

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 216 OF 2020

KAMPALA INTERNATIONAL UNIVERSITY..... APPLICANT

VERSUS

MANJU THOMAS.....RESPONDENT

(From the decision Commission for Mediation & Arbitration of DSM at Ilala)

(William, R: Arbitrator)

Dated 8th May 2020

in

Labour Dispute No. CMA/DSM/ILA/R.2605/17/694

JUDGEMENT

26th & 14th December 2021

Rwizile, J

The applicant, **KAMPALA INTERNATIONAL UNIVERSITY** has filed the present application against the decision of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/DSM/ILA/R.2605/17/694. The same is praying for the orders as in the following: -

1. That this Honourable Court be pleased to revise the proceedings and award of the Commission for Mediation and Arbitration dated 8th May 2020 by Hon. William, Arbitrator on the grounds that the

Commission acted in the said matter with material irregularity and that there is an error material to the merits of the matter.

2. Any other reliefs this Court deems fit and just to grant.

The application is supported by the applicants' affidavit. Paragraph "C" of the affidavit contains one legal issue arising from material facts. The respective legal issue is; *whether the Commission acted in the said matter with material irregularity and that there are errors material to the merits of the matter.*

The background of the dispute in brief is that; the respondent was employed by the applicant on 1st October 2014 as a Head of Department of Pharmacy/Pharmacology under fixed term contract of two years. It was alleged by both parties that the applicant's contract expired, but he worked for some time. Later the applicant decided to terminate the respondent's employment. Aggrieved by the decision, the respondent decided to file the matter at CMA which decided the matter in his favour, hence the present application.

Both parties to the application were represented. The applicant was represented by Mr. Tesha Florence, Advocate, whereas the respondent was represented by Mr. Amini Mshana, Advocate.

Mr. Tesha Florence, advocate for the applicant submitted that upon a finding that the contract had expired, the parties agreed, the applicant is

to pay the respondent the sum of the USA 7,330,000/= upon termination because the same is what had remained under the agreement exhibit A. Basing on such agreement, the respondent was paid, she signed and accepted the same. This means, she had nothing against the applicant. The document was tendered at the trial, but was not considered by the arbitrator. He was of the view that, if the arbitrator could consider the document which show all issues were settled as per exhibit A5, would lead to a different verdict.

The Counsel argued that parties are bound by agreement and have to respect conditions and terms of the same as per exhibit A5. He further stated that another irregularity failed to be considered by the arbitrator in his findings was that parties were in a fixed term contract and there is a requirement to be fulfilled by the part wishing to renew the contract. They had agreed not to extend/renew the same. Supporting his application, he cited the case of **Feza Primary School vs Wahida Kibarabara**: [2014] 1 LCC D34. The applicant prayed for the CMA award to be quashed and set aside.

Disputing the application Mr. Amin submitted that there is nothing that shows, the award was improperly procured by the arbitrator. For the allegation to stand, it has to be proved, it was obtained fraudulently or that there is corruption or dishonesty or it was contrary to public policy.

This can be gathered from **Salu and Co. Ltd vs Cool case services Ltd**, Misc. Commercial Course No. 56 of 2017. The counsel further argued that none of the above has been stated and so section 91(c) of Employment and Labour Relations Act was not proved infringed. Therefore, he added, the submission is not made in accordance with the law. In his view, there is no serious specific challenge to the award. He stated that exhibit A5 an agreement to pay, was not a contract of employment. It did not change or alter the terms of the contract. He was of the view that since there is evidence that the respondent worked for some months after the expiry of the fixed term contract then the same amount to automatic renewal.

It was further submitted that the case of **Shedrack Haruna vs Interchick Co. Ltd**, which was cited by the arbitrator upon examination of evidence was relevant to this dispute.

He went on saying that there was a reasonable expectation of renewal, arise from the long silence of the applicant by allowing respondent to continue in rendering services while the contract had expired. It is his humble submission that application has no merit and the submission has been argued against the law.

In a rejoinder, the counsel argued that there was misconduct in the pleadings which clearly shown irregularities which were found in the award. Therefore, it was his belief that what he has submitted is in line with section 91(2)(c) of ELRA as the award did not consider evidence before it especially exhibits A.5. He prayed, this application to be granted.

Having carefully gone through submissions by the parties and the records and the grounds for revision, the issues for determination is *whether there was automatically renewal of respondent's contract of employment; if yes, was the same breached by the applicant.*

Starting with first issue, regarding automatic renewal. The applicable provision is section 36(a) (iii) of the ELRA No. 6 of 2004 and Rule 4 (3) (4) of G.N No. 42 of 2007 which provides that: -

"section 36

(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".

Rule 4 (3) of the GN 42 of 2007 provides that;

"...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.

Also Rule 4(4) of G.N No. 42 of 2007 provides that: -

"An employer and employee shall agree to terminate the contract in accordance to agreement.

(4) Subject to sub-rule (3), the failure to renew a fixed-term contract in circumstances where the employee reasonably expects a renewal of the contract may be considered to be an unfair termination"

From the wording of the law, termination that falls in the above provisions, is considered unfair. Going by the record and evidence, it is apparent that the respondent was employed by the applicant for a fixed term contract of two years. It was starting from 01.10.2014 and expired on 30.09.2016 as envisaged by the employment contract itself, exhibit D1. But until on 30.05.2017, the respondent was still working. The applicant issued a notice vide a letter that respondents employment contract would not be renewed. Therefore, the respondent had worked for more than 8 months after expiry of his contract. This means the contract was by operation of the law renewed for two years. In the eyes of the cited provisions of the

law, there was automatic renewal of the respondent's employment contract.

Regarding breach of the contract, I am of the view that as the same was supposed to end on 30.9.2018 and applicant decided to terminate the respondent on 30.05.2017, she ought to have followed legal procedures of terminating the same.

Doing otherwise, amounted to unfair termination as per Rule 4(4) of G.N No. 42 of 2007 and contrary to the principle of fair termination as stated under section 37(2) of the ELRA. Therefore, the employment contract was breached. It is enough therefore to hold that there was no fault for the arbitrator to arrive at the similar finding.

Reliefs that parties are entitled should be as stated in the terms of the contract. In the case of **Hotel Sultan Palace Zanzibar vs Daniel Laizer & Another**, Civil. Appl. No. 104 of 2004, 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 affairs if employees or employers were left to freely do as they like regarding the employment in issue."

In my view, the applicant was entitled to be paid the remaining period of the contract, that is unexpired term. This is as evidenced by the employment contract and the notice of intention not renew, which is

exhibit A4. This means the remaining period was fourteen (14) months.

In the case of **Good Samaritan vs Joseph Robert Savari Munthu**, Rev. No. 165 of 2011 HC Labour Division DSM (unreported) where the Court held that: -

"When an employer terminates a fixed term contract, the loss of salary by employee of the remaining period of the unexpired term is a direct foreseeable and reasonable consequence of the employer's wrongful action..."

I consider it to be unfair termination and I award fourteen (14) months as remained period basing on his salary. The application is dismissed, with no order as to costs.




A.K. Rwizile

JUDGE

14.12.2021