

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR-ES SALAAM**

**REVISION NO. 356 OF 2020**

**HASSAN MOHAMED AUSI & 2 OTHERS.....APPLICANT**

**VERSUS**

**UDA MANAGEMENT AGENCY LIMITED.....RESPONDENT**

(Revision from the decision of the CMA Dar es salaam)

**(Gerald J: Arbitrator)**

Dated 27<sup>th</sup> June, 2019

in

Labour Dispute No.CMA/DSM/ILA/R.1237/17/72

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**JUDGEMENT**

10<sup>th</sup> August & 24<sup>th</sup> September 2021

**Rwizile, J**

This application is for revision, the applicant challenging the decision of the CMA where the applicant challenges the decision of the CMA. It is filed under section 91(1)(a), (2)(b)(c) and Section 94(1)(b)(i) of the Employment and Labour Relations Act, Rule 24(1), (2)(a), (b), (c), (d),

(e) and (f) and (3)(a), (b), (c) and (d) and Rule 28(1)(c)(d) and (e) of the Labour Court Rules, GN No. 106 of 2007.

It is supported by a joint affidavit of the applicants, Hassan Mohamed Ausi, Ally Ally Bitta and Rashid Said Mtawe, asking this court to mainly revise the decision of the CMA. The point for determination is stated under paragraph 4 of the affidavit.

*That the arbitrator erred in law and facts to award benefit which were not within the applicants' claim*

It is on record that the applicants were employed by the respondent as security guards, under one-year contract that allegedly commenced from 11<sup>th</sup> June 2016 on the monthly amount of consideration of 300,000/=. In 2018, however, their contracts were not renewed instead their employment was terminated. This happened on 11<sup>th</sup> June 2018, according to their letters of termination. It is in the same letter where it was stated that the applicants to be paid salary to the date of termination, leave of 14 days which was not taken and a certificate of service. They were not satisfied with the respondent's decision and filed a dispute with at the CMA. The claims advanced were over time, unpaid annual leave and night allowance, as well as other benefits according to the employment contract. The matter was heard exparte and the

arbitrator ordered re-engagement to the positions as the remedy for unfair termination. They were aggrieved by the order and have now come before this court challenging the same.

At hearing the applicants entered their appearance in person. The case was heard by way of written submissions, while the respondent has been represented by Sechelela Chitanda, learned advocate.

It has to be noted at the outset that the respondent although was not heard at the CMA since the matter was taken ex parte against her, appeared before this court filed a counter affidavit and then filed a submission resisting the application.

It is clearly to me that this was uncalled for. Being a party who appeared before the CMA and later absented herself and case taken ex parte. Upon being notified of the judgement I think, if she wanted to challenge the evidence of the same, she ought to have applied before the same commission for setting aside the award so as to be afforded with an opportunity of defending her case. failure to do so she cannot come at revisional stage to challenge the evidence presented at the trial. I have considered that fact and so have decided not to consider all

his submissions and the counter affidavit. What remains is the submission of the applicants.

The applicants' submissions being crafted by Janeth Kazimoto of Legal and Human Rights Centre, has the view that what was awarded was not prayed by the applicants. Their claim based on terminal benefits which were a result of unfair termination, they ought to have been so paid, including overtime. According to their submission, over time is a statutory right made under section 19(1) of ELRA. Considering the time, spent in the process of dealing with this dispute, they came up with view that article 13(3) and (6) of the Constitution was infringed. Further, it was argued that their claims are indeed genuine as stated in the affidavit supporting the same.

Reference was made to the Case of **Makori Wassanga v Mwaikambo and Others** [1987] TLR 88 and the case of **Juma Ally Kaziyabure vs Tanzania Posts Telecommunication Corporation**, HC, Civil Case Cause No. 94 of 1985.

From the record, it is apparently clear that the award re-engaged the applicants. They are not happy with the order since they were

interested in terminal benefits. Their claim as stated did not among the prayers sought involve what was awarded. But it seems, their submission did not in any way deal with the point raised but rather asked for payment of their terminal benefits. In as much as I agree with them that the award presents a wrong remedy, still I do not agree with them on the terms finding of the commission on termination.

There is no doubt that the applicants were employed on fixed term contracts. The mode of termination in my view may happen in two ways, **one**, by notice issued by the terminating party, which if not stated by the agreement itself, then one stated under section 41 of ELRA, **second**, by expiry of the term of the contract and without being renewed. Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN 42 of 2007 provides that;

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

Subsection 3 of the Code provides further the mode through which renewal may be done, as thus;

*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 warrant it.*

Failure to renew a fixed term contract in circumstances where the employee reasonably expects a renewal may be considered to be unfair termination. This is true of subrule 4 of the code. In the eyes of the same law, reasonable expectation is created under Rule 4(5) of the Code by say previous renewals, employer's undertakings to renew, and failure to renew the employment contract on similar terms upon expiry.

Evidence before the Commission is not clear as to how many times the same had renewed their contracts, if indeed it happened. To have reasonable expectation, I think, there must be an express intention of the employer to renew the contract as it comes to the last date. The applicants having operated under a fixed term contract, in the absence of evidence that the same terminated before it came to an end, the issue of unfair termination does not arise.

I am fortified by the reasoning that parties in such a fixed term contract are well aware of the commencement date as well as the last day of the



action. If the employer remains silent, to the expiry of the same without renewing, it means the relationship comes to an end. There is even no need of a termination letter. The arbitrator was therefore not justified to apply and rely on section 37(2) of ELRA, since the same has no application in the circumstances of the dispute.

The applicants have challenged an award on ground that they did not ask for reengagement. Rightly so, as I have said before that the parties are bound by their pleadings. The claim as advanced in CMA form No.1 did not include such claim. In the circumstances of this application, I think, the dictates of section 40 of the ELRA could not apply in the event, termination ruled to be unfair by the court or commission is based on the fixed term contract. It would serve no purpose to both, the applicants and the respondent. All in all, the application fails and the decision of the Commission is quashed and set aside. No order as to costs.



**AK. Rwizile**  
**Judge**  
**24.09. 2021**