

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 218 OF 2020

BETWEEN

EDWARD B. MAYIGE **APPLICANT**

AND

MOUNT EVEREST SCHOOL **RESPONDENT**

JUDGMENT

Date of last order: 9/02/2022

Date of Judgment: 22/3/2022

B.E. K. Mganga, J

On 13th January 2017, the applicant and respondent entered one-year fixed term contract expiring on 30th January 2018 whereas the applicant was employed as a teacher. After expiration of the said fixed term contract, the parties entered another one-year fixed term contract starting on 30th January 2018 ending on 31st January 2019. On 5th December 2019 applicant was served with a warning letter that he was underperforming and further that he was running illegal microfinance. On 31st November 2018, applicant served the respondent with a notice of intention to renew the said fixed term contract upon expiry. On 16th

January 2019, respondent informed the applicant that there will be no renewal of the said fixed term contract of employment. Applicant was further informed that Cheque No. 001202 dated 4th January 2019 valued at Five Hundred Ninety-Seven Thousand Ninety Hundred Tanzanian Shillings (TZS 597,900/=) only was issued in his favour as one month salary in lieu of notice. On 29th January 2019, applicant filed labour dispute No. CMA/DSM/KIN/79/78 before the Commission for Mediation and Arbitration at Kinondoni claiming to be paid (i) TZS 800,000/= being one month salary in lieu of notice, (ii) TZS 12,800,000/= being sixteen months' salary compensation for breach of contract, (iii) TZS 1,600,000/= being two months' leave pay and (iv) TZS 430,769/= being severance pay all amounting to TZS 1,630,769/=. In CMA F1, applicant showed that there was legitimate expectation to renew the contract. On 6th May 2020, Hon. Muhanika, J, arbitrator, having heard evidence of the parties issued an award in favour of the respondent by holding that there was no termination of the said fixed term contract of employment, rather, the said contract automatically came to an end after expiration of the agreed period.

Applicant was aggrieved by the said award as a result he filed this application for revision. In the affidavit in support of the notice of application, applicant raised four grounds namely:-

- 1. The Honorable arbitrator erred in law in not deciding the issue of breach of contract raised and framed by the Commission.*
- 2. That the Honorable arbitrator did not consider written submissions filed by the applicant in support of his case.*
- 3. That the decision of the Commission that the applicant was not terminated by the respondent is against and contrary to evidence on record.*
- 4. That the Honorable arbitrator's finding and decision that applicant's employment was not terminated but came to an end is contrary to the law.*

On the other hand, Mr. Edwin Cyprian Mrema, the Human Resources Manager of the respondent filed both the notice of opposition and a counter affidavit resisting the application. In the counter affidavit, the deponent stated that applicant was served with a notice of non-renewal and further that contract of the applicant was not terminated but came to an end automatically.

When the application was called for hearing, Mr. Leonard Masatu, learned counsel, appeared, and argued for and on behalf of the applicant, while Ms. Ziada Mkwazu, learned counsel appeared and argued for and on behalf of the respondent.

On the 1st ground of revision, Mr. Masatu, learned counsel for the applicant submitted that parties entered a fixed term contract of one year from 31st December 2018 expiring on 31st January 2019. That, applicant was served with termination letter on 31st December 2018, one month before its expiry that was expected on 31st January 2019. Counsel for the applicant submitted that in the said contract, parties agreed salary of TZS 800,000/= . Counsel went on that in the award the arbitrator did not consider that applicant was entitled to be paid TZS. 15,630,769/= as one-month salary in lieu of notice, 16 months compensation for breach of contract, two months leave, and Severance pay.

Counsel for the applicant submitted further that applicant was expecting the contract to be renewed hence legitimate expectation to renew, because previously, a contract was renewed. Counsel for the applicant submitted that applicant's performance was good and led him to be given a certificate of appreciation as a sign that the contract may be renewed. Counsel conceded that in evidence of the applicant, nothing was stated to show that he was promised by the respondent that the contract will be renewed.

It was argued by Mr. Masatu, learned counsel for the applicant that arbitrator erred in law for his failure to decide on the issue of breach of contract that was framed. Counsel for the applicant cited this court's decision in the case of ***Arnold Anatomy Ndiyetaura v. China Railway Service Group Company Limited, Revision No. 186 of 2020*** (unreported) and prayed CMA proceedings be nullified.

On 2nd ground i.e., that arbitrator did not consider written submissions filed by the applicant, counsel for the applicant submitted that in terms of Rule 22(1) and (2) and Rule 26(1), (2) and (3) both of the Labour Institutions (Mediation and Arbitrations Guidelines) Rules, GN. No. 67 of 2007, arbitrator is supposed to consider arguments of the applicant in written submissions. Counsel for the applicant prayed that the award should be set aside for non-compliance with the law. During his submissions counsel for the applicant conceded that submissions are not evidence but are merely explanations with a view of helping the arbitrator in analyzing evidence.

On 3rd ground namely, that the decision of the arbitrator that applicant's employment was not terminated is not supported by evidence on record, counsel for the applicant submitted that the fixed term contract

of employment of the applicant was terminated by a letter dated 31st December 2018 (exh. D6). Mr. Masatu argued that procedure for termination was not adhered to because there was no agreement for early termination of employment or that applicant breached the contract as provided for under Rule 8(2) (a) and (b) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007.

On the 4th ground namely, that the arbitrator's decision that the contract came to an end was an error, counsel for the applicant submitted that, as there was evidence of appreciation (exh. D2), renewal was expected hence legitimate expectation. Counsel for the applicant prayed the application be allowed, the CMA award be quashed and set aside, and reliefs prayed in the CMA F1, be granted.

On her side, Mkwazu, learned counsel for the respondent, while responding on the 1st ground, submitted that arbitrator didn't see essence of deciding the issue of breach of contract while the same came to an end automatically. Counsel for the respondent submitted that applicant was not terminated, rather, through a letter dated 31st December 2018 (exh. D6) he was notified by the respondent that there will be not renewal of the

contract upon expiry. Counsel submitted that there was no breach of contract and that in exhibit D6, applicant was paid his January 2019 salary.

On legitimate expectation, counsel for the respondent submitted that the same cannot exist because, through exhibit D6, applicant was informed that there will be no renewal after expiration of the contract. Counsel for the respondent cited the case of ***Viettel Tanzania v. Naftari Mahenge and another Revision No. 10 of 2019*** (unreported) to support his argument that the contract came to an end upon expiration of the agreed period.

On the 2nd ground relating to failure to consider submissions made by the applicant, counsel for the respondent submitted that written submissions of the applicant were considered in the award.

Responding on the 3rd ground, counsel for the respondent submitted that the arbitrator considered the contract and concluded that it expired/came to an end automatically and that applicant was paid his entitlements. Counsel for the respondent submitted that the award is supported by evidence on record. Counsel for the respondent went on that, Rule 8(2) (a) and (b) of GN. 42 of 2007 cited by counsel for the applicant

can be applicable only when there is a breach of contract but in the application at hand, the contract came to an end automatically.

On the 4th ground, counsel for the respondent submitted that clause number 9 of the contract required the employer to notify the applicant her intention to renew. That, based on this clause, applicant was notified through exhibit D6 that there will be no renewal. Counsel for the respondent prayed the application be dismissed and CMA award be upheld.

In rejoinder, Masatu, counsel for the applicant, maintained that in the award the arbitrator said nothing in relation to breach of contract while applicant indicated in CMA F.1 that there was breach of contract. He reiterated that applicant's employment was terminated on 31st December 2018. Counsel for the applicant concluded by submitting that there is no evidence in CMA record showing that applicant was paid salary for January 2019.

I have read the evidence of the parties in CMA record and considered rival submissions of the parties and find that it is undisputed that the last fixed term contract of employment the parties entered was expiring on 31st January 2019. It is also undisputed that on 15th November 2018, applicant a wrote a letter to the respondent requesting renewal of the said fixed

term contract of employment. It is further undisputed that on 31st December 2018, applicant was notified that upon expiry of the said fixed term contract, there will be no renewal and in fact the contract was not renewed.

It was submitted by Mr. Masatu, counsel for the applicant that applicant's employment was terminated on 31st December 2018 and that there was legitimate expectation. On the other hand, Ms. Mkwazu, counsel for the respondent submitted that the said fixed term contract of employment came to an end automatically upon expiration of the agreed period and that there was no legitimate expectation. With due respect to counsel for the applicant. The said fixed term contract of employment between the parties was not terminated on 31st December 2018. This is because exhibit D6 clearly shows as follows:-

"...Reference is made to your letter dated 31/11/2018 requesting to renew the contract. We regret to inform you that we are no longer going to renew the contract after the expiry of the current contract on 31/01/2019.

*The management has given you a cheque number **001202** dated **04.01.2019** with the amount of Tsh.(sic) five hundred ninety seven thousand nine hundred only (97,900) in lieu of such notice as one month salary in advance (January salary) to complete the remaining time of your current contract..."*

From the quoted letter, it is my opinion that the complaint that respondent terminated employment contract of the applicant is not correct. I have read evidence of Edward Busamba Mayige (PW1) the applicant and find that he admitted that his fixed term contract of employment was coming to an end on 31st January 2019. Applicant (PW1) admitted while under cross examination that on 16th January 2019 he received the above-mentioned cheque as notice of termination of his employment. Applicant was paid one month salary that was remaining on the cheque said fixed term contract of employment.

It was submitted that applicant was entitled to be paid TZS 15,630,769/= as one-month salary in lieu of notice, 16 months compensation for breach of contract, two months leave and Severance pay. I have examined evidence of the applicant and find that nothing was adduced in evidence proving breach of contract for him to be paid amount claimed. I therefore hold that there was no proof that the contract was breached.

The arbitrator was criticized that he failed to decide the issue of breach of contract that was framed. With due respect, I have examined the CMA record and find that on 21st May 2019 three issues were framed by

the parties namely, (i) whether there were valid reasons for termination of employment of the applicant, (ii) whether procedure for termination of employment of the applicant was adhered to and (iii) what reliefs the parties are entitled to. There was no issue framed by the parties relating to breach of contract. It is my opinion therefore, that the criticism against the arbitrator for not deciding the issue of breach of contract allegedly that it was framed by the parties is not correct. That ground fails.

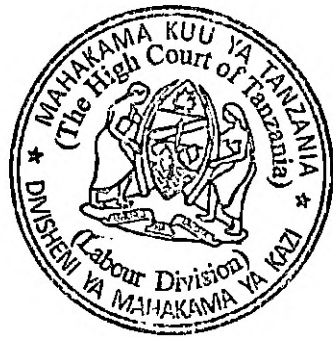
The argument by the applicant that there was legitimate expectation for renewal is not supported by evidence on record. In his evidence, applicant (PW1) testified that he was served with a warning letter and a letter showing that he was under performing and that he was running illegal microfinance. In my view, with that evidence from the applicant himself, the issue of legitimate expectation dies naturally. It is not expected for an employer to renew a contract of an employee who she has found under performing. I therefore hold that the argument that there was legitimate expectation also fails.

On failure by the arbitrator to consider written submissions filed by the applicant, I entirely agree with counsel for the respondent that submissions are not evidence but are merely clarifications on issues raised

by the parties. The arbitrator was supposed to consider evidence and not submissions. After examination of evidence on record, I find that this argument is also barren of merit.

In the upshot, I hereby dismiss this application for want of merit.

Dated at Dar es Salaam this 22nd March 2022.




B.E.K. Mganga
JUDGE

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