IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 247 OF 2021

(From the award of Commission for Mediation & Arbitration of DSM at Ilala Dated 21st May 2021 in Labour Dispute No. CMA/DSM/KIN/748/20/366)

BETWEEN

JONES RUGAKINGIRA.....APPLICANT

VERSUS

HUBERT KAIRUKI MEMORIAL UNIVERSITY.....RESPONDENT

JUDGEMENT

20th June 2022 & 27th June 2022

K. T. R. MTEULE, J.

This Revision application arises from the award of the Commission for Mediation and Arbitration which was delivered by Hon. Mbena, S. Arbitrator, dated 21st day of May 2021 in Labour Dispute No. CMA/DSM/ILA/R.539/17/655 at Ilala. The Application is instituted by the employee (the Applicant) against the employer (the Respondent). The Applicant is praying for the following orders of the Court:-

1. That, this Honorable Court be pleased to call for, revise the proceedings and set aside the award of the Commission for Mediation and Arbitration at Dar es salaam Zone in Labour Dispute No. CMA/DSM/KIN/748/20/366.

2. Any other relief(s) this Honorable Court deems fit and just to grant thereof.

The background facts of this application is traced from CMA record, affidavit and counter affidavit filed by the parties. The applicant was employed by the respondent as Human Resources and Administration Manager in different dates under 3 years fixed term contract. His contract was renewed several times and the last contract started on 1st September 2017 and ended on 30th August 2020. On 25th August 2020 the respondent decided to notify the applicant on her intention of non-renewal of their contract. Dissatisfied with the decision, the applicant filed the Labour Dispute No. CMA/DSM/KIN/748/20/366 at the CMA where the matter was decided against the Applicant. The arbitrator found that there was no employees expectation for renewal of the contract and therefore no termination, but the contract ended by time with no automatic renewal clause in the said contract. This decision triggered this application for revision.

Along with the Chamber summons, the applicant filed an affidavit sworn by himself, in which after expounding the chronological events leading to this application, alleged to have been unfairly terminated after being issued with a notice of intention not to renew just 5 days

before the contract came to an end. The applicant is of the view that there was a reasonable expectation of renewal.

The application was challenged through a counter affidavit sworn by Mr. Sima Kairuki. The deponent in the counter affidavit vehemently and strongly disputed applicant's allegation regarding reasonable expectation of renewal.

The application was disposed of by a way of written Submissions. The Applicant was represented by Ms. Shaely Richard Onesi Advocate, from Ntanga Attorneys whereas the Respondent was represented by Mr. Mohammed Tibanyendera, Advocate, from a firm styled as Star Chambers Advocates. I appreciate their rival submissions which will be considered in drafting this Judgement.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, I am inclined to address two issues. The first issue is **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award** issued in Labour Dispute No. CMA/DSM/KIN/748/20/366 and secondly, **to what reliefs are parties are entitled**?

In addressing the issue as to **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award,** I will start to expound on the nature and status of the respondent's notice of intention not to renew the contract. Does it amount to termination? Was there an expectation of renewal on the part of the applicant which should have rendered the said notice superfluous?

Beginning with the status of the notice, the Applicant's counsel averred that the applicant was unlawfully terminated according to clause 3 paragraph 2 of the employment contract after notice of intention not to renew being issued 5 days before the date when the contract was supposed to expire. On the other hand, the Respondent's Counsel averred that the applicant failed to comply with clause 3 paragraph 2 of the employment contract which directs an employee to notify the employer of his intention to renew the contract in three months before the expiry of the contract. The Respondent is of the view that the applicant was fairly terminated as his contract come to an end.

In addressing these questions, the relevant provisions of law are; **Rule 4 (2) of GN. No. 42 of 2007 and Section 36 (a) (iii) of**

the Employment and Labour Relation Act, Cap 366 R.E 2002 which provide:-

> *"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."*

I have gone through the record especially clause 3 paragraph 2 of the employment contract (Exhibit D-1). It requires the employee to issue notice of intention to renew the contract in three months before the end of the contract. I will quote the words of paragraph 3 of the said contract hereunder:-

> *"The employee will remain in Service of the Hubert Kairuki Memorial University for a period of three years commencing on 1 September 2017, and terminating on 30 August, 2020.*
>
> *Three months before the expiry of this contact the employee must notify the employer in writing of his intention to renew the contract for another period. Upon receipt of the request the employer shall have an option to accept or reject the request taking into consideration the prevailing financial position and the employee's performance assessment during the running contractual period."*

From the evidence in the CMA, it appears that the Applicant did not observe this contractual requirement of indicating the intention to renew the contract 3 months before the expiration. The evidence available in CMA record indicates that nothing from the Applicant was done, till 25th August 2020 when the notice of intention not to renew was issued. In such circumstance, I am of the view that applicant's averment regarding short notice by the Respondent cannot supersede the terms agreed by the parties in their contract. In the case of **Hotel Sultan Palace Zanzibar vs. Daniel Laizer & Another,** Civil. Appl. No. 104 of 2004, where it was held that:-

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

Basing on the above cited authority since parties agreed to terminate their employment contract by agreement as per **Exhibit D-1 (Employment contract)**, then it is unwise for this Court to interfere parties' agreement. Therefore, the respondent's notice of intention of not renewing the contract issued on 25th August 2020 and the

purpose of the same is just to inform applicant that she had no intention of initiating a new contract with the applicant. Basing on **Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN. No. 42 of 2007** the act of respondent to notify the Applicant cannot amount to termination since termination is automatic for a contract with a specified period of time.

The contract agreed by the parties speaks by itself that it was to come to an end on 30th August 2020. One cannot claim that the notice issued amounted to termination regardless of the date it was issued.

Regarding the expectation of renewal, the applicable provisions are **Section 36 (a) (iii) of the ELRA No. 6/2004** and **Rule 4 (4) of GN. No. 42 of 2007**. Section 36 provides:-

> *"Section 36 (a) Termination of employment includes:-*
>
> *(iii) a failure to renew a fixed term contract on the same or similar terms, if there was* ***reasonable expectation of renewal"*** *.*

As well, Rule 4 (4) of GN. No. 42 of 2007 is quoted hereunder:-

> *"Rule 4 - An employer and employee shall agree to terminate the contract in accordance with their agreement.*
>
> *(4) Subject to sub-rule (3), the failure to renew a fixed-term contract in circumstance where the employee reasonably expects a renewal of the contract may be considered to be an unfair termination"*

It is on record that the respondent issued notice of intention not to renew the contract on 25th August 2020 and not notice of termination as the contract come to an end on 30th August 2020. **Section 41 of the Employment and Labour Relation Act, Cap 366 R.E 2019** as contested by the respondent's Counsel is inapplicable in this matter. It could have been relevant if the employer decided to terminate an operative or existing contract and not an expired contract. According to Rule 4 (2) the contract under fixed term terminates automatically when the agreed period expires. In this matter, clause 3 of the employment contract places a duty to the employee to demonstrate the renewal expectation. The Applicant's

failure to demonstrate the renewal expectation is an indication that there was no such expectation.

In this application at hand the applicant failed to prove a reasonable expectation of renewal. In such circumstance I have to say that there was no any reasonable expectation of renewal subject to previous renewal as was held in the case of **National Oil (T) Ltd. v. Jaffery Dotto Mseseni & 3 others,** Revision No. 558 of 2016 (unreported). It was stated that:-

> *"I 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."*

From the above authority the reasonable expectation of renewal of an employment contract; must be proved by an employee to show employer's conduct through statements, directions or any other act which makes it clear that there is expectation to continue with the contract. The Applicant can not claim any expectation which was not indicated previously.

From the foregoing the answers to the two questions are thus, there has been no termination of employment contract and that there was no proved renewal expectation on the part of the applicant.

The answers to the two questions renders the first issue framed in this application to be answered in the negative that the Applicant has not demonstrated sufficient reasons to justify setting aside of the CMA award.

Having found that the first issue is answered negatively, I find nothing to award to the applicant. The only relief available is to dismiss the application.

On that basis this Court finds that the application filed by the applicant has no merit. The said application is dismissed. The CMA award is hereby upheld. Each party to take care of its own cost. It is so ordered.

Dated at Dar es Salaam this 27th day of June, 2022.

MAHAKAMA KUU YA TANZANIA (The High Court of Tanzania) (Labour Division) DIVISHENI YA MAHAKAMA YA KAZI

KATARINA REVOCATI MTEULE

JUDGE

27/06/2022