

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 498 OF 2019**

**BETWEEN**

**ROSAMISTIKA SIWEMA (ADMINISTRATIX  
OF THE ESTATE OF JOSEPH MANDAGO)..... APPLICANT**

**VERSUS**

**ADD INTERNATIONAL TANZANIA .....RESPONDENT**

**JUDGEMENT**

Date of Last Order: 23/07/2020

Date of Judgement: 25/09/2020

**Aboud, J.**

The Applicant filed the present application seeking the Court to revise the award of the Commission for Mediation and Arbitration (herein CMA) which was delivered on 06/01/2017 in Labour Dispute No. CMA/DSM/KIN/R.67/16 by Hon. Mgendwa. M, Arbitrator. The application was made on the following grounds:-

- i. The Arbitrator erred in law and fact in holding that there was no reasonable expectation of renewal of the contract, in regard of the promise to renew the contract contained in the

offer letter which was accepted by the applicant and the fact that the position was still vacant.

- ii. The Arbitrator erred in law for failure to declare the non-renewal of the contract unfair termination, despite the fact that there was an objective reasonable expectation of renewal of the contract.
- iii. The Arbitrator erred in law for failure to declare the non-renewal of the contract unfair termination despite the fact that, the employer did not assign any reason for non-renewal and did not afford an opportunity to the employee to be heard.

The background of the dispute in brief is that, on 02/01/2013 the applicant was offered an employment contract by the respondent at the position of Finance Manager on a fixed term contract of three years. On 15/01/2013 the parties signed an employment contract where the applicant was subjected in probation of six months. On 10/09/2013 the applicant was confirmed in his employment following the expiry of probation period. Upon expiry of the fixed termination contract, the respondent did not renew the applicant employment contract. Dissatisfied by the respondent's decision the applicant referred the dispute at the CMA claiming for unfair termination as he

had reasonable expectation of renewal of the contract. The CMA decided in favour of the respondent. Aggrieved by the CMA's award the applicant filed the present application.

At the hearing of the application both parties were represented by Learned Counsels. Mr. Evans Robson Nzowa appeared for the applicant while Mr. Avitus Rugakingira was for the respondent. The matter was argued by way of written submission.

Arguing in support of the application Mr. Evans Robson Nzowa submitted that, the prior promise to renew the contract on mutual consent in the offer letter (Exhibit P1) by itself created an objective reasonable expectation to renew the contract on the part of the applicant. He stated that if the Arbitrator could have properly consider the import of Exhibit P1 she could have found that, the applicant had reasonable expectation of renewal of his contract of employment considering the fact that the position was still vacant upon his termination.

Mr. Evans Robson Nzowa argued that, according to section 36 (a) (iii) of the Employment and Labour Relations Act, [CAP 266 RE 2019] (herein referred as the Act), failure to renew a fixed term contract on the same or under similar terms if there was reasonable

expectation of renewal is considered as termination of employment as provided under Rule 4 (4) of the Employment and Labour Relations (Code of Good Practice) GN. 42 of 2007 (here forth GN. 42 of 2007).

Mr. Evans Robson Nzowa further submitted that, the Arbitrator erred in law for failure to declare the non-renewal of the applicant employment contract was unfair termination despite the fact that the employer did not assign any reason for non renewal and did not afford an opportunity to the applicant to be heard. He added that the doctrine or concept of reasonable expectation imposes a duty to the employer to act fairly and it is connected with a right to be heard. He said according to Exhibit P1 the parties agreed to renew the contract on mutual consent. He stated that, this creates a right to be given a prior notice of the non renewal and the right to be heard in response to the reason advanced for the non renewal. To buttress his submission he cited the case of **James Gwagilo vs. Attorney General** (1994) TLR 73 HC.

The Learned Counsel strongly submitted that, the non renewal was unfair termination for violating the principles of natural justice, duty to give reasons for action taken and right to be heard before adverse decision is taken. He therefore urged the court to allow the

application and order the applicant to be paid 12 months salaries as compensation for unfair termination.

Responding to the application Mr. Avitus Rugakingira submitted that, the issue of renewal of contract was not automatic but it was subject to mutual consent between the parties as rightly held by the Arbitrator. He stated that, the applicant was supposed to make a request to the respondent to express his interest to continue working with the respondent after the expiry of his contract and, that the two parties would have then discussed and mutually agreed on whether to renew the contract or not. He added that the applicant did not do so.

Mr. Avitus Rugakingira went on to submit that, there is nowhere in the applicant's testimony at the CMA where it was demonstrated that there was an objective basis for the expectation to renew the fixed termination contract as provided under Rule 4 (5) of GN. 42 of 2007. He further stated that there was no evidence that the mutual consent was sought by the applicant. The Learned Counsel added that, there was no need for the respondent to give reasons for non renewal since it was known to the applicant that the contract would come to an end.



In rejoinder Mr. Evans Robson Nzowa reiterated his submission in chief.

Having carefully examined the parties' submissions, and considering CMA's and court records, relevant labour laws and case laws, I find the issues for determination before the Court are whether the applicant was fairly terminated from employment and to what relief are parties entitled.

On the first issue as to whether the applicant was fairly terminated from employment. Unfair termination occurs when an employer fails to prove the circumstances provided under section 37 of the Act. Under Rule 3 (2) of GN. 42 of 2007 the law provides ways in which employment contracts may be terminated. The relevant provision provides as follows:-

**"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 should be noted that, employment contracts are like any other contracts where parties signing it are bound to its terms. This was the position in the case of **Hotel Sultan Palace Zanzibar Vs. Daniel Leizer and another**, Civ. Appl. No. 104 of 2004 (unreported) 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 state of affair if employees or employers were left to freely do as they like regarding the employment in issue".

In the application at hand the parties entered into a fixed term contract of employment from 02/01/2013 to 01/02/2016. The applicant claimed to be terminated from his employment on 04/01/2016. The respondent in his submission strongly disputed that

fact and submitted that the applicant's contract expired upon the agreed term. I have carefully examined the record and it is revealed that indeed the applicant was not terminated from his employment. He served the respondent for the whole agreed period of three years. It is further revealed that when the contract expired the respondent did not renew the terms into another contract.

It is a settled law that, a fixed term contract shall automatically come to an end when the agreed time expires. This is a position in law, to wit under Rule 4 (2) of the Code of Good Practice 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".**

[Emphasis is mine].

In the submission the applicant claimed that, he had reasonable expectation of renewal of the said contract. The position of the law imposes the duty to an employee claiming for reasonable expectation



of renewal to demonstrate reasons for such expectation. This is provided under Rule 4 (5) of GN. 42 of 2007 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 renewal, employer's under takings to renew**".

[Emphasis is mine].

In the matter at hand the applicant's basis of expectation of renewal is in one of the clauses provided under employment offer letter (Exhibit P1) which provides as follows:-

"This is a three year contract which is renewable on mutual consent".

From the discussion above I fully agree with the applicant Counsel's submission that, the clause in the applicant's employment offer letter provided expectation of renewal of the relevant contract. However, such renewal was subject to mutual consent between the parties. The word "mutual" is legally defined to mean dealings and

transaction between two sides or parties creating independent obligations on the other, something done or experienced equally by two parties. Therefore, the agreement to renew the relevant contract was to be done by both the applicant and the respondent. In this application as rightly submitted by the respondent's Counsel there was no any mutual agreement between the parties to renew the contract in question. Under such circumstances it is my view that the applicant's expectation of renewal is not backed up with any legal basis.

The applicant's Counsel contended that the employer should have stated reason for non renewal. It is my view that, when a fixed term contract expires an employer is not obliged to state reasons for his decision not to renew the contract. Imposing liability to state reason for non renewal would undermine the very purpose of having fixed term contracts as is clearly expressed that termination is automatically when the agreed period expires.

The applicant also contended that he had reasonable expectation of renewal of such contract because his position was still vacant. It is my view that the fact that the position was still vacant does not automatically bound the respondent to continue working

with the applicant. As an employer, the respondent had right to choose employees of his own choice who fits the need of his business considering the fact that the applicant's contract of employment expired.

On the basis of the above discussion it is my findings that, the applicant was bound by the terms of his employment contracts. Since the employment contract in question provided that the renewal was subject to mutual agreement by the parties, then it was wrong for the applicant to assume that the contract would be automatically renewed without mutually agreed with the respondent.

The applicant also claimed that the respondent did not follow procedures in terminating him. The position of the law is very clear and stated that, when the agreed fixed 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 procedure which is a lawful automatic termination as discussed above.

I have also noted the applicant's submission on the right to be heard and, it is my view that such submission is irrelevant and irrational because the contract itself terminated automatically.

Therefore, the applicant's reasons would have not change the terms of the agreed contract. I fully agree with the respondent's submission that, the applicant was supposed to notify the respondent of his intention to continue working with him before the expiry of the employment, however, he did not do so. Thus, the applicant cannot claim for unfair termination of employment. The position of the applicant would have been different if his fixed contract was terminated before its expiry due to any reason that he was to be heard as he determined as is provided in law.

Under the circumstances of this application and on the basis of the above discussion, I find no reason to fault the Arbitrator's findings that the applicant did not demonstrate any reasonable expectation of renewal of the contract as he wishes this Court to believe. It is my considered view that, the applicant's contract automatically expired on 01/01/2016 and he was paid all of his dues. Thus, he cannot claim for unfair termination of his employment.

On the last issue as to what reliefs are the parties entitled, I will direct my mind on what the applicant sought at the CMA. It is on record as reflected in CMA F1 the applicant prayed for an order of reinstatement. Basing on the finding that the applicant was not

terminated from employment then he is not entitled to any remedies for unfair termination as stipulated under section 40 (1) (a) (b) (c) of the Act which provide that:-

In the result I find the present application has no merit. The applicant failed to demonstrate reasons for expectation of renewal of the contract in question. Thus, the Arbitrator's award is hereby upheld and the present application is dismissed accordingly.

It is so ordered.



I.D. Aboud

**JUDGE**

25/09/2020