IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 52 OF 2021

G4S SECURE SOLUTIONS (T) LIMITED ..... APPLICANT

VERSUS

ABBAS MPEWA ..... RESPONDENT

(From the decision of the Commission for Mediation and Arbitration at Kinondoni)

(Ngaruka: Arbitrator)

dated 23rd November 2020

in

REF: CMA/DSM/KIN/800/19/349

JUDGEMENT

28th February & 08th April 2022

Rwizile J

This application emanates from the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/800/19/349. This Court has been asked to call for and revise the proceedings, award and decision of the CMA dated 23rd November, 2020 by Hon. Ngaruka, O. (arbitrator).

Briefly, facts are that the respondent was employed by the applicant under a fixed term contract which was extended in many times. The contract

was of five years expected to expire on 31st January, 2019. Upon expiry the respondent extended the contract for 6 months.

Again, at the end of the 6 months, there was another extension of one month. Before the last one ended, the applicant served a notice to the respondent and ended the contract. He paid what was his dues and let him go. Being aggrieved, the respondent went to CMA claiming for breach of contract and payment of unexpired term of five years, notice and severance pay to make a total of TZS 43,226,590.01. The matter at the Commission was decided in favour of the respondent. Hence this application.

The application was supported by the affidavit of Imelda Lutebinga the principal officer of the applicant with grounds for revision raised as: -

i. *That the award is tainted with illegality on the face of the record.*
ii. *That the arbitrator erred in law and in facts for holding that there was reasonable expectation of renewal of the respondent's fixed term contract, while there was no renewal clause in the said contract.*
iii. *That the arbitrator erred in law and in fact for awarding the complainant/respondent a compensation pursuant to section*

40(1)(c) of the Employment and Labour Relations Act, Cap 366 R.E. 2019, which remedy is for unfair termination claims.

iv. *That the arbitrator erred in law and in facts for awarding the respondent overtime pay while the respondent was under a fixed term contract which expired by effluxion of time.*

v. *That the trial arbitrator erred in law and in facts for ordering payment of a one-month salary in lieu of a notice, while the said contract was a fixed term contract, essentially a notice in itself, and which contract terminated upon its expiration.*

vi. *That the arbitrator erred in law and in facts for failure to asses and/or analyse the evidence both oral and documentary tendered by the applicant henceforth reached on a wrong final decision.*

The application was heard orally. The applicant was represented by Moses Kiondo learned Counsel whereas the respondent was represented by Juma Ahmed Mwakimatu, learned Counsel.

Mr. Kiondo submitted on the first issue that there was illegality as the respondent was employed in a contract of 5 years and upon expiry, it was extended for six months and then for one more month. He stated that the applicant was getting contracts with US Embassy and its expiry depended on the US contract and had notified the employees, respondent being one

of them. He stated that the respondent's contract was supposed to end on 31st August 2019.He was given a letter to end the contract followed by his payment of terminal benefits. He stated further, that in the CMAF1, the respondent sued for unfair termination while in his view termination of a fixed term contract can only be for breach of contract. To him the arbitrator acted illegally.

On the second issue, he stated that the contracts did not show there was expectation for renewal. He stated that the contract was for five years, six months and one month. In all contracts, he added, there were no clause of reasonable expectation for renewal.

Mr. Kiondo argued the third issue and stated that section 40(1)(c) of Employment and Labour Relations Act, (ELRA) applies for the terms of the award and compensation of 12 months was not a correct one. He stated further that the section used is not for fixed term contracts but for permanent employment.

On the fourth issue he stated that the arbitrator erred by ordering the respondent to be paid overtime, since overtime is paid for extra hours worked.

Lastly, Mr. Kiondo argued that the arbitrator erred in law by awarding the notice of one month as the contract was on a fixed term. In his view, there is no need to award notice while the contract speaks for itself. The counsel was clear that the arbitrator failed to analyse the evidence tendered basing on all what has been stated above and so the decision was wrong and prayed for the application to be granted.

In opposing the application Mr. Mwakimatu stated that there is no dispute that the respondent was an employee of the applicant. There was first, a contract of five years and that the contract was renewed three times. He further stated that the last contract was terminated before one month of its expiry. He stated further that when one renews a contract, it means the terms of the last contract will still be operative and that the last contract which was not one month contract did not come to an end and the respondent was terminated. He elaborated further that the contract commenced on 1st September and ended on 16th September, there were therefore 15 days remaining. He stated that there is proof that even after the termination of the respondent, the applicant still has employment relationship with the US Embassy.

Further, he argued that the one who replaced the position of the respondent was trained by the respondent and that fact was not disputed

at CMA. In his view, ending the contract amounts to termination as there was expectation of renewal of the contract.

He further stated that the award of compensation for 12 months was proper as there was no notice. He stated that the law provides that the note has to be for one month before termination. He finalized by stating that the arbitrator analysed the evidence correctly that led to a fair decision.

In a rejoinder Mr. Kiondo stated that there was no evidence to prove that there was renewal of the contract for three times. He argued further that it is normal for the applicant to make clearance for the employee who finishes the contract, in order to be paid terminal dues. The learned counsel went on stating that from 1st August to 16th was the clearance time. He continued that, the expectation for renewal must be expressed in the contract which in this case was not. He further stated that in fixed term contracts no notice is needed because the contract itself is a notice.

Having gone through submissions of the parties, records and the grounds for revision, the issues for determination are *whether there was automatic renewal of respondent's contract of employment, and if the answer is in the affirmative to what reliefs are the parties entitled.*

starting with the first issue, the applicable provisions are section 36(a)(iii) of the Employment and Labour Relations Act [CAP 366 R.E. 2019] and Rule 4(3) & (4) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007, which provide: -

"Section 36

For the purpose of this sub part-

(a) "Termination of employment" includes-

(iii) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;"

And

Rule 4(3) Subject to sub rule (2), 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 warrants it.

(4) Subject to sub rule (3), the failure to renew a fixed term contract in circumstances where the employee reasonably expects a renewal of the contract may be considered to be unfair termination.

Going back to the proceedings and the exhibits tendered, I find there is no dispute that the respondent was the employee of the applicant. It is

also true that the respondent had three times got extension of his contracts, that is the one of five-years, six months and one month. This has been evidenced by exhibits GS1 and GS2. I also found that upon expiry of the earlier contract, there was a renewal of another though for a different period of time. But for the last contract termed of one month, I have found out that it started on 1st of August, 2019 and was supposed to end on 31st August, 2019. As exhibit GS3 shows, it is the end of employment contract which is dated 16th September, 2019 showing that the contract of the respondent ended on 31st August, 2019. As stated here below for easy reference: -

"Dear Abbas,

RE: END OF EMPLOYMENT CONTRACT

Refer to the above heading and clearance made on 13th September, 2019.

Your employment contract with G4S ended on 31st August, 2019.

After the end of employment contract with G4S on 31st August, 2019 the management is pleased to inform you that you will be paid your final dues as follows: -

1. *Salary and overtime for the days worked*
2. *Leave days due*
3. *Certificate of service*

Please be reminded that it is your responsibility to follow up on you pension benefits with your respective pension fund office.

We would like to take this opportunity to thank you for your service and we wish you the best in the future endeavour."

From the exhibit above, it shows that the termination letter was given to the respondent 16 days after he had worked with the applicant after expiration of the said one month contract. Based on the trend of the previously renewal of contracts, I believe the respondent had expectation of renewal of the contract. This is because he had continued working for 16 days, which is more than a half of the previous contract. It follows therefore that the arbitrator was correct in holding that the respondent was unfairly terminated.

The second issue is on the reliefs. The applicant stated that the reliefs awarded based on section 40(1)(c) of [CAP 366 R.E. 2019] are usually for permanent employees. As the evidence and exhibits prove that the last contract of the respondent was that of one month. Section 35 of [CAP 366 R.E 2019] provides that unfair termination does not apply to those employees with less than six months. It states:

> *"The provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts."*

For that matter even section 40(1)(c) used by the arbitrator to compensate the respondent falls under this sub-part. The court finds, it was not proper for the arbitrator to apply the same. Based on the above finding, I hold, it was not proper for the respondent to be compensated as if he was on permanent terms of contract. Reference, is made to the case of **Hotel Sultan Palace Zanzibar v Daniel Laizer & Another**, Civil Application No. 104 of 2004, where it was held: -

> *"It is elementary that the employer and employee have to be guided by agreed terms governing employment. Otherwise, it could be a chaotic state of affairs if employees or employers were left to freely do as they like regarding the employment in issue."*

For the foregoing reasons, I find this application with merit. The respondent was to be paid the remaining part of the contract. Since he had worked for 16 days, he ought to be paid as follows;

the Salary for the whole month, and overtime for the days worked, Leave for days due and Certificate of service

I make no order as to costs.

A. K. Rwizile

JUDGE

08.04.2022