IN THE HIGH COURT OF TANZANIA

LABOUR DIVISON

AT DAR ES SALAAM

REVISSION APPLICATION NO. 229 OF 2020

BETWEEN

MUSA K. MSANGI ..... 1ST APPLICANT

JIMMY S. MALUMBO.....2ND APPLICANT

AND

LAKE CEMENT LTD.....RESPONDENT

JUDGMENT

Date of last order:25/11/2021
Date of judgment: 30/11/2021

B.E.K. Mganga, J

On 3rd February 2014 applicants entered into one-year fixed term contract of employment with the respondent renewable. On 3rd August 2017 applicants entered into another two years fixed contract with the respondent ending on 2nd August 2019. On 2nd August 2019 the respondent served applicants with a notice of non-renewal of contract. Aggrieved with the said non-renewal of contract, on 20th August 2019 applicants referred Labour Dispute No. CMA/DSM/TEM/269/19 at CMA claiming that termination of their contracts were unfair both substantively and procedurally hence claiming to be paid one month

salary in lieu of notice, severance pay, transportation allowance to the place of recruitment, substance allowance between the date of termination of contract and the date of their transportation with their families, not less than 12 months' salary compensation and annual leave. On 14th May 2020, Kokusiima, L. arbitrator, issued an award in favor of the respondent that there was no unfair termination as the contract came to an end automatically.

Aggrieved with the award, applicant filed this revision application seeking the court to revise the said award. The notice of application is supported by the joint affidavit of the applicants. In the joint affidavit, applicants raised 5 grounds of revision namely:-

1. *That the Honorable Arbitrator was wrong to oversight the fact that applicants were terminated without being given reasons for non-renewal of their contracts despite their expectations of renewal.*
2. *That the Honorable Arbitrator was wrong for failure to nullify the decision of the respondent to terminate contracts of the applicants.*
3. *That the Honorable Arbitrator erred in law and fact by failure to analyze documentary evidence tendered.*
4. *That the Honorable Arbitrator erred in law and fact by failure to order compensation to the applicants based on the law and collective bargain agreement with the respondent.*

Respondent filed the counter affidavit of Amina Hamadi Siwa, the Human Resources Officer, to oppose the application. In the said counter affidavit, the deponent deponed that applicants were employed at a

fixed term contract of two years that expired automatically and that applicants were issued with non-renewal of contract letters.

In their written submissions, applicants argued that they entered into a wrong fixed term contract from the beginning as they have only on job training and experience, and that they are not qualifying to be professionals and in managerial cadre. Applicants submitted that they have worked for five years and that they had reasonable expectation for renewal of the contract, and that failure to renew, amounted to unfair termination. Applicants criticized the arbitrator for failure to hold that the respondent did not give reasons for non-renewal of their fixed contract of employment. They cited the case of ***Good Samaritan v. Joseph Robert Savari Munthu,*** Revision No. 165 of 2011 to stress the position that whether it is permanent or fixed term contract, an employee has to be informed the reason for termination. Arbitrator is further criticized for failure to nullify the respondent's decision to terminate employment contracts of the applicants. Applicants argued that fixed terms contracts, in terms of section 14(1)(d) of the Employment and Labour Relations Act [cap. 366 R.E. 2019], are for professionals and managerial cadres, and they does not belong in that category.

Applicants submitted that, the notice of non-renewal was in violation of section 41(1)(ii) of the Employment and Labour Relations Act[Cap. 366 R.E. 2019) that requires 28 days' notice to be issued. The last complaint of the applicant is that the arbitrator erred in not awarding them compensation and other claims including those provided for, under the collective bargainagreement.

In his written submissions, Mr. George Vedasto, advocate for the respondent, cited the case of ***Jordan University College v. Flavia Joseph***, Revision No. 23 of 2019, (Muruke, J) and the case of ***Msambwe Shamte and 64 Others v. Care Sanitation and Supplies***, Revision No. 154 of 2010 (Rweyemamu, J, as she then was) to support his point that, principles of unfair termination do not apply to fixed term contract which comes to an end on the specified time. On failure to give reason to applicants, counsel submitted that applicants were given reasons through notices of non-renewal that their contracts have expired. On failure to nullify respondent's decision based on ground that applicants were not professional and in managerial hence not covered by fixed term contract, counsel submitted that applicants were professionals in the cement industry. He backed his submission on evidence of Amina Siwa Dw1 who, gave evidence showing professional carrier of the applicants.

On non-compliance with section 41(1)(ii) ELRA, counsel for the respondent submitted that the notice of non-renewal was notifying applicants that there would be no renewal of the said fixed contract and that the same was not notifying them termination of their contract. He cited the case of ***Dotto Shaban Kuingwa v. CSI Engineering Company Ltd***, Revision No. 5 of 2020 (A.E.Mwipopo J) and ***Kinondoni Municipal Council v. Maria Emmanuel Rungwa*** , Revsion No. 375 of 2019 (S.N. wambura J as she then was) that fixed term contracts are not covered by the provisions of section 40, 41,and 42 of ELRA.

On failure of the arbitrator to grant compensation and other claims, counsel for the respondent submitted that applicants are not entitled to those claims.

I have examined written submissions made by both sides and the CMA record and find that there is no dispute that applicants were employed by the respondent on fixed terms. No dispute that, on 3rd August 2017, applicants entered into two years fixed contracts with the respondent and that the said contracts expired on 2nd August 2019. It is further not in dispute that on 2nd August 2019, the respondent served applicants with a notice of non-renewal of contracts. There is no dispute also that applicants referred the dispute at CMA against the respondent for unfair termination for want of reasons and procedure as indicated in

CMA F.1. The only central issue is whether there was unfair termination and what reliefs the parties are entitled to.

This issue is straight forward as Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007 is clear and covers the application squarely. The said Rule provides:-

> *"Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise."*

In the application at hand, parties agreed that contracts shall expire on 2nd August 2019. Nothing was provided as what will happen after 2nd August 2019. After expiry of those contracts, in my view, there cannot be claim for unfair termination. It is also clear that applicants' complaints are on unfair termination. Nothing was pleaded by the applicants that there was breach of contract, understandably, because the contract reached to an end automatically. In the case of ***Serenity on the lake Ltd v. Dorcus Martin Nyanda***, Civil Appeal No. 33 of 2018, (Unreported), the Court of Appeal held:-

> "***the law is clear that, where the contract of employment is for a fixed term, the contract expires automatically when the contract period expires*** *unless the employee breaches the contract before the expiry in which case the employer may terminate the contract. On the other hand, the employer must have a fair reason to terminate the contract in case of the indefinite contract of employment and must follow a fair procedure in that regard."*

It is my view that the complaint by the applicants that respondent was required to give reasons for termination of their employment contracts are misconceived. I am of that view as applicants from the beginning, were aware that their contracts will come to an end on the agreed date. The notice of non-renewal was of no use in the circumstances of the application, although it served as reminder to them that the respondent does not intend to enter into further employment relationship. The case of ***Good Samaritan,*** supra, cited by applicants to the position that, whether the contract of employment is fixed or not, an employee has to be informed the reason for termination, cannot apply in the application at hand. That applies only when the contract is terminated not automatically after expiry of the agreed dates.

The Arbitrator was criticized for failure to nullify the respondent's decision to terminate employment contracts on ground that applicants were not covered under section 14(1)(d) of the Employment and Labour Relations Act [cap. 366 R.E. 2019] as they were not professionals and not in managerial cadres as they wrongly entered in fixed term contracts. This complaint cannot detain me. The matter before the arbitrator was not relating to whether the parties entered into valid contract or not. In other words, arbitrator was not called to determine validity of contract between applicants and respondents. According to

CMA F.1, Arbitrator was called to determine whether termination of employment of applicants was fair or not. Therefore, these criticism against arbitrator on this ground, is not warranted.

Applicants submitted that the notice of non-renewal was in violation of section 41(1)(ii) of the Employment and Labour Relations Act[Cap. 366 R.E. 2019) that requires 28 days' notice to be issued. In my view, as held above, the notice of non-renewal in circumstances of the application at hand does not fall in the ambit of the provision of that section. It was not a notice of termination so to speak. As it was held by my learned brother and sister in ***Kuingwa's case,*** supra, and ***Kinondoni Municipal Council's case,*** supra, the provisions of section 41of the Employment and Labour Relations Act [Cap. 366 R.E. 2019) does not apply in fixed term contracts.

Applicants faulted the arbitrator for not awarding them compensation and other prayers indicated in the CMA F.1. including failure to use collective bargain agreement. It is my considered view that applicants are not entitled to compensation as there was no breach of contract but their contract came to an end automatically. Not only that but also, applicants are not entitled to be paid based on collective bargain agreement between Tanzania Union of Industrial and Commercial Workers (TUICO) and Lake Cement Company (the respondent) that was

operative from 1st June 2016 up to 1st June 2020, because the said collective bargain agreement covered only permanent employees. Clause 2.1 of the said agreement reads:-

> "*CHARACTERS*
>
> *This agreement will affect all* ***permanent*** *employees of Lake Cement Ltd except expatriates."*

Applicants' employment was not permanent but fixed term contract. For that reason, arbitrator was right not to invoke the provisions of the said collective bargain agreement.

For what I have pointed hereinabove, I have found that the application is devoid of merit and I do hereby uphold CMA award and dismiss it.

It is so ordered.

B.E.K. Mganga
JUDGE
30/11/202