub-part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts."

This was also the position in the case of **Mtambua Shamte & 64 others Vs. Care Sanitation and Suppliers** (supra) at Dar es Salaam, where the Court held that:-

".....Explained 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."

In the result I find that the present application has merit. CMA's award is hereby accordingly revised and set aside.

S.A.N Wambura
JUDGE
26/06/2020

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KINONDONI MUNICIPAL COUNCIL APPLICANT

VERSUS

MARIA EMMANUEL RUNGWA RESPONDENT

Date: 26/06/2020

Coram: Hon. W.S. Ng'humbu, Deputy Registrar

Applicant:

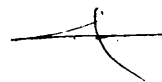
For Applicant: Mr. Jeremiah Odinga - Advocate

Respondent: Present in person

For Respondent:

CC: Lwiza

COURT: Judgment delivered on the 26th June, 2020 in the presence of Mr. Jeremiah Odinga, Learned Counsel for the Applicant and in the presence of the respondent in person is hereby certified true copy of the original.



W.S. Ng'humbu
DEPUTY REGISTRAR
26/06/2020