

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT MOROGORO

REVISION NO. 55 OF 2019

BETWEEN

ALLIANCE ONE TOBACCO TANZANIA LIMITED.....APPLICANT

AND

MARIAM BUJO.....RESPONDENT

JUDGMENT

Date of Last Order: 18/05/2021

Date of Judgment: 02/06/2021

A. E. MWIPOPO, J.

The Applicants here in namely **ALLIANCE ONE TOBACCO TANZANIA LIMITED** has filed the present application against the decision of the Commission for Mediation and Arbitration (CMA) in labour dispute no. CMA/MOR/86/2019. The Applicant herein is praying for the orders of the Court in the following terms: -

1. The Honorable Court be pleased to set aside the award of the arbitrator (Hon. Matalis, R.) dated 04th December, 2019 in Dispute no. CMA/MOR/86/2019
2. Cost of this application be provided for;

3. Any other orders(s) or relief the Honorable Court may deem fit and just to grant.

The Application is supported by the Affidavit of Sabatho Musombwa Applicant's Principal Officer. Paragraph 5 of the Affidavit contains one legal issue arising from material facts. The respective legal issue is that the arbitration award was manifestly unreasonable and improperly procured.

The background of the dispute in brief is that; the Respondent namely Mariam Bujo was employed by the Applicant on 2009 for a fixed term contract. The contract was renewed several times upon expiry. The last employment contract commenced on 01/06/2016 and was supposed to end on 30/05/2019. After the contract has expired, on 31/05/2019 the Applicant informed the Respondent that her contract has expired and there will be no renewal of another contract. The Respondent was not happy with the termination and she referred the dispute to the Commission which decided the dispute in her favour. This time the Applicant was not satisfied with the Commission award and he filed the present application for revision.

In this application, both parties were represented. The Applicant was represented by Mr. Shukran E. Mzikila, Advocate, whereas the Respondent was represented by Mr. Emmanuel Zongwe, Personal Representative from the trade union known as TPAWU. The Court ordered for the hearing of the

matter to proceed by way of written submissions following the parties' prayer.

The Applicant's Counsel submitted in support of the application that the renewal of the contract is not absolute factor to conclude that there was an expectation of the renewal of the contract. He stated that in the last contract which started in 01/06/2016 to 30/05/2019 there is no any term (renewal clause) which elaborate that the Applicant may undertake to renew the contract after its expiry. In such circumstance, he is of the view that the intention of the said contract was not subject to renewal. To support his position, he cited the case of **National Oil (T) Limited v. Jaffery Dotto Msensemi & 30Others**, Labour Revision No. 558 of 2016, High Court of Tanzania Labour Division, at Dar Es Salaam (unreported).

The counsel submitted further that party's contract of 01/06/2016 does not guarantee automatic renewal of the contract as claimed by the Respondent and confirmed by the Arbitrator. He stated that the e-mail print out was tendered and admitted at CMA without authentication as required by Electronic Transactions Act. The printout does not show whether the applicant was assigned any duties on 31/05/2019. The same was done upon Respondent's will and it does not amount to the renewal of contract of employment. Therefore, the arbitrator misconceived by holding

that the applicant had mandate to notify the respondent that the contract come to an end.

It was further submitted that a fixed term contract may be renewed by default if an employee continues to work after expiry of fixed term contract according to rule 4(3) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. And its operation is subject to Rule 4(2) of the same G.N. Thus, the contract does not guarantee automatic renewal of the said fixed term contract.

Lastly, the Counsel submitted that it is an established principle of law that in a fixed term contract the employee is only entitled for compensation of the salaries for the remaining period salary of her contract. However, the record reveal that the Applicant had valid reason for terminating Respondent employment and the Respondent was paid all her salaries and dues. As a result, she had nothing to claim. Therefore, the Arbitrator was wrong to award the Respondent shillings 17,6000,665.32 being compensation for unfair termination. The Counsel prayed for the CMA's award to be revised.

In reply, the Respondent Personal Representative submitted that the Respondent proved through evidence adduced before the Commission for Mediation and Arbitration that there were circumstances which made her to expect the renewal of her last contract. This is found in the testimony of

DW1, Exhibit D2, Exhibit P1 and P2. He stated that the records and Exhibits justify expectation of the renewal. The first Respondent contract was made and signed on 03/06/2013 and it expired on 01/06/2016. The second one was renewed on 06/06/2016 while the first contract expired on 31/05/2016. The Respondent was still working between 01/06/2016 up to 06/06/2016 when the new contract was signed. In such circumstances, he is of the view that there was an expectation of renewal of the respondent's employment contract. Therefore, the formalities used by the Applicant in renewing the contracts created reasonable expectation of renewal on the ground of previous renewal and employer's undertaking to renew. This is according to rule 4(5) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007.

The Representative averred that by virtue of Rule 4(3) and 4(5) of G.N. No. 42 of 2007, the Respondent had expectation of renewal by default. To cement his position, he cited the case of **Azama Rajabu Mbilanga v. Shield Security Services Ltd**, Revision No. 113 of 2019. He added that the Arbitrator was right to hold that the Applicant was supposed to issue notice to the respondent showing the intention of not renewing contract as per Clause 15(c) of the Employment Contract.

It was further argued by the Representative that the Applicant's payment of notice and severance allowance as evidenced by Exhibit D1

justify expectation of renewing contract on the reason that Section 42 of the Employment and Labour Relation Act, Cap 366, R.E. 2019, does not allow payment of the same to an employee whose contract has expired or ended by reason of time. He stated that it is undisputed fact that the Respondent on 31/05/2019 was at Applicant's premises and rendered services using Applicant's tools as shown by Exhibit P3 (e-mail printout from Respondent to her supervisor). Therefore, the act of the Applicant to dispute Exhibit P3 - e-mail print out is afterthought as the same was not disputed at CMA.

Lastly, the Personal Representative submitted that the Respondent on 31/05/2019 was at her working place and she rendered services to the Applicant as per Exhibit P3 (e-mail print out). He stated that the Applicant owes duty of proving that the Respondent did not work on 31/05/2019. To support the position he cited the case of **Ultimate Security (T) Limited v. Abubakari Abdallah Mkupaji**, Revision 337 of 2019, High Court Labour Division, at Dar Es Salaam, (Unreported). Then, the Personal Representative prayed for the application to be dismissed.

In rejoinder the applicant reiterated his submission in chief.

After reading the submission from both sides, there are three major issues for determination. The issues are as follows;

- i) Whether there was reasonable expectation of the renewal of Respondent's employment contract.
- ii) If the first issue answered in positive, then whether the termination of Respondent's employment was fair.
- iii) What are the reliefs entitled to parties?

In determination of the first issue as to whether there was reasonable expectation of renewing employment contract, the relevant provisions of the law providing for reasonable expectation of renewal of the fixed term contract is Section 36(a) (iii) of the Employment and Labour Relation Act, Cap366, R.E. 2019. Section 36(a) (iii) of the Act provides that, I quote: -

"36. For purposes of this Sub-Part-

(a) "termination of employment" ' includes-

(i);

(ii);

*(iii) a failure to renew a fixed term contract on the same or similar terms, if there was **reasonable expectation of renewal**;*

(v);"

This section is read together with rule 4(2) and (3) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007. The rule read as follows hereunder:-

"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.

(3) Subject to sub-rule (2), a fixed term contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it."

In this matter at hand, the Applicant averred that Respondent's contract was for a specific time hence it ceased upon expiry of the term of contract. On other hand the Respondent maintained that since he rendered service on 31/05/2019 after the contract has expired and that the previous contract has been renewed several time after she worked for few days there is reasonable expectation of renewal.

I have gone through the record and noted that the Respondent's last contract of employment commenced on 01/06/2016 and it ended on 30/05/2019 as supported by Exhibit P2- Employment contract. This means it was for a specific term for three (3) years. Prior to the last contract, the Applicant and the Respondent signed several fixed term employment contracts which were renewed upon expiry. PW1 testified that these contracts were renewed after she worked for few days after expiry of her previous contract. Further, she testified that after the expiry of the last contract on 30/05/2019 she reported to the office and worked on 31/05/2019 where she was assigned duties by her superior as shown by Exhibit P3 – an e mail to her supervisor. And that around 16:00 hours she was called by Human Resources Manager who informed her that her

contract has expired and she is not supposed to continue with work. She stated that she was not notified that her contract would not be renewed upon expiry as it was in the previous contracts.

From this evidence there is no doubt that the Respondent was employed for a fixed term contract and her last contract expired on 30/05/2019. It is in record that her previous contracts were renewed after she worked for few days after her contract had expired. The Respondent continued to work on 31/05/2019 but she was informed by the Applicant Human Resources Manager that her contract has expired. I'm of the opinion that this evidence prove that the respective employment contract expired and the Applicant had no intention to renew the same as he informed the Respondent on the next day following expiry of the contract that she should not continue to work as her contract has expired. The Respondent view that since her previous contract with the Applicant has been renewed several times then there is reasonable expectation of renewal.

According to rule 4(2) and (3) of the G.N. No. 42 of 2007, the reasonable expectation of renewal arises where the respective contract provides or where an employee continues to work after the expiry of the fixed term contract and circumstances warrants it. I have read the employment contract – Exhibit P2 and it does not provides for the

automatic renewal of the contract. The Respondent Representative alleged that under article 15(c) of the contract the Applicant was supposed to give notice of termination. I have read the contract of employment and the respective article provides for disciplinary actions taken by the employer. It is article 15(d) which provides about discretion of the company to terminate the employee without any notice for misconduct. Thus, there is no provision in the employment contract providing for the duty of the employer to give notice of termination upon expiry of the contract.

Moreover, the evidence available shows that the Respondent continues to work on 31/05/2019 after the expiry of the fixed term contract but the Human Resources Manager informed her to stop working as her contract has expired. It is my opinion that the act of the Applicant to inform the Respondent that her contract has expired and she should not come to work on the first date she went to work after the contract has expired proves that the employer had no intention to renew Respondent employment. For that reason, the circumstances does not warrants renewal by default.

Regarding the allegation that Respondent's previous employment contracts were renewed after she has worked for few days hence there is reasonable expectation, I'm of the opinion that these fixed term contracts entered between the Applicant and Respondent are independent contract.

Each contract was entered after expiry of the previous contract. The fact that the previous contract was renewed upon expiry after the employee has worked for few days from the expiry date does not mean that the following contracts has to be renewed on the same style. Parties to the contract are bound by the terms of the contract. This Court in the case of **Dar Es Salaam Baptist Sec School vs. Enock Ogala, Revision No. 53 of 2009, High Court Labour Division, at Dar Es Salaam, (unreported)**, held that, I quote:-

".....where a contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise or there were no expectation of renewal, the contract would have expired automatically with no need to write a termination letter."

Thus, I'm of the opinion that the Respondent's contract expired automatically and the circumstance does not raise any reasonable expectation of renewal.

Therefore, I find the Revision application has merit and I hereby allow it. The Commission arbitral award is set aside. As the first issue has disposed of the application, there is no need to determine the remaining issue. I give no order as to the cost of the suit.


A. E. MWIPOPO
JUDGE
02/06/2021