

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

DAR ES SALAAM

REVISION NO. 347 OF 2019

BETWEEN

PAUL JAMES LUTOME 1ST APPLICANT

FIDELIS ABRAHAM KALOLO 2ND APPLICANT

JOHN MDUMA 3RD APPLICANT

HASSANI OMARY MHINA 4TH APPLICANT

VERSUS

BOLLORE TRANSPORT & LOGISTICS TANZANIA LTD RESPONDENT

JUDGEMENT

Date of Last Order: 19/02/2021

Date of Judgement: 05/03/2021

Aboud, J.

The applicants above named, filed the present application seeking revision of the decision of the Commission for Mediation and Arbitration (herein CMA) delivered on 13/08/2018 by Hon. Lukewa, Arbitrator. The application is made under section 91 (1) (a), 94 (1) (b) (i) and section 91 (2) (c) of the Employment and Labour Relations Act [CAP 366 RE 2019] (herein referred as the Act) read together with Rule 24(1) 24 (2) (a) (b) (c) (d) (e) (f) 24 (3) (a) (b) (c) (d) and Rule 28 (1)

(c) of the Labour Court Rules GN. No. 106 of 2007 (herein referred as the Labour Court Rules).

The application originates from the following background; the applicants were employees of the respondent for the period of four (4) consecutive years. Their employment were under fixed term contracts of one year renewable upon its expiry. The last contracts entered by the parties were on November, 2015 and agreed to end on 30/11/2016. The applicants alleged that prior to the expiry of their fixed term contracts on 17/10/2016 they were provided with letters of salary increase following General Salary Review and also encouraged to take the company with the right attitude to the end of 2016 and beyond.

It was alleged that seven days after the increase of their salaries, on 24/10/2016 the applicants were served with the notice of non-renewal of their employment contracts. Being aggrieved with the said notice on the applicants filed a labour dispute at the CMA claiming for unfair dismissal of their employment as they had reasonable expectation of renewal of their contracts. The CMA dismissed the

applicants' application for want of merit. Aggrieved by the CMA's award the applicants filed the present application.

The matter proceeded by way of written submissions. The applicants were represented by Mr. Paschal Temba, Personal Representative whereas the respondent was represented by Mr. Daniel Kalasha, Respondent's Legal Manager. I commend both parties for filing their submission as scheduled.

Arguing in support of the application Mr. Paschal Temba confined the applicants two legal issue as reflected in their affidavit into one legal issue to wit, whether there was reasonable expectation of renewal of the applicants fixed term contracts of employment. He submitted that at the CMA the applicants strongly testified on the presence of reasonable expectation of renewal of their employment contracts which was articulated from their historical backgrounds. It was also submitted that, exhibit SE clearly demonstrates reasonable expectation of renewal of their employment contracts. He argued that if the Arbitrator could have scrutinized the salary increase letters (exhibit SE) and the surrounding circumstances of the applicant's employment, he would have found that the applicants were unfairly terminated by the respondent.

It was further submitted that at page 12 of the award, the Arbitrator dismissed the applicants' claims of reasonable expectation of renewal without stating any reasons thereof. The Personal Representative stated that, it is the rule of law that court's including the CMA has a duty to provide legal reasoning on every fact or evidence which he/she has acted upon or rejected.

Furthermore, it was submitted that, the law on unfair termination on fixed term contracts provides for circumstances creating reasonable expectation of renewal as they are outlined under section 36 (a) (iii) of the Act as well as under Rule 4(4) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007 (herein referred as GN. 42 of 2007). To strengthen his submission Mr. Paschal Temba cited number of cases including the case of **National Oil (T) Ltd. Vs. Jaffery Dotto Msensem & Others**, Lab Rev No. 558 of 2016 HC, DSM.

Mr. Paschal Temba went on to submit that the law clearly articulates that though previous renewals may be a factor creating reasonable expectation of renewal of contract but that is not an absolute factor as there are other factors to be considered including

representations made by the employer or undertakings as the list is not exhaustive. He added that, in the present matter the prevailing circumstances created by the respondent clearly and unambiguously warrants that the applicants had reasonable expectation of renewals of their employment contracts.

It was further submitted that the applicants were able to demonstrate and provide proof at the CMA that through exhibit SE and their previous renewals the respondent created reasonable expectation of renewal. He added that the words on exhibit SE sufficiently discloses and created impression with expectation that the applicant's contracts will be renewed after their expiry on 30/11/2016. The Personal Representative argued that the Arbitrator ought to ask how the word End of 2016 and beyond implies in exhibit SE. He therefore prayed for the CMA's award to be quashed and grant the relief which has been founded on Voluntary Agreement (Exhibit VA) at paragraph 21.5.0.

Responding to the application the respondent's Legal Manager submitted that, the applicants had fixed term contracts and not renewable as claimed as evidenced by letters of employment contract Exhibit C1, C2, C3, C4, C5 and C6. He stated that the applicants

contended that they had reasonable expectation of renewal however there is no any evidence to prove such fact.

It was further submitted that, the applicants contended that exhibit SE demonstrates reasonable expectation of renewal however that single fact of salary increment does not create expectations of renewal. He added that, it was the general salary review for 2016 for all employees including the applicants herein and such policy is well stipulated in the Collective bargaining agreement at paragraph 6.1.0 which was tendered and marked as Exhibit VA.

It was also submitted that, the trial Arbitrator properly adjudicated the complaints per the requirement of the law as evidenced from page 10 to 12 of the contested award. As to the cases referred by the applicants' Representative it was submitted that they are all distinguishable to the circumstances at hand. Regarding the issue of Voluntary agreement raised by the applicants he stated that such issue was properly addressed by the Arbitrator at page 13 paragraphs 3 and 4 of the award. He added that the applicants referred the complaint at the CMA claiming for unfair termination and not

implementation of Voluntary Agreement as prayed in this Court. He therefore prayed for the application to be dismissed.

Having considered parties submissions, court records as well as relevant applicable labour laws and practice with eyes of caution, I find the key issue for determination is whether the applicants had reasonable expectation of renewal of their contracts.

In this application it is undisputed fact that the employment of the applicants was for a fixed term contracts renewable upon its expiry. However, the last contracts entered by the parties started from November, 2015 and ended on 30/11/2016 were not renewed. The Court notes that, before the expiry of their contracts in issue on 24/10/2016 the applicants were served with the notice of non-renewal of their contracts.

It is a settled law that, a fixed term contract shall automatically come to an end when the agreed time expires. This is the position of the law provided under Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN 42 of 2007 (herein GN 42 of

2007) which is to the effect that: -

*"Rule 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**".*

[Emphasis is mine]

The applicants are strongly contending that they had reasonable expectation of renewal of their contracts. The law imposes the duty to an employee claiming for reasonable expectation of renewal to demonstrate reasons for such expectation. This is provided under Rule 4 (5) of GN 42 of 2007 which provides as follows: -

"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 matter at hand the basis of the applicants expectation of renewal arose from the salary increase letter served to them on 17/10/2016 of which I find its important to reproduce in its extenso: -



IMARA MOHAMED KHANGANE(010852)
CLERK-WAREHOUSE
WAREHOUSE DEPARTMENT

17th October, 2016

Dear IMARA MOHAMED,

RE: 2016 SALARY INCREASE

This is to inform you that in the General Salary Review for 2016, your basic salary has been adjusted and effective 1 January, 2016, your salary is as below:

Basic Salary	718,306.38
Housing	220,000.00
Transport	55,200.00
Gross	993,506.38

You will be paid your arrears in the month of October, 2016, which will be subject to all statutory deductions.

Also note that your performance will continue to be measured through the Bollore Performance Management System and existing performance tools.

It should also be noted that 2016 has been a tough year and business has been quite challenging due to major changes, competitiveness and constraints in the market. With this in mind we hope that you as part of the Tanzania Team will embrace the right attitude to take the Company to End of 2016 and beyond.

Sincerely,

FOR BOLLORE TRANSPORT AND LOGISTICS TANZANIA LIMITED

Régis Tissier
MANAGING DIRECTOR

BOLLORE TRANSPORT AND LOGISTICS TANZANIA LIMITED
P.O. Box 40000, Dar es Salaam, TANZANIA
Tanzania Tel: 222 400 0000 / 0000000000 / 0000000000
E-mail: info@bollorelogistics.com / hr@bollorelogistics.com
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BOLLORE LOGISTICS

The applicant's personal representative argued that, the fact that the applicants were urged to to take the Company to end of 2016 and beyond it created an impression that their employment contracts would be renewed after their expiry on 2016.

Generally reasonable expectation of renewal of the contract is created by the employer through conduct or statements which gives the employee prospective renewal of such contract. In my view in this application the fact that the applicants were urged to take the Company to the end of 2016 and beyond created an intuition that their contracts will be renewed to another term considering the fact that their contracts were to end on 2016 and not beyond that. However, that would have been the position if the applicants were not served with the notice of non-renewal of their employment contracts. To the contrary the record reveals that seven days after they were served with the letter of increase of salary, they were also served with the notice of non-renewal of their employment contracts on 24/10/2016.

Therefore, if the respondent created any expectation of renewal to the applicants those expectations were rebutted by the notice of non-renewal. Thus, I find no justifiable reasons for the applicants to rely on the letter of increase of salary to establish their expectation of renewal of their employment contracts while the employer had made it clear through the notice served to them in accordance to exhibit K2 which clearly expressed that, their contracts will not be renewed to

another term. I reproduce one of the letter served to the applicants which has similar content except the names for easy of reference:-

Imara Khangane
BOLLORE LOGISTICS

Imara Mohamed Khangane (10852)
P.O. Box 1683,
Dar es Salaam

24th October 2016

Tel: 255 22 2401016
Fax: 255 22 2401025
E mail : info.tanzania@bollore.com

Re : HR/EC/010/2016

RE: END OF YOUR EMPLOYMENT CONTRACT

This has further reference to our letter with reference HR/GU/VAW/009/2015 dated 27th October, 2015 in which your employment contract was renewed for one year.

Please be advised that the company will not renew your contract when it expires on 30th November 2016.

You will be paid the following terminal benefits -

1. Cash in lieu of leave (if any)
2. Salary for the days worked up to 30th November 2016

Please note that the amount mentioned above is in full and final settlement of your dues from the company.

You are required to handover your duties to your Head of Department and return any Company's property under your possession including identity card to the Human Resources Department.

Your NSSF contributions due to you will be paid as per the Fund's regulation.

Yours sincerely,

BOLLORE TRANSPORT & LOGISTICS TANZANIA LIMITED

Regis Tissier
MANAGING DIRECTOR

Imara Khangane do hereby confirm my understanding and acceptance of the contents of this letter

Signature:.....

Date: 01/11/2016

As discussed above fixed term contracts come to an end when the agreed term expires. The number of years the fixed term contract was renewed does not automatically change the status of such contract into a permanent one. This is also the position in the case of **National Oil (T) Ltd** (supra) where it was held that: -

"I must say the question of previous renewal of employment contract is not an absolute factor for an employee to create a reasonable expectation, reasonable expectation is only created where the contract of employment explicit elaborate the intention of the employer to renew a fixed term contract when it comes to an end."

On the basis of the above discussion, the Court finds that, the applicants were duly informed about non-renewal of their contracts one month before they expired as rightly decided by the Arbitrator. Thus, I have no reason to fault the Arbitrator's findings that applicants did not demonstrate any reasonable expectation of renewal of their contracts as claimed before this Court.

In the result I conclude that, the present application has no merit because the applicants failed to demonstrate reasons for expectation

of renewal of the contracts in question. Thus, the Arbitrator's award is hereby upheld and the present application is dismissed accordingly.

It is so ordered.

A handwritten signature in blue ink, consisting of several loops and a horizontal line across the middle.

I.D. Aboud, J.

JUDGE

05/03/2021