

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION APPLICATION NO. 30 OF 2022

BETWEEN

G4S SECURE SOLUTIONS (T) LTD APPLICANT

AND

JANETRICE EVARIST KESSY RESPONDENT

JUDGMENT

*Date of last Order: 09/06/2022
Date of Judgment: 17/06/2022*

B. E. K. Mganga, J.

The parties herein were in an employment relationship which commenced on 2nd June 2010 when the respondent was employed as a security Officer for a one (1) year fixed term contract ending on 2nd June 2011. After expiration of the said contract, parties did not sign another contract, but the respondent continued to work until on 7th June 2021, when she received a letter notifying her that the contract ended on 2nd June 2021. Respondent was aggrieved with that information. On 24th

June 2021, she knocked the doors of the Commission for Mediation and Arbitration (CMA) and filed labour dispute No. CMA/DSM/KIN/180/2021 claiming that she was unfairly terminated. In the CMA F1, respondent indicated that she was claiming to be paid TZS 272,700/= being one month salary in lieu of notice, TZS 734,192/= as severance pay, TZS 272,700/= being one month salary for accrued leave, TZS 545,400/= being salary arrears for May 2021 and June 2021, TZS 2,999,700/= being specific damages for the remained contractual period, TZS 16,362,000/= being 60 months' salary compensation for unfair termination, TZS 50,000,000/= as general damages all amounting to TZS 71,186,692/=.

Having heard evidence of both sides, on 7th January 2022, Hon. Lucia Chrisantus Chacha, Arbitrator, issued an award that termination of employment of the respondent was both substantively and procedurally unfair. The arbitrator awarded the respondent to be paid TZS. 2,999,700/=being salary for eleven (11) months of the remaining period of the contract, TZS. 272,000/= being leave pay and TZS. 272,000/= being one (1) month salary in lieu of notice all amounting to TZS. 3,545,100/=.

Applicant was aggrieved, as a result, she filed the present application seeking the court to revise the said award. In the affidavit sworn by Imelda Lutebinga, the principal officer of the applicant in support of the application, raised two issues namely: -

- (i) whether the award is tainted with illegality on the face of record and,*
- (ii) whether the arbitrator erred in law and facts for failure to assess and or analyses the evidence both oral and documentary tendered by applicant.*

Countering the application, respondent filed her counter affidavit.

At the hearing of the application, applicant was represented by Mr. Mosses Kiondo, learned Advocate, while the respondent appeared in person.

Mr. Kiondo submitted generally on the two grounds that respondent was employed for a fixed term contract commencing on 03rd June 2010 to 02nd June 2011 as evidenced by the fixed term contract exhibit D1. He submitted further that, after expiry of the said contract, respondent continued to work as the contract was automatically renewed. He added that, the last contract between the parties commenced on 03rd June 2021 and was expected to expire on 02nd June 2022. He further submitted that; respondent complained that she was terminated in June 2021 while she was not terminated by the applicant. Counsel for the

applicant submitted that respondent was informed by the Zonal Manager through SMS (Exhibit D2) that she should continue with work, but she did not return at work. In his submissions, counsel for the applicant conceded that there is no letter written by the applicant requiring the respondent to continue working and that the contract between the two was a written one.

Furthermore, Mr. Kiondo submitted that, the arbitrator awarded the respondent to be paid salary for the remaining period of contract on ground that applicant breached the contract. He submitted further that the arbitrator awarded the respondent based on salary of TZS. 272,700/= while as per salary slip (exhibit D4), the basic salary of the respondent was TZS 150,000/=. He emphasized that, evidence of DW1 proved that applicant was not terminated hence the award of notice and leave pay was improper.

On the other side, Ms. Kessy, respondent, submitted that she was informed by the Human Resources Manager that she was terminated from her employment and that on 07th June 2021 she was served with a letter titled end of employment contract (exhibit P2). She further submitted that, the pay slip that was authored and tendered by the applicant at CMA shows that her salary was TZS 272,700/=. She insisted

that, applicant did not write a letter calling her back to work but was saying that she resigned.

In rejoinder, Mr. Kiondo, learned counsel for the applicant submitted that respondent's salary was TZS 150,000/=.

I have examined the CMA records and find that it is undisputed fact that respondent was employed by the applicant for one-year fixed term contract which was renewed several times and that the last contract ended on 2nd June 2021. It is further undisputed that there was an automatic renewal of the said one-year fixed term contract at the end of each contract.

It was submitted by the respondent that on 7th June 2021, the Human Resource Officer served her with a letter terminating her contract. I have gone through the said letter (exhibit D2) and noted that the same relates to the contract which came to an end on 2nd June 2021. It is clear that in evidence of the parties that respondent was notified on 7th June 2021 that her employment ended on 2nd June 2021. At the time respondent was notified of end of contract, she had already worked for four days for the new contract that was renewed automatically as parties were not signing new contracts. In his evidence, Elifariji Kisoka (DW1) testifying for the applicant, stated that

there was automatic renewal of contracts between the parties after the first contract (exh. D1) that commenced on 3rd June 2010 and expired on 2nd June 2021. It is my view that, if applicant intended to end employment relationships with the respondent, she was supposed to write end of employment letter (exh. P2) prior commencement of a new contract and serve it to the respondent. Exhibit P2 is dated 2nd June 2021, the date the contract expired but was served to the respondent on 07th June 2021 after an automatic renew of the contract for another one year and at the time respondent has worked for four days. Evidence that respondent was served with exhibit P2 on 07th June 2021 was not challenged by the applicant. That being the case, in my view, there was unfair termination of contract of employment as the arbitrator held.

Applicant has complained that the Arbitrator did not analyze properly evidence of the parties. I have examined the award, the subject of this revision, and the CMA record and find that the Arbitrator fairly analyzed evidence of both parties and arrived at the proper conclusion that termination of employment of the respondent was unfair as I have also concluded. I therefore dismiss that complaint.

It was submitted by counsel for the applicant that monthly salary of the respondent was TZS 150,000/= and not TZS 272,700/= that the

arbitrator used to form the basis of calculation of compensation. On the other hand, respondent maintained that her salary was TZS 272,700/=. This ground cannot detain me so much. It is a trite principle of law that, who want the court to decide in his favour must prove the allegations. The position is clearly provided for under Section 110 of the Evidence Act [Cap.6 R.E 2019] and has been emphasized in several cases including the case of ***Barelia Karangirangi vs. Asteria Nyalwambwa***, Civil Appeal No. 237 of 2017, CAT (Unreported) where it was held that: -

*"... we think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that he who alleges must prove. ...It is similarly that in civil proceedings, **the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities.**"*(Emphasis added).

I have read the CMA record and find that the amount of TZS.150,000/= as monthly salary is neither reflected in the fixed term contract of employment that was signed by the parties on 2nd June 2010 (exh. D1) nor in the salary slip (exh. D4) both tendered by the applicant. The fixed term contract (exh. D1) shows that the parties agreed that monthly salary will be TZS 105,000/=. That was in June 2010. On the other hand, the salary slip (exh. D4) shows that monthly salary was

calculated at TZS 800/= per hour worked and there was no uniform amount of monthly salary. It was upon the employer (applicant) to prove the amount payable to the respondent as monthly salary, but she didn't. In my view, without such proof, the arbitrator cannot be faulted.

For all stated hereinabove, I uphold the CMA award and dismiss the application for want of merit.

Dated at Dar es Salaam this 17th June 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 17th June 2022 in the presence of Janetrice Evarist Kessy, the respondent but in the absence of the applicant.



B. E. K. Mganga
JUDGE

