IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

REVISION NO. 621 OF 2019

BETWEEN

BOARD OF TRUSTEES OF THE
MEDICAL STORES DEPARTMENT..... APPLICANT

VERSUS

ROBERT NJAU..... RESPONDENT

JUDGEMENT

Date of last order: 21/04/2021
Date of Judgement: 16/07/2021

Aboud, J.

The applicant, filed the present application seeking revision of the decision of the Commission for Mediation and Arbitration (herein CMA) delivered on 19/09/2017 by Hon. Kokusima, H Arbitrator in labour dispute No. CMA/DSM/TEM/66/2015. The application is made under section 91 (1) (a), 91 (2) (b) (c) and section 94 (1) (b) (i) of the Employment and Labour Relations Act [CAP 366 RE 2019] (herein referred as the Act) Rule 24(1) 24 (2) (a) (b) (c) (d) (e) (f) 24 (3) (a) (b) (c) (d) and Rule 28 (1) (c) (d) (e) of the Labour Court Rules GN. No. 106 of 2007 (herein referred as the Labour Court Rules).

The brief background of the dispute is that; the respondent was firstly employed by the applicant on 09/02/2009 as a Warehouse Officer on a three years fixed term contract ended on 09/02/2012. When the said contract expired the parties renewed it on another fixed term contract of three years commencing on 09/02/2012 to 09/02/2015. On 08/12/2014 the applicant informed the respondent through a letter (exhibit RN2) that he has no intention of renewing the contract of employment when it expires on 09/02/2015. The respondent was dissatisfied with the applicant's decision not to renew the contract, where he wrote a letter to him demanding compliance of the Government Circular of 2009 (exhibit RN5). The applicant did not respond to such letter. Aggrieved, the respondent appealed to the Board of Trustee of the applicant through the letter dated 04/02/2015 (exhibit RN7). While waiting for the Board's decision which was delayed, on 06/03/2015 the respondent referred the matter to the CMA claiming for unfair termination. On 05/08/2015 while the matter was already filed at the CMA, the applicant's Board of Trustee confirmed the decision not to renew the respondent's employment contract.

After considering the evidence of both parties the Arbitrator was of the view that, the respondent demonstrated sufficient reasonable expectation of renewal of the contract thus, she rules that it was wrong for the applicant not to renew the contract in issue. Therefore, the Arbitrator ordered the respondent to be reinstated in his employment in accordance with section 40 (1) (a) of the Act. Being resentful with the CMA's award the applicant filed the present application urging the court to determine the following legal issues:-

i. That, the award procured by Hon. Kokusima, H Arbitrator in dispute No. CMA/DSM/TEM/66/2015 was improperly procured for failure to rule out that the respondent's termination fairly conducted.

ii. That, the CMA acted in the exercise of its jurisdiction illegally for awarding reinstatement of the respondent for unfair termination despite sufficient evidence on record that the respondent was fairly terminated.

The matter was argued orally. The applicant was represented by Ms. Aggness Msuya, State Attorney whereas Mr. Anthony Kianga, Learned Counsel was for the respondent.

Arguing in support of the application Ms. Lightness Msuya adopted the applicant's affidavit to form part of her submission. On the first issue it was submitted that, at the CMA DW1 testified that the contract of the respondent was of three years term from 09/02/2009 to 09/02/2012. She submitted that, the witness testified that, the second contract started from 09/02/2012 to 09/02/2015 which was prompted by the respondent by his letter admitted as exhibit D1 at the CMA.

It was submitted that, the respondent demanded that his second term of contract should begin from 09/02/2012 instead of 10/02/2012 to 09/02/2015 and change of his salary. It was argued that, the Arbitrator erred in law by considering that the second term of contract of the respondent was from 10/02/2012 to 09/02/2015. It was stated that, the correct period which the respondent's second contract started was 09/02/2012.

It was further submitted that, the Arbitrator was wrong to decide that the respondent had automatic expectation of renewal of his contract after the second contract ended. It was added that, the Arbitrator wrongly considered clause 3.0 of the respondent 2nd employment contract, and the respondent's supervisor

recommendation in performance appraisal. It was argued that, clause 3.0 of the respondent's 2nd contract required the contract of the employee to be renewed upon satisfactory of the performance of the employee. It was stated that, the satisfactory performance does not base only on performance appraisal but there are other aspects to be considered, for example conduct of the employee etc.

The Learned Counsel went on to submit that, the procedure of conducting performance appraisal of the respondent is governed by Rule 47 to 52 of the Medical Stores Department Staff Regulations, 2011. It was submitted that, the regulations require the supervisor to submit the performance appraisal forms of the employees to the Director General for review according to rule 52 of the relevant Regulations. It was argued that, the Arbitrator was wrong to hold that, recommendation of the supervisor was final to determine one's performance. It was added that, The Director General (DG) or Director of Human Resource (DHR) was the final decider of the performance appraisal of employees and not otherwise.

Moreover, it was submitted that, since the applicant had notified the respondent that he had no intention to renew the contract by the letter dated 08/12/2014 which was three months

before the expiry of the 2nd contract, it means the applicant had no intention to renew the contract in issue. To support her submission the Learned Counsel referred the court to the case of **Rosamistika Siwema (Administratix of the Estate of Joseph Mandago) Vs. Add International Tanzania**, Rev. No. 498 of 2019, HC Lab. Division Dar es Salaam (unreported). It was argued that, at page 9 of the relevant case the court held that employer is not obliged to state the reason for his decision for non-renewal of contract. It was added that, upon serving notice to the respondent by the appointing authority the reason for the non-renewal of his 2nd employment contract was not necessary or required by law to be stated.

As regard to the second ground of revision it was submitted that, the Arbitrator acted in the exercise of its jurisdiction illegally for awarding reinstatement of the respondent for unfair termination despite sufficient evidence on record that he was fairly terminated. It was stated that, it is on record the respondent's 2nd contract expired on 09/02/2015 and no new contract was given to him. She added that, the respondent was also paid all of his terminal benefits. It was further argued that, the respondent was not entitled to be reinstated as awarded by the Arbitrator. To strengthen her submission, the

Learned Counsel referred the Court to the case of **Kinondoni Municipal Council vs. Maria Emmanuel Rungwa**, Rev. No. 375 OF 2019, HC. Lab. Division Dar es Salaam (unreported). Therefore, the Learned Counsel prayed for the CMA's award to be set aside.

Responding to the application Mr. Anthony Kiyangu adopted the respondent's counter affidavit to form part of his submission. He submitted that, this is not a case of mere end of contract, but is a case of failure of employer to renewal a fixed term contract in circumstances where the employee reasonably expects renewal of his contract. It was stated that, the termination was unfair contrary to the Employment and Labour Relations (Code of Good Practice) Rules, GN 42 of 2007 (herein GN. 42 of 2007), Rule 4 (4) and (5). It was submitted that, according to the evidence which was tendered at the CMA, the assessment of the respondent's performance was above average because was given 2 points.

It was contended that, the submission by the applicants' Counsel that the performance appraisal made by the respondent's supervisor was not final is not correct, it was stated that the supervisor appraisal followed the instruction of the Director of Human Resource, as per exhibit RN2. It was added that, the respondent was

appraised highly and instead of being retained at work following the satisfactory performance he received a letter of non-renewal of the 2nd contract.

As regard to the date of the 2nd contract of the respondent it was submitted that, the date was amended from 10/02/2012 to 09/02/2012 as per exhibit MSD1. He therefore prayed for the application to be dismissed for want of merit.

In rejoinder Ms. Lightness reiterated her submission in chief. She added that, final decision of the employee's appraisal was on the hands of the MD and DHR of the applicant as per Rule 52 of their Staff Regulations.

After consideration of parties' submissions, court record, the relevant applicable labour laws and practice, I find the issues for determination in this matter are; whether the respondent had reasonable expectation of renewal of the contract and what reliefs the parties are entitled to.

On the first issue of whether the respondent had reasonable expectation of renewal; it is undisputed fact that in the application at hand the parties entered into two fixed term contracts. The first

contract started from 09/02/2009 and ended on 09/02/2012, the second contract which is the gist of the application at hand started from 09/02/2012 and ceased on 09/02/2015 as reflected in the employment contract (exhibit D2). The respondent strongly claims that, he had reasonable expectation of renewal of the second 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 of the GN No. 42 of 2007 which provides that:-

> *'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'.*

Generally, an employee who claims for reasonable expectation of renewal of the contract he/she should established his reasonable expectation in relation to such contract. This is the requirement under Rule 4 (5) of the GN 42 of 2007. I quote:-

> *'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'.

In the application at hand, the respondent's basis of expectation of renewal is in clause 3.0 of the disputed employment contract which provides as follows:-

'Clause 3.0 - The employee shall serve the Department for a period of Three (3) years commencing from the day of February 9, 2012 to February 9, 2015. The contract shall be renewed predicated to upon satisfactory performance of the employee.'

Reading between lines from the quotation above, it is true that the wording of the relevant clause creates reasonable expectation of renewal of the contract in question when the employee's performance is satisfactory.

The respondent's basis of expectation was also founded from the fact that, his performance was appraised and he was proved to have an average performance as evidenced by the open performance review and appraisal form (exhibit RN3). Under the above analysed circumstances it is my view that, the respondent had reasonable

grounds to expect renewal of the contract in question. However, that would have been the position if the applicant did not serve the respondent with the notice of non-renewal of the contract in dispute. To the contrary the records shows that 08/12/2014 the respondent was served with the notice of non-renewal of the contract (exhibit RN4).

Therefore, it is my view that the respondent's expectation of renewal was nullified by the notice of non-renewal served to him three months before termination of the contract in question. Thus, under the circumstances I find the respondent's expectation were unreasonable and baseless.

I fully agree with the applicant's counsel submission that the employer is not obliged to state reasons for non-renewal. Indeed, that is the correct position which was held by this court in the case of **Rosamistika Siwema** (supra) where it was held that:-

> *'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.'

Thus, on the basis of the foregoing discussion it is my view that, the respondent failed to prove the basis of his reasonable expectation. It is also my observation that, if the Arbitrator would have keenly considered the letter of notice of non-renewal of the contract (exhibit RN4) she would have arrived to a different decision.

On the second issue as to parties relief, it is on record that the Arbitrator awarded the respondent reinstatement, on the basis of the above discussion since it is found that the respondent failed to demonstrate reasonable expectation of the renewal of the contract in issue it is my view, he is not entitled to the remedy awarded by the Arbitrator. The record also reveals that upon termination the respondent was duly paid his terminal benefits as reflected in the letter of terminal benefits (exhibit D4) therefore, he is not entitled to any further claims.

In the result, I find the application has merit. The respondent had no basis of reasonable expectation of renewal of the contract because he was duly served with the notice of non-renewal.

Consequently, the Arbitrator's award is hereby quashed and set aside.

It is so ordered.

I.D. Aboud

JUDGE

16/07/2021