

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
LABOUR REVISION NO. 05 OF 2021**

(Originating from Labour Dispute No. KTV/CMA/28/2019)

HJF MEDICAL RESEARCH INTERNATIONAL INC APPLICANT

VERSUS

DAUDI VICENT & 2 OTHERS.....RESPONDENT

RULING

Date of last Order: 28/10/2021

Date of Ruling: 21/02/2022

NDUNGURU, J

The applicant above named, filed the present application seeking revision of the decision of the Commission for mediation and Arbitration (herein CMA) delivered on 30/04/2021 by Hon. Ngaruka, Arbitrator. The application is made under section 91 (1) (a) and (2) (b) and (c), section 94 (1) (b) (i) of the Employment and Labour Relations Act Cap 366 RE of 2019, Rule 14 (i), Rule 24(2) (a), (b), (c), (d), (e) and (f), rule 24 (3) (a), (b), (c) and (d) and Rule 28 (i) (c) (d) and (e) of the Labour Court Rules Government Notice Number 106 of 2007 (herein referred as the Labour Court Rules.

The application originates from the following background; the

applicant was the employer of the respondents. The respondents were employed under fixed term contracts of one year. Vicent Daud was employed in the capacity of SI Technical Associate and his contract was running from 23rd September 2018 up to 22nd September 2019 while Bernard mwingira was employed in the capacity of Contract Officer and his contract was running from 22nd September 2018 and remained valid for period of one year and Joseph mayala was employed in the capacity of Driver and his contract commenced on 23rd September 2018 and remained valid for a period of one year.

The respondents' contracts of employment expired on 21st and 22nd September 2019 and the applicant decided not to renew the said contracts. Before the expiration of the respondent's contracts, the applicant issued notices of non-renewal of the contract to the respondents dated 2 August 2019 as well as a letter reminding them of the end of fixed term contract of employment dated 16 September 2019. The respondents alleged that prior to the expiry of their fixed term contract on 21st September 2019 and on 22nd September 2019 they had reasonable expectation of renewal of their contracts.

The respondents alleged that prior renewal of their contract twice by the applicant, availability of fund from the donor, and an email from the applicant clarifying an extension of the project for the next five years made

them to have reasonable expectation of the renewal of their contracts of employment. Being aggrieved with the said notices the respondents filed a labour dispute at the CMA claiming for unfair termination of their employment as they had reasonable expectation of renewal of their contracts. The CMA granted the respondent's application. Aggrieved by the CMA's award the applicant filed the present application.

The matter proceeded by way of written submissions. The applicant was represented by Mr. Sweetbert Egidius, learned advocate whereas the respondents were represented by Mr. Muya assisted by Mr. Mwanry, learned advocates. Written submissions were filed as scheduled.

Arguing in support of the application Mr. Juvelinas Ngowi, learned advocate submitted that each of the respondents was employed on fixed term contract which ended on September 2019. It was his further submission that before the expiry of the respondent's employment contracts, the applicant on 2nd August 2019 informed all respondents that their employment contracts were coming to end. He said the notification was followed by the reminder note informing the respondents not to renew their employment contracts. He argued that on the date of expiry of the respective contracts, the same was terminated automatically in accordance with **Rule 4(2)** of Employment and Labour Relations (Code of Good Practice) Rules, GN. No 42 of 2007 (Code). He referenced the position of

the law to the case of **National Oil (T) Limited vs Jaffey Dotto Msensemi & 3 Others**, Revision No. 558 of 2016, HC DSM.

It was his further submission that since the employment contracts of the respondents were of fixed term, thus unlawful termination of employment cannot be applied. The position was taken in the case of **Msambwe Shamte and 64 Others vs Care Sanitation and Supplies**, Revision No. 154 of 2010. Since the relationship between the parties herein was based on fixed term contract, then arbitrator erred in holding that there was unfair termination of the contract.

As to the second ground Mr Ngowi submitted that previous renewals do not create legitimate expectation for a future renewal as per the case of **National Oil (T) Limited vs Jaffey Dotto Msensemi & 3 Others** he cited.

Mr. Ngowi went on to submit that renewal of the contract was not automatic but rather subject to the written agreement. To strengthen his position, he cited the cases of **Rosamistika Siwema (Administratrix of the Estate of Joseph Mandango vs Add International Tanzania**, Revision No. 498 of 2019, unreported and **Dotto Shaban Kuingwa vs CSI Engineering Company Ltd**, Revision No. 5 of 2020, unreported.

Furthermore, he argued that the fact that once a notice of non-renewal is given, extinguishes any possible expectation for the renewal as per the case of **Board of Trustees of the Medical Stores Department vs Robert Njau**, Revision No. 621 of 2019, unreported.

It was further submitted that a mere fact that the employer indicated that the institution's project will continue beyond the expiry dates of the contract does not create a legitimate expectation for the renewal of the contract. The holding was held in the case **of Paul James Lutome & 3 Others vs Bollore Transport & Logistics Tanzania Ltd**, Revision No. 347 of 2019, unreported.

Submitting further Mr Ngowi submitted that arbitrator misinterpreted the clause which stated that position at HJFMRI Inc is contingent upon receipt of funding from outside sources. As a result of HJFMRI Inc reliance on outside funding, position may be terminated due to lack of fund. He clarified that the clause meant that in the event that there is no availability of funds, the employment contract shall be terminated whether or not the same to an end.

As regards the email from Dr. Chintowa, he said the email was communicating about availability of funds but in no way did it amend terms and conditions of the existing employment contracts. There was no

agreement between the employer and the employees for the renewal of the contract and therefore he submitted that expiry dates for the contracts remained as provided in the agreements and signed by the parties.

It was further submitted that notice of non-renewal of the contract issued by the applicant extinguishes the expectation and in no way can it create legitimate expectation for the renewal of the employment contracts.

As regards the financial year, Mr Ngowi argued that the contract does not have any clause which provides that the contract shall expire at the end of financial year.

It was also submitted that Arbitrator misdirected himself on the retrenchment exercise without discussing the reason for the intention to retrench and why the process was not completed. He submitted that intention to terminate the respondents by way of redundancy cannot create expectation for the renewal of their contracts at the same time.

It was his further submission that there was no unlawful termination and therefore the respondents are not entitled to compensation under **section 40 (1) (c)** of ELRA as ordered by the arbitrator.

He finally argued that respondent's employment was of fixed term contract, thus once expired there is no procedure provided for a renewal or non-renewal of the contract.

He prayed for the court to set aside the CMA Arbitral Award and declare that the respondent's employment contracts came to an end by expiry.

Responding to the application the respondent's advocate submitted that having a fixed term contract is not an absolute factor that the same contract will end at the expiration of fixed tenure. He that depends on the words used in the agreement. He cited **Rule 4 (2)** of the Employment and Labour Relations Code, GN. No. 42 of 2007.

It was further submitted that failure by the employer to renew a fixed term contract if there was a reasonable expectation of renewal amounts to termination of employment as per **section 36 (a) (iii)** of the Employment and Labour Relation Act, Cap 366 RE 2019.

It was submitted that the respondent's employment was unfairly terminated as the previous renewal proved legitimate expectation to renew. The respondents contended that presence of renewal clause in the accepted offer letter of employment, email of Dr Chitowa assuring the respondents are there to stay for next five years, use of financial year FY 20 in a notification letter enunciation of retrenchment process, Practice of signing the contract after commencement date all these demonstrated reasonable expectation of renewal.

In rejoinder, the applicant's advocate reiterated what he has submitted in the submission in chief.

Having considered submission of both parties to the application, court records and applicable labour laws, the key issue for determination is whether the respondents had a reasonable expectation of renewal of their contracts.

In this application it is undisputed fact that the employment of the respondents was for a fixed term contract for one year. However, the last contracts entered by the parties started from 23 September 2018 and ended on 22 September 2019. In this last's contracts, before their expiry date on September 22, 2019 the respondents were issued with notice of non-renewal of their contracts dated August 2, 2019.

It is a settled law that, a fixed term contract shall automatically come to an end when the agreed time expires. The position is provided under **Rule 4 (2)** of the Employment and Labour Relations (Code of Good Practice) GN 42 of 2007 (herein GN 42 of 2007) which states that:

"Rule 4 (2) - where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise."

The applicant is strongly disputing that the respondents had no reasonable expectation of renewal of their contracts. The law imposes the duty to an employee claiming for reasonable expectation of renewal to demonstrate reasons for such expectation. The same is provided under Rule 4 (5) of GN 42 of 2007 which provides as follows: -

"Rule 4 (5) - where fixed term contract is not renewed and the employee claims a reasonable expectation of renewal, the employee shall demonstrate that there is an objective basis

for the expectation such as previous renewal, employers undertakings to renew"

In this matter at hand the applicant is strongly disputing previous renewal of the contracts and employers' undertakings to renew as a basis of the respondent's expectation of renewal.

The applicant advocate argued that, the fact that the applicant gave notice of non-renewal of the employment contracts it extinguished any expectation for the renewal.

Reasonable expectation of renewal of the contracts is created by the employer through conduct or statements which gives the employee prospective renewal of such contract. Admittedly, in this application the respondents were employed under fixed term of one year, however, the applicant for several times renewed contracts of respondents beyond one year after the expiry of the fixed term of one year, that created an intuition that their contracts will be renewed to another term even after the last contract ending date on 22 September 2019. However, that would have been the position if the respondents were not served with the notice of non-renewal of the employment contracts on 2 August 2019. The records in this application shows that the respondents were served with notice of non-renewal of their employment contracts on 2 August 2019 fifty days

before the ending of their employment contracts on 22, 23 September 2019.

Therefore, any expectation created by previous renewal or employer's undertakings were rebutted by the notice of non-renewal. The employer (the applicant) through exhibit RD 2 made it clear that the respondents' contracts of employment will not be renewed to another term.

The number of years the fixed term contract was renewed does not automatically change the status of such contract into a permanent one. The position was held in the case **National Oil (T) Ltd** (supra) where it was held that: -

"Z must say the question of previous renewal of employment contract is not an absolute factor for an employee to create a reasonable expectation, reasonable expectation is only created where the contract of employment explicit elaborate the intention of the employer to renew a fixed term contract when it comes to an end."

On the base of foregoing, this court of the strong view that the respondents were duly informed about the non-renewal of their contracts almost fifty days before they expired. The Hon Arbitrator

misdirected himself to believe that previous renewal and employers under takings created reasonable expectation of renewal of contract of employment in lie of notice to non-renewal.

As a result, the present application has merit, thus, the Arbitrator's award is hereby quashed and the present application is allowed accordingly.

It is so ordered.



D. B. NGUNGURU

JUDGE

21. 02. 2022

Date 28.02.2022
Coram Hon M. S. Kasonde - DR
Applicant Mr Kelvin Deogratias Advocate
Respondent Absent
B/C - Zuhura


Mr Kelvin Deogratias Advocate

This matter comes for ruling and we are ready.

Court:

Ruling delivered this 28th day of February 2022 in the presence of Mr Kelvin Deogratias learned advocate for the applicant and in absence of the respondent.




M.S Kasonde,
DR,
28/02/2022.