

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LABOUR REVISION NO. 61 OF 2018

(Arising from CMA/BUK/102/2017 of the Commission for Mediation and Arbitration at Bukoba)

THOMAS NKILIJWA.....APPLICANT

VERSUS

KAGERA SUGAR LIMITED.....RESPONDENT

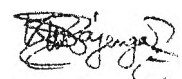
JUDGMENT

Date of last order 30/10/2020

Date of judgment 13/11/2020

Kilekamajenga, J.

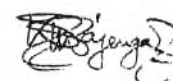
The applicant appeared before this Court challenging the award of the Commission for Mediation and Arbitration (CMA) of Bukoba. The application is made under **section 91(1)(a) and (b), section 91 (2)(b) and section 94(1)(b)(i) of the Employment Labour Relations Act, No. 6 of 2004, Rule 28 (1)(b) (c)(d) and (e) and Rule 24(1)(2)(a)(b)(c)(d) and (f) and (3)(a)(b)(c) and (d) of the Labour Courts Rules, 2007, GN No. 106 of 2007.** The application is accompanied by the affidavit deposed by the applicant. Precisely, the applicant sought for the following order:



1. This Hon. Court be pleased to revise and set aside the award of Commission for Mediation and Arbitration at Bukoba dated the 18th May, 2018 in complaint No. CMA/BUK/102/2017.

The matter was finally scheduled for hearing. The applicant was present in person under the legal representation of the learned advocate, Mr. Joseph Bitakwate whereas the respondent was represented by Mr. Angetire Mwalyaje (Industrial Relations Officer). During the oral submission, Mr. Bitakwate revisited the above information that the application originated from the CMA award of Bukoba in labour dispute number CMA/BUK/102/2017 which was decided on 18th May, 2018. The instant application was made under Section 91 (1) (a) (b), 91 (2) (b), 94 (1) (b) (i) of the Employment and Labour Relations Act, Cap. 366 RE 2019; and Rule 28 (1) (b) (c) (d) (e) and Rule 24 (1) (2) (a) (b) (c) (d) and (f), 24 (3) (a) (b) (c) and (d) of the Labour Court Rules GN No. 106 of 2007. The application is supported by the affidavit of the application (Thomas Nkilijiwa). Mr. Bitakwate prayed for the applicant's affidavit to be adopted to form part of his submission.

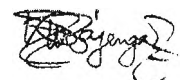
Mr. Bitakwate submitted further that the basis of the application appears on paragraph 5(1)(2)(3)(4) and (5) of the applicant's affidavit. He argued that, according to the evidence adduced before the CMA, the respondent failed to



prove the reasons for termination of the applicant's employment contract. The applicant's contract ended on 31st October and was renewed on 01st November of every year. When the employment contract ended on 31/10/2017, on 01/11/2017, the applicant was given a one month employment contract. The one month contract ended on 31/10/2017. However, the applicant did not know the said one month contract. Before the CMA, the respondent tendered the one month contract which was received as exhibit KLS – 7. Also, the respondent tendered a dispatch book showing that the applicant received the one month contract on 1st November 2017. The copy of dispatch book was admitted as exhibit KSL – 8. He however insisted that exhibit KSL – 8 was forged to fortify the respondent's case.

Mr. Bitakwate stated that the letter terminating the one month employment contract was given to the applicant without any justifiable reasons and therefore renders the termination of employment contract unfair. Because the termination was unfair, the applicant claimed for the following reliefs:

- 1) Under Section 40 (1) (c) of the Employment and Labour Relations Act, the applicant is supposed to be paid compensation which is the applicant's 12 month's salary.



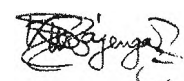
- 2) Under section 43 (1) (a) and (c) of the Employment and Labour Relations Act, the applicant should be repatriated from Kagera Sugar to Bukoba Town.
- 3) The applicant is also entitled to daily substance allowance from the date he was unfairly terminated to the date when he will be repatriated i.e. 30/11/2017 – todate. The daily substance allowance is normally paid to the applicant's wife and two children. The daily substance allowance is Tshs. 23,000/= (per day) as stipulated under the collective bargaining agreement. It is paid under Section 43 (1) (e) of the Employment and Labour Relations Act. He cemented his argument with the case of **Gaspar Peter v. Mtwara Urban Water supply Authority (Mtuwasa), civil Appeal No. 35 of 2017** (unreported).
- 4) The applicant is entitled to severance pay as provided under Section 42 (2) (a) (b) of the Employment and Labour Relations Act.
- 5) The applicant will also be paid other entitlements.

In total, the applicant is entitled to the payment of Tshs. 74,881,766.50/=. Mr. Bitakwate prayed for the application to be allowed.



On the other hand, Mr. Angentire Mwalyaje for the Respondent prayed for the respondent's counter affidavit to be adopted to form part of the submission. He further submitted that termination of the applicant's employment was fair because the applicant's contract of employment ended by lapse of time. The applicant's one year contract of employment ended on 31/10/2017 and the expiry notice was issued. After the expiry of one year contract, the applicant made an informal request alleging that he had reasonable expectation. As the decision could not be made on the day of 31/10/2017, the respondent issued a provisional contract on 01/11/2017 which ended on 30/11/2017. The applicant acknowledged the receipt of the one month provisional contract by signing in the dispatch book. The dispatch book shows that the applicant received the provisional contract and not a clearance form as alleged. The allegation that the applicant received a clearance form on 1st November 2017 instead of the provisional contract is just an afterthought. Mr. Mwalyaje argued that a provisional contract ended due to lapse of time hence there was no reason to state the reasons for termination.

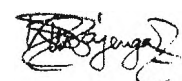
Mr. Mwalyaje stated that the right to repatriation was granted by the CMA on 14/02/2018 and the applicant refused that right. It is the applicant's right to be repatriated to Bukoba and be paid subsistence allowance. However, the



respondent should pay the subsistence allowance from the date of termination to the date when his right was granted but he refused. He fortified his argument with the case of **Gosbert Mutalemwa v. Kagera Sugar Ltd, Labour Revision No. 11 of 2018** (unreported). As the termination was fair, the applicant does not deserve for compensation because the contract of employment came to an end automatically. This position of law was stated in the case of **Joakim Mwamkwa v. Golden Tulip Hotel, Revision No. 268 of 2013**. He also argued that the applicant is not entitled to severance pay because the contract automatically ended. He urged the Court to dismiss the application and uphold the decision of the CMA.

When rejoining, Mr. Bitakwate insisted that the termination of employment was unfair as the applicant was not given the provisional contract on 01/11/2017. He argued that the applicant worked in Nov, 2017 believing that he was working under the one year contract. As the contract was terminated on 30/11/2017 and the respondent failed to state any reason for termination; it therefore amounted to unfair termination of employment contract.

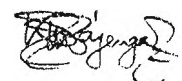
In this case, the Court is invited to revise the award of the Commission for Mediation and Arbitration. One the reasons for revision is to find any irregularity



or illegality in the proceedings and decision of the commission. In the case at hand, the applicant is among many of the employees of the respondent whose employments were terminated in 2017. The applicant's contract of employment commenced on 01st November and ended on 31st October of every year; the contract which gave rise to this dispute was entered on 01st November 2016 and lapsed on 31st October 2017. When the contract of employment lapsed on 31st October 2017, the applicant was issued with a notice informing him that the contract ended. For that reason therefore, as the applicant's contract of employment was a fixed term contract, it came to an end upon its lapse on 31st October 2017. The same contract came to an end in line with **Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007** which provides that:

'Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise.'

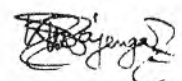
Having the knowledge that the contract ended on 31st October 2017, the applicant did clearance. However, on 1st November 2017, the respondent issued a provision contract of employment for one month to the applicant. The applicant received the provisional contract on the same date by signing in the dispatch book. During the oral submission, the counsel for the applicant (Mr. Bitakwate)



argued that the applicant did not know about the alleged the alleged one month provision contract. He argued further that the dispatch book was forged for the purposes of this case. He believed that, when the applicant continued to work, he was reinstated for the one year contract. From 01st November 2017, the applicant started working for one year under presumptive renewal of the one year contract.

In my view, the counsel for the applicant raised a serious allegation which this Court cannot determine at the appellate stage. The allegation that the dispatch book was forged to show that the applicant received a one month contract would possibly need intervention of other authorities because it is a criminal issue. I however perused the copy of the dispatch book and it seems to show that the applicant was among the persons who received something titled 'provisional employment contract.' The counsel for the applicant never disputed the signature of the applicant which appears in the dispatch book. It seems, the applicant received a document on that day which is believed to be a provisional contract of employment for one month.


For that reason therefore, there was not automatic renewal of the one year contract because the applicant received a one month contract which replaced the

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one year contract. The one month provisional contract also automatically came to an end on 30th November 2017. The same contract also ended in line with the above provisions of the law and therefore the termination was fair. Based on the above analysis, I find the award of the commission correct. What the applicant may be entitled to is the payment of subsistence allowance from the date when the contract ended to the date when the offer was given but he declined. The applicant is also entitled to the certificate of service. He is unfortunately not entitled to the other claimed reliefs. Therefore, the application is partly allowed. No order as to costs. Order accordingly.

Dated at BUKOBA this 13th November 2020.




Ntemi N. Kilekamajenga
Judge
13th November 2020

Court:

Judgment delivered this 13th November 2020 in the presence of the counsel for the respondent, Mr. Richard Mzure also holding brief for advocate Joseph Bitakwate. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga
JUDGE



13th November 2020

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