THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 323 OF 2020

BETWEEN

TANZANIA ELECTRIC SUPPLY COMPANY LIMITED ..... APPLICANT

AND

INNOCENT SHIRIMA & 43 OTHERS ..... RESPONDENTS

JUDGMENT

Date of last order: 08/03/2022
Date of Judgment: 28/3/2022

B. E. K. Mganga, J

On 26th May 2017, in terms of Rule 34(1) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 47 of 2007, Israel Alfeo Mbukwa, Haji Salum Aga, Omari Alfan Ahmad, Said Shamte Mwangai, Lemburis Ole-Lombo,Mussa Ismail Kamunde, Hassan A. Kipembe, Robert A. Sambu, Raymond Curthbert Kuziwa, Abdallah Mussa, Hamis Hamis Runje, Rashid Kimbale, Mila Yasin Meck, Eradius Justine Wesimaba, Joel Ambonisye Mwabamba, yahya Shaban Nyang'undu,

Emmanuel Lusekelo Maloboko, Edward Dismas Dismas, Fredrick Aidan Mapunda, Alhadhir Wazir Lulimo, Nyange Ahmed Kiboko, Yasin Salum Hemed, Evodius Gerevas,Athuman Hassan, Kabaka Ninde Ninde, Japhet John John, Mustafa Omary, Marijan Sawa, Antony Sammy Simon, Angelous Litula Expedito, Ramadhan Said Zame, Shamte Abdallah, Benedict Philemon Eriyo, Ally Salehe Mkali, SultanJuma Chuma, Omari Mganga, Bakari Saad Mateso, Daniel Frank Likoko, Innocent Shirima, Wilson Alex Shauli, Hamis Koso Rashid, Shamte Magoga,Siraji Shaweji, Kassim Mustapha and Mdimu Stanley all in total being 45 appended their signature and authorized Innocent Shirima to file the dispute before the Commission for Mediation and Arbitration henceforth CMA on their behalf. On the same date, Innocent Shirima filed the dispute at CMA. In the CMA F1, it was shown that the dispute arose on 30th April 2017 and that the respondents were claiming to be paid notice pay, severance pay, leave and compensation for unfair termination. In the said CMA F1 it was not shown as to when respondents started to work with the applicant and the amount they are claiming.

On 6th September 2019, M. Batenga, arbitrator, having heard evidence of both sides delivered the award that according to contracts

tendered by the parties, respondents were employed for one-month specific task renewable, but that applicant failed to prove that contracts of the respondents were not continuous. The arbitrator went on that, respondents had legitimate expectation of renewal of their contracts and that termination was unfair. The arbitrator ordered the respondent be paid notice pay, severance pay and 12 months' compensation.

Applicant was aggrieved by the said the said award as a result she filed this application seeking the court to revise it. The applicant filed both the notice of application and an affidavit affirmed by Farid Adam Sued, her principal officer. Applicant raised four ground namely: -

1. *That the arbitrator erred in law and facts for entertaining the matter while it had no jurisdiction.*
2. *That the arbitrator erred in law and fact by arriving at a decision basing on the evidence of four witness purporting to act on behalf of others.*
3. *That the arbitrator erred in law and fact when she held that the complainants were employed under permanent contracts based on speculations and in disregard of the law while there was ample evidence to prove that they were working under specific task Contracts.*
4. *That the arbitrator grossly failed to analyze and evaluate the evidence and testimonies of the witnesses hence leading to unfair award.*

On 23rd August 2021, in Misc. Application No. 113 of 2021, this court granted leave to Benedict Philemon Eriyo to appear on his behalf and

represent other 43 respondents. With that leave, on 29th August 2021, Benedict Philemon Eriyo filed the counter affidavit opposing the application.

When the application was called for hearing, the applicant was represented by Musa Mbula, Principal State Attorney, Deodatus Nyoni, PSA, Adelaida Ernest, State Attorney, Farida Swed, State Attorney and Fahika Mamuya, State Attorney. The respondents were represented by Sothenes Mdeule, advocate.

In arguing the application for the applicant, Mr. Mbula, Principal state Attorney and Farida Sued, State Attorney, dropped the 1st and 2nd grounds and argued the 3rd and 4th grounds only. It was submitted by Ms. Sued, State Attorney that respondents were employed at specific performance contracts and not permanent contracts as evidenced by exhibit SH1 that was tendered by PW1, exhibit SH4 that was tendered by PW3 and exhibit TAN 1 that was tendered by DW1. State Attorney submitted that each contract was ranging for three months from 1st April 2017 to 30th April 2017.

Ms. Sued, State Attorney submitted that the Arbitrator erred in holding that respondents were unfairly terminated because applicant did not renew

the contract while there was legitimate expectation for renewal in terms of section 36 of the employment and Labour Relations [Cap. 366 R. E. 2019]. She submitted that respondents were not employed on fixed term contract but for specific task. She submitted further that, in CMA F1, respondents were claiming to be paid notice, severance and compensation for unfair termination and showed that the dispute arose on 30th April 2017. State Attorney submitted further that the CMA F1 did not show that the dispute included also other persons whose names are not in the said CMA F1.

State Attorney submitted also that respondents were not covered under section 35 of Cap. 366 R.E. 2019 (supra) because their employment was for less than six months' therefore there cannot be unlawful termination. She argued further that the mere fact that respondents worked for a long time with the applicant at different time for specific task, does not automatically change the nature of their employment. She cited the ***case of Group Six International v. Musa Maulid and another, revision No. 428 of 2015***, High Court(unreported), ***Hussein Juma Ngobelo v. China Railway Jiang Chang Co. Ltd, Revision No. 67 of 2015***, High Court(unreported) to bolster her argument. She concluded that arbitrator

assumed wrongly that several specific task contracts created legitimate expectation for renewal of contracts of the respondents.

Ms. Sued, State Attorney submitted further that Arbitrator disregarded the notice dated 22nd March 2017 (exh.TAN2) that was issued by the applicant to the respondents informing them that there will be no renewal when their contracts expires. She submitted that contracts of the respondents were terminated on 30th April 2017 on the date the contracts expired and that, there was no room for legitimate expectation to exist.

State Attorney submitted further that Arbitrator awarded reliefs to the respondents as if they were employed for permanent terms while they were not. She submitted that respondents were awarded notice, severance, and 12 months' salary compensation. She concluded that in terms of section 13 of Cap. 366 R.E (supra) the arbitrator erred.

In opposing the application, Mbedule, advocate for the respondents, submitted that employment of the respondents started in 2002 although no contract was tendered ta CMA to that effect. He argued that respondents were paid salaries continuously (exh. SH5) hence a proof that they were employed on permanent terms. Counsel submitted that ***Group six's case***

(supra) and ***Ngobelo's case*** (supra) are distinguishable and not applicable to the application at hand.

Counsel for the respondents submitted further that respondents were paid on monthly basis though calculations were made on daily basis and that respondents worked for more than ten years therefore they cannot be regarded that they were employed for a specific task. During his submissions counsel for the respondents conceded that the law does not provide time limit within which an employee can be employed for specific task.

Counsel for the respondents cited Rule 4(3) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 as the basis of renewing of the contracts of the respondents. He however, further conceded that, contracts of the respondents were for specific task and not fixed term period and that their contract does not fall under section 36 Cap. 366 R. E. 2019 (supra).

In relation to the notice, counsel for the respondent submitted that the notice did not give reasons as to why there will be no renewal of contracts of the respondents. He argued that this violated the provisions of section

41(3) of Cap. 366 R. E. 2019 (supra) that requires a notice to give reasons. He submitted that the notice therefore violated the principle of natural justice for failure to give reasons and right to be heard. Therefore, there was no justification for the applicant to terminate employment of the respondents. Counsel for the respondents argued further that, procedures for termination were not followed because the notice (exh. TAN 2) was issued prior to the parties entering the contract.

Counsel for the respondents were paid severance by the applicant and that the arbitrator properly awarded respondents to be paid 12 months' compensation but that it was not proper for them to be awarded notice pay.

In rejoinder, Ms. Sued State Attorney submitted that respondents were employed for specific task and none of their contracts exceeded three months' contract. She concluded that the contract between the parties expired automatically. Responding on the argument by counsel for the respondents that the notice violated the principle of natural justice, Mr. Mbula, Principal State Attorney submitted that the principle of natural justice was not violated by the applicant.

Having heard submissions by both sides and examined evidence on the CMA record, I have opted to start with the complaint that the CMA F1 does not show that the dispute included also other persons whose names are not in the said CMA F1. I have examined the CMA F1 and find that Innocent Shirima indicated that the dispute was filed by himself and 43 others. In fact there is an annexture to the said CMA F1 showing that Innocent Shirima was appointed other applicants who appended their signatures on the document appointing him in terms of Rule 34(1) of the Employment and Labour Relations (General Regulations) GN. No. 47 of 2007 to file the dispute on behalf of 44 others who appended their signature. The Form referred to in Rule 34(1) of GN. 47 of 2007 (supra) relates to notification to exercise organizational rights and it is supposed to be filled by a Trade Union to notify the employer that they are seeking to exercise their rights. In short, the said section has nothing to do with filing the dispute before CMA. But so long as they signed the form indicating that they are appointing Innocent Shirima to file the dispute at CMA on their behalf, in the interest of justice, I hold that the dispute was properly filed and heard. I therefore dismiss that complaint as it lacks merit.

It was submitted by the State Attorney that respondents were employed for specific task but counsel for the respondents was of the contrary view. Evidence of the parties at CMA gives the answer to this issue. In his evidence **Benedict Philemon Eriyo (PW1),** testified that he was employed in 1998 for the contract of three months' and that later on himself and others were issued a one-month contract. He went on that they were paid TZS 15,000/= daily but the money was paid at the end of each month. While under cross examination, PW1 admitted that he didn't have evidence showing that his employment started in 1998. He admitted further that he was not employed on permanent terms and that at the end of his contract he was paid.

On his part, Mr. Siraji Omari Shaweji (**PW2**) testified that they had three to six fixed term contracts renewable. While under cross examination, PW2 testified that they had six months' fixed term contracts and not permanent contracts. He admitted that the last contract was for one month at TZS 15,000/= daily. PW2 testified that he was not employed at permanent terms and that he was not terminated but the contract expired automatically. When under re-examination, PW2 testified that their

contracts showed that payment were on daily basis, but they were paid monthly.

Omari Mustafa Omari (**PW3**) testified that he was employed for specific task contract at the contract of one-month renewable. While under cross examination admitted that he was employed at a contract of one month renewable and that a notice that there will be no renewal was issued. Eradius Justine Rwesimba (**PW4**) testified that every month was signing a contract and that they had expectation to renew the contract, but they received termination letter.

These were the only witnesses who testified on behalf of the respondents.

On the other hand, Bruno Novart Tarimo (**DW1**) testified that, respondents were employed for specific task contracts as evidenced by their contracts (Exh. TAN1) and that they had a one-month contract renewable. He testified further that; respondents were issued with a notice informing them that there will be no renewal of contrcats (exh. TAN2) because applicant had no work for them to perform. While under cross examination DW1 testified that respondents were paid severance pay

wrongly because they were not entitled because they had a three months' contracts.

From the evidence of the parties, there is no doubt that respondents were not employed on permanent basis. I have examined contracts of the respondent and finds that their employments were for specific task. Contracts of the respondents (exh. TAN 1) reads "***MKATABA WA MFANYAKAZI WA KAZI YA MUDA MAALUM (SPECIFIC TASK).***" With that evidence, the argument by counsel for the respondents that respondents were employed on permanent terms dies a natural death. Whatever the case, the mere fact that respondents worked continuously with the applicant, that did not change the nature of their contract as it was held in Group ***six's case*** (supra) and ***Ngobelo's case*** (supra). Since evidence shows that respondents had employment contracts of one month, I hold that they were not covered by the provisions of section 35 of Cap. 366 R. E. 2019 (supra) relating to unfair termination.

It was submitted by counsel for the respondent that there was unfair termination, but State Attorney submitted that contracts of the respondents expired automatically and that they were informed through exhibit TAN 2 that there will be no renewal of their contracts upon expiry.

Counsel for the respondent argued that the said notice violated section 41(3) of Cap. 366 R. E. 366 (supra) and the principles of natural justice. With due respect to counsel for the respondent, unfair termination cannot apply to an employee whose contract is less than six months as per section 35 of Cap. 366 R. E. 2019 (supra).

The argument by counsel for the respondent that respondents were issued notice of termination in violation of the law is not correct. In my view, and as it was testified by DW1, there is no notice of termination rather an information to the respondent that there will be no renewal upon expiry of the contract. I have examined the said notice and find that even reasons for non-renewal was given namely that the contract is coming to an end. Contracts of the respondents expired automatically.

It was held by the arbitrator that respondents had legitimate expectation of renewal of their contract. A similar view was taken by counsel for the respondents. That view is not correct in my opinion, because the notice is dated 22nd March 2017 and states that the contracts entered on 1st April 2017 but expiring on 30th April 2017 will not be renewed. In my view, this was an advance notice to the respondent that the contracts they will enter on 1st April 2017 will not be renewed upon

expiration on 30th 2017. This eliminates the argument of legitimate expectation. Arbitrator therefore erred in holding that respondents had legitimate expectation for their contracts to be renewed.

Since the contracts expired automatically, the arbitrator erred to award the respondents to be paid 12 months' salary compensation. I hold also that both notice and severance pay were wrongly awarded to the respondents.

For all said hereinabove, I hereby allow the application, quash, and set aside the award.

Dated at Dar es Salaam this 28th March 2022.

B.E.K. Mganga
JUDGE