**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 10 OF 2019**

**BETWEEN**

**RASHID MOHAMED.....APPLICANT**

**AND**

**MENEJA, TANESCO PWANI.....RESPONDENT**

**JUDGMENT**

Date of Last Order: 18/09/2020

Date of Judgment: 30/10/2020

**A. E. MWIPOPO, J**

This Revision application arise from the decision of the Commission for Mediation and Arbitration (CMA) dated 16th February, 2017, in labour dispute no. CMA/PWN/KBH/491/714/2016. The Applicant **RASHID MOHAMED** was aggrieved by the said decision of the Commission for Mediation and Arbitration (CMA) and he filed the present application. The Applicant is praying for the following orders:-

1. That, the Court be pleased to revise and set aside the whole proceeding and award/ruling of the Commision for Mediation and Arbitration in Labour Dispute No. CMA/PWN/KBH/491/714/2016.

2. Any other relief this Court may deem fit, just and equitable to grant.

The application is accompanied by Chamber Summons supported by the applicant's affidavit.

The brief history of the application is that the Applicant was employed by the Respondent for specific task from 1st March, 2012, to May, 2016. During this period, the contract was renewed several times depending on the length of the task. On May, 2016, the Applicant was terminated from employment. The Applicant referred the dispute to the Commission where during mediation the Respondent agreed to pay the Applicant a total of Tshs. 506,000/= being notice of termination and severance pay. The matter proceeded with arbitration and the Commission awarded the Applicant to be paid Tshs. 420,000/= being a notice payment and to be issued with certificate of service. The Applicant was not satisfied with the award and he filed the present application for revision.

In this application, the Applicant represented himself, whereas the Respondent was represented by Ms. Farida Hussein, Advocate. The Court ordered hearing of the Application to proceed by way of written submission.

The Applicant submitted in support of the application that the reason for termination was not fair and that the procedure for termination were not complied. The Applicant was supposed to be paid terminal benefits since the

termination was not fair. The Arbitrator erred to decline the relief prayed in the CMA Form No. 1 while the Applicant worked for the Respondent for 3 years. The fact that the Applicant was working for specific task does not mean that his termination was not supposed to follow the procedures laid by the law and that he is not entitled to terminal benefits as it was held by the Arbitrator. The Respondent failed to prove that the reason for termination is valid and fair and the procedure for termination was fair. The Arbitrator did not take account in the award the period of time which the Applicant worked for the Respondent. The Applicant prayed for the application to be allowed.

In contention, Ms. Farida Sued submitted that the Arbitrator rightfully held that the Applicant was employed for a specific task. And for that reason he could not claim for unfair termination benefits. The evidence adduced by Applicant and Respondent witness namely Nisile Mwakalindile signified that the Applicant was employed on a monthly basis. Under section 35 of the Employment and Labour Relations Act, 2004, the Applicant is not eligible to contest for fairness of termination under section 37 of the Act. Working for longer period of time under one or more contracts does not automatically change the kind of employment relationship from a contract for specific task to a contract of unspecified period of time as it was held in the case of **Group Six International vs. Musa Maulid and Another**, Labour Revision No.

428 of 2015, High Court Labour Division, (unreported). The Applicant was not terminate but his contract came to an end due to expiry of the contract. The Applicant was paid Tshs. 506,000/= as a salary in lieu of notice. Thus, the Arbitrator rightly held that the Applicant is not entitled to terminal benefits. The Respondent prayed for the application to be dismissed.

The Applicant did not file any rejoinder.

From the submission and the evidence available in the record there is no doubt that the Applicant was employed by the Respondent for specific task. The testimony of Nisile Mwakalinga – Respondent's Human Resources Officer shows that the Applicant's contract of employment was specific task and was renewed several times depending on the respective task. The Contracts which were tendered collectively as Exhibit R shows that the contracts were for specific task for one month. The witness tendered record of employment of the Applicant from 2012 to 2016 – Exhibit R2 which shows that in some months the Applicant was not working for the Respondent. The Exhibit R2 shows that for the year 2012 the Applicant worked 8 months and from 2013 to 2015 the Applicant worked for 9 months for each year. This evidence proved that the Applicant's employment contract was not for unspecified period of time. The specific task employment is recognized by our labour laws as one of the valid contracts of employment in our regime.

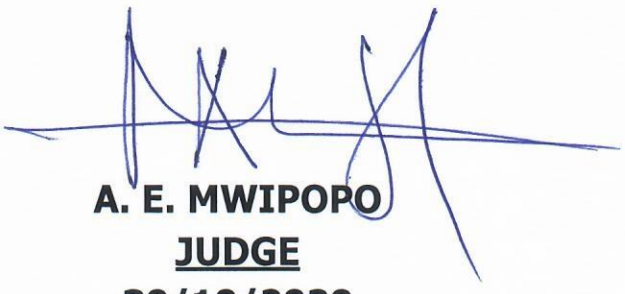
G.N. No. 42 of 2007 provides in Rule 3(4) (a) that the agreed duration of contract shall be applicable where there is an agreement to work for a fixed term in respect of a fixed time or upon completion of a task. In the present matter, the agreement was that the employment was coming to an end after completion of specific task within specific period of time. The fact that the Applicant worked for 3 years under one or more specific task contract does not automatically change the employment relationship from a contract for specific task to a contract of unspecified period of time as it was held in the case of **Group Six International vs. Musa Maulid and Another, (Supra).**

The Applicant alleged that he was unfairly terminated from employment as the termination was supposed to be according to law as per section 37 of the Employment and Labour Relations Act, 2004. The Respondent was of the view that under section 35 of the Act the Applicant being a Specific Task Employee cannot claim for relief under section 37 of the Act. I agree with Respondent submission that employees under specific task for less than 6 months are not covered under the provision for unfair termination. The only time when the principles of unfair termination under the Act appears to apply to specific tasks contract is on conditions specified under section 36 (a) (iii) of the Employment and Labour Relations Act, 2004, read together with rule 4 (4) of the G.N. No. 42 of 2007. The conditions exist where an employee

reasonably expects a renewal of contract then such termination of employment must be proved to be fair according to section 37 of the Act, (see. **Mtambua Shamte & 64 Others vs. Care Sanitation and Suppliers**, Revision No 154 of 2010, High Court Labour Division, at Dar Es Salaam).

The evidence available in record shows that the Applicant was informed by the Respondent that the employment will terminate at the end of contract. As a result there was no expectation of renewal. Further, under rule 4 (1) of G.N. No. 42 of 2007, an employer and employee shall agree to terminate the contract in accordance to agreement. Reading the Contract of employment – Exhibit R1 it state clearly under item 3 that at the end of the contract the employer shall not give notice of termination to the employee. Thus, I agree with the Arbitrator that in specific task contract the principles for unfair termination do not apply. As a result, the Applicant is not entitled to any terminal benefits.

Therefore, I find the Revision Application to be devoid of merits and I hereby dismiss it. The CMA award is upheld. Each party to take care of its own cost of the suit.



**A. E. MWIPOPO**
**JUDGE**
**30/10/2020**