THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 311 OF 2021

BETWEEN

DALBIT PETROLEUM CO. (T) LIMITED..... APPLICANT

AND

MUNIRA HAPENDEKI NASSORO..... RESPONDENT

JUDGMENT

Last order: 07/02/2022
Date of Judgment: 11/02/2022

B.E.K. Mganga, J

On 22nd October 2012, Dalbit Petroleum Co. (T) Limited, the herein applicant, entered into a fixed term contract of six (6) months with Munira Hapendeki Nassoro, the respondent, as Operations Assistant. After expiration of the said six months, on 23rd April 2013 the parties entered into another fixed term contract of eighteen (18) months expiring on 23rd October 2014. On 23rd October 2014, while the respondent was in office, she was informed that her employment has been terminated and required to handover the office to the applicant.

Upon being informed that her employment has been terminated, on 3rd November 2014, respondent filed Labour dispute No. CMA/DSM/TEM/345/2014 before the Commission for Mediation and Arbitration (CMA) at Temeke claiming to be paid 12 months' salary compensation, annual leave, notice pay, and severance pay. The dispute was heard on merit to conclusion at CMA. On 13th January 2016, Hon. Masawe, arbitrator, issued an award in favour of the respondent that there was reasonable expectation to renew the contract and further that there was no valid reason for not renewal. In the said award, respondent was awarded to be paid TZS 6,000,000/= as salary compensation for 12 months, TZS 500,000/= being one-month salary notice, TZS 500,000/= being annual leave pay and TZS 269,231/= being severance pay all amounting to TZS 7,269,231/=.

Applicant was aggrieved by the said award and filed this application for revision. In the affidavit of Fatuma Msofe, the applicant's Human Resource Manager in support of the application, she raised eight grounds. However, during hearing of the application, Mr. Peter Ngowi, advocate for the applicant dropped six grounds and argued the remaining two grounds only. The remaining two grounds that were argued by the parties are: -

1. 1. *That, the arbitrator erred in law to issue an award out of time prescribed without any justification*
2. 2. *That, arbitrator erred to rely on the respondent's documents and exhibits that were filed after closure of the case by both parties at the time they were waiting for the award.*

Arguing the first ground, Mr. Ngowi, counsel for the applicant cited section 88(9) of the Labour and Employment Act [Cap.366 R.E. 2019] and Rule 27(1) of the Labour Institutions (Mediation and Arbitrations Guidelines) Rules GN. No. 67 of 2007, and submitted that the arbitrator was supposed to issue an award within 30 days after conclusion of hearing. Mr. Ngowi, counsel for the applicant, submitted that the award was improperly procured as it was issued seven (7) months out of the prescribed 30 days. He cited the case of ***Malaik K. Mwasungi v. Tanzanite One Mining Ltd***, Revision Application No. 108 of 2010, (unreported) and prayed the award be quashed.

On the second ground, Mr. Ngowi, counsel for the applicant submitted that arbitrator erred in law to rely on documents that were filed at CMA by the respondent on 15th October 2015 while both parties concluded hearing and closed their case on 24th June 2015. Counsel submitted that this was in violation of Rule 22(2) of the Labour Institutions (Mediation and Arbitrations Guidelines) Rules GN. No. 67 of

2007 that requires documents to be filed before commencement of hearing. He argued that these documents were not admitted as evidence for the arbitrator to rely upon them. Counsel concluded by praying that the award be nullified.

Arguing on behalf of the respondent, Mr. Lucas Nyagawa, advocate, admitted that the award was issued out of the time prescribed under the law. He was quick to submit that, though it was so delivered, no miscarriage of justice was done to the parties. He therefore prayed this ground be dismissed.

On the second ground, Mr. Nyagawa, counsel for the respondent submitted that, even if the documents were filed after closure of hearing, they were not used or considered by the arbitrator in the award. Counsel for the respondent submitted that the arbitrator considered only exhibit D1 and D2 all being fixed term contracts for six and 18 months respectively that were tendered by the applicant. Counsel for the respondent prayed this ground also be dismissed.

I have carefully examined evidence in the CMA record, submissions of both counsels and the award itself and find that there is no dispute that on 23rd April 2013, the parties entered into a fixed term contract of

employment for 18 months and that the same came to an end on 23rd October 2014.

It was argued by counsel for the applicant that the award was issued out of the prescribed 30 days and prayed the award be quashed. On the other hand, counsel for the respondent admitted that the award was issued out of the 30 days provided for under the law, but was of the view that the same has no effect as it did not occasion miscarriage of justice to the parties. I agree with counsel for the respondent as that is the correct interpretation. The Court of Appeal had an advantage of discussing a similar issue in the case of ***FINCA Tanzania Ltd v. Wildman Masika & 11 Others,*** Civil Appeal No. 173 of 2016(unreported). In the ***FINCA's case***, (supra), the Court of Appeal held: -

> *"The law in terms of s.88(9) of the Employment and Labour Relations Act requires that decisions be given within 30 days after the date of hearing. It is true that the CMA's decision in this case was delivered after 4 months. However, the delay in our view is not a material irregularity in procurement of an award, sufficient to have the same invalidated. We say so because if for example the award is nullified merely because the decision was not given within thirty days the effect is to have the process commence afresh causing further delay which is to the disadvantage of both parties. To us that is not the spirit behind section 88(9). The spirit is to have a time frame in completing matters brought before the MA but failure to meet the*

deadline stipulated in section 88(9) will not invalidate the proceedings and the award. At any rate, the delay of four months in this case has not prejudiced any party, hence no injustice occasioned".

That said and done, I dismiss the first ground.

In the second ground, counsel for the applicant submitted that arbitrator used and relied upon documents that were filed by the respondent after closure of hearing to issue the award in favour of the respondent. On the other hand, counsel for the respondent submitted that no documents filed by the applicant was used or relied upon by the arbitrator in the award. I have read the award and find that the only documents that was referred to, and relied upon in the award by the arbitrator, is the six months fixed term contract between the applicant and the respondent (exh. D1) in which they agreed that it will commence on 22nd October 2012; and 18 months fixed term contract between applicant and respondent (exh. D2) valid from 23rd April 2013 to 23rd October 2014. Both exhibit D1 and D2 were tendered by the herein applicant. That being the position, this ground also fails.

During hearing, I asked both counsels to address me whether it was proper for the arbitrator to award the respondent to be paid TZS 6,000,000/= as salary compensation for 12 months, TZS

500,000/=being one-month salary notice, TZS 500,000/= being annual leave pay and TZS 269,231/= being severance pay all amounting to TZS 7,269,231/= or not as this was not addressed by the parties.

Responding to the issue raised by the court, Mr. Ngowi counsel for the applicant submitted that compensation of 12 months was illegal as the fixed term contract between the parties expired on the date alleged termination occurred. Counsel submitted that in the contract there was no clause relating to legitimate expectation for the respondent to be awarded 12 months' salary as compensation.

On the other hand, Mr. Nyagawa, counsel for the respondent submitted that compensation of 12 twelve months were properly awarded. He argued that there was legitimate expectation. Counsel for the respondent conceded that the contract expired on 23rd October 2014 the date respondent's employment was terminated. He however argued that the promise to renew the contract came from the Human Resources (HR) of the applicant. Counsel for the respondent conceded further that, no evidence was adduced to the effect that the said HR had a final say in employment issues. Mr. Nyagawa conceded also that there is no evidence providing that the Chief Executive of the Applicant was aware with that promise.

It is my view that arbitrator erred to awarded respondent to be paid TZS 6,000,000/= as salary compensation for 12 months, TZS 500,000/= one-month salary notice, TZS 500,000/= being annual leave pay and TZS 269,231/= being severance pay all amounting to TZS 7,269,231/= because in her evidence, respondent admitted that the said fixed contract of employment (exhibit D2) expired on 23rd October 2014, the date she was informed that applicant has terminated her employment. It was testified by the respondent and held by the arbitrator that there was no reason for not renewing the contract. This was the base of the respondent to be awarded the aforementioned amount. This, in my view, was an error on the part of the arbitrator as in the CMA F1, respondent did not claim to be paid based on legitimate expectation of renewal of the contract, but based her claims on terminal benefits, annual leave, severance and twelve months salary compensation. In terms of Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007, the contract between the parties expired automatically. The said Rule provides: -

> *"4(2) Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise."*

The arbitrator found that no notice of termination was issued to the respondent. As the contract expired automatically, there was no need of issuing notice to the respondent as that is not the requirement of the law. A notice can only be issued if the employer intends to terminate a fixed term contract before expiry of the agreed period.

On legitimate expectation to renew, respondent testified that she was promised by the Human Resources officer (HR). It was conceded by counsel for the respondent that no evidence was adduced to the effect that the said HR had a final say in employment issues. It was conceded further by counsel for the respondent that there is no evidence providing that the Chief Executive of the Applicant was aware with that promise. In my view, the alleged promise to renew cannot be said was issued by the applicant. It may have been inadvertently issued by the HR who, at any rate, without proof that it came from the person with authority, in my view, cannot amount to promise. More so, the promise to renew must be relating to renew on similar terms to the previous contract. In the application at hand, there was a previous six months contract and the last one or eighteen months contract. There is no reason for the respondent to expect renewal of twelve months while there is not previous contract of twelve months between the parties.

Whatever the case, for the legitimate expectation of renewal to exist, some conditions have to be met. In ***Onesphory J. Mbina & 2others V. Tanzania Youth Alliance (Tayoa)***, Revision Application No. 222 of 2020 (unreported) this court quoted a South African case of ***Armscor Dockyard vs CCMA and 2 others***, case No. ***C853/15*** and held:-

> *"...that the expectation must be reasonable in the objective sense. The question that one has to ask is whether the circumstances were such that any reasonable employee would, in the circumstances, have expected the contract to be renewed ...here the court has to conduct a two-stage enquiry. The first stage is to determine what the applicant's subjective expectation actually was in relation to renewal. This is a question of fact. Once the subjective expectation has been established...the court then go on to decide the second stage, namely whether this expectation was reasonable in the circumstance..."*

The court went on to state that:

> *"...The law does not protect every expectation but only those which are legitimate. The requirements for legitimacy of expectation include the following:*
>
> *(i)The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification'. The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing of which they act at their peril.*
>
> *(ii) The expectation must be reasonable*

(iii) The representation must have been induced by the decision maker and

(iv) The representation must be one which it was competent and lawful for the decision-maker to make without which reliance cannot be legitimate."

From the quoted paragraph, it is clear in my mind that (i) a representation must be from a person with authority of which there is no proof that the HR had and (ii) that the decision must be induced by the decision maker of which it was conceded that no proof that HR was the decision make. These two conditions were supposed to be met for renewal to occur. It was therefore not an automatic renewal for another one year.

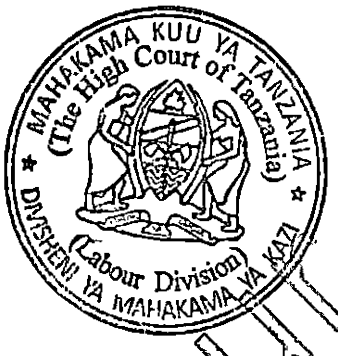
I have pointed hereinabove that in the CMA F1, respondent did not base her claim on legitimate expectation rather on unfair termination. In short, the issue of legitimate expectation was not in her pleadings she filed at CMA. In the case of ***Melchiades John Mwenda v. Gizelle Mbaga (Administratrix of the Estate of John Japhet Mbaga - deceased) & 2 Others***, Civil Appeal No. 57 of 2018 (unreported) the court of Appeal was confronted with a similar issue and held that: -

"It is elementary law which is settled in our jurisdiction that the Court will grant only a relief which has been prayed for-see also ***James Funke***

Gwagilo v. Attorney General *[2004] T.L.R. 161 and* ***Hotel Travertine Limited & 2 Others v. National Bank of Commerce*** *[2006]T.L.R. 133."*

For all what I have pointed hereinabove, I hold that there was no legitimate expectation and that the arbitrator erred in awarding the respondent to be paid 12 months' salary as compensation for the contract that expired automatically. I therefore, allow the application and set aside the CMA award.

Dated at Dar es Salaam this 11th February 2022.



B.E.K. Mganga
JUDGE