

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

REVISION APPLICATION NO. 47 OF 2021

(Originating from Labour Dispute No. CMA/DSM/ILA/938/19/113/20)

BETWEEN

SULEIMAN HASSAN STIMA.....APPLICANT

VERSUS

G4S SECURE SOLUTIONS TANZANIA LIMITED.....RESPONDENT

JUDGMENT

Date of Last Order: 23/11/2021

Date of Judgment: 28/01/2022

I. Arufani, J.

The applicant, Suleiman Hassan Stima was employed by the respondent on 6th November, 2014 as a Vault Manager in a one (1) year fixed term contract. After expiration of the contract, the applicant continued with work until on 6th November, 2019 when the respondent terminated his employment contract on the reason that he has no intention to renew the contract. The applicant felt resentful with the said termination and filed the dispute before the Commission for Arbitration and Arbitration (hereinafter referred as the CMA) claiming to have been unfairly terminated from his employment.

After hearing both sides the CMA decided the dispute in favour of the respondent by holding that, there was no termination of the

applicant's contract of employment rather the contract came to an end. On the second bite the applicant filed the present application in this court to challenge the award basing on the following grounds:-

- i. The legality and correctness of the CMA's finding that there was no expectation of renewal on the part of the applicant.*
- ii. The legality and propriety of the CMA's finding that the current respondent is not liable for unfair termination*
- iii. The legality and propriety of the CMA's finding that the applicant is not entitled to any relief and or terminal benefits.*

The application was supported by the applicant's affidavit and it was challenged by the counter affidavit of Imelda Lutebinga, the respondent's Principal Officer. Hearing of this application was by way of written submission. While the applicant was unrepresented in the matter the respondent was represented by Mr. Mosses Kiondo, Learned Advocate.

In his submission, the applicant stated in relation to the first ground of revision that, the evidence on record reveals that he was employed by the respondent in a one-year fixed term contract from 6th November, 2014 to 5th November, 2015. He stated it is undisputed fact that after expiration of the first contract, they did not enter into

another contract. He stated he continued to work with the respondent for four (4) years until 18th October, 2019 when he was issued with the notice of non-renewal of his contract of employment.

He further submitted that, the fact that the applicant worked for the stated period of time without contract, by the time he was served with a notice of non-renewal of the contract he already had expectation of renewal of the contract. He added that even the notice of non-renewal issued to him by the respondent was insufficient as from the date of issuance to the date of the contract to come to an end was too short.

He argued in relation to the second ground that, when he was issued with a notice of non-renewal of the contract, already he had reasonable expectation of renewal of the contract. Therefore, termination of his employment was not fair as the respondent had no valid reason for termination of his employment. He argued that, the respondent failed to comply with the procedure for termination of employment of an employee as provided under Section 37 of the Employment and Labour Relations Act, CAP 366 RE 2019 (ELRA).

With regards to the third ground the applicant submitted that, since the respondent had no valid reason for terminating his contract,

the arbitrator wrongly decided that he was not entitled to any relief. He prayed the court to revise and set aside the CMA award and order the respondent to pay him reliefs as provided under section 40 of the ELRA, severance pay since he worked with the respondent from 6th November, 2014 to 6th November, 2019, and general damages to the tune of Tshs. 200,000,000/= . To support his submission the applicant referred the court to the case of **Abubakar Haji Yakub v. Air Tanzania Company Limited**, Revision No. 162 of 2011. He stressed that, he was unfairly terminated as when he was served with a notice of non-renewal of the contract, he already had formed reasonable expectation of the renewal of the contract.

In response, the counsel for the respondent stated that, the arbitrator was correct to decide that there was no expectation of renewal of the contract. The reason being that, previous renewal of a contract is not an absolute factor for an employee to create reasonable expectation of renewal of a contract. He argued that, reasonable expectation is only created when the contract explicitly elaborate the employer's intention of renewal of a fixed term contract when it comes to an end. To bolster his arguments the counsel for the respondent cited the case of **National Oil (T) Ltd. v. Jaffery Dotto Mseseni & 3 others**, Revision No. 558 of 2016 (unreported).

Mr. Kiondo further submitted that it is obvious that the applicant was employed in a one-year fixed term contract, hence he was aware that on 5th November, 2019 the contract would come to an end. He stated that, the notice of non-renewal was issued out of a good will by the respondent as there was no need for the same to be issued as the contract was a notice by itself. To support his argument, he referred the court to Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) GN. No.42 of 2007 which states that, a fixed term contract shall be terminated automatically when the agreed period expires unless the contract provides otherwise. He also referred the court to the case of **Abel Kikoti & 5 Others V. Tropical Contractors Ltd.**, Revision No. 305 of 2019 (unreported) where it was stated that, as distinct from unspecified time contracts, specific time contract expires at the end of the contract period although the parties may enter into a new contract.

He argued in relation to the second ground that, the arbitrator was correct in his decision because, the employment contract (exhibit D1) do not provide for requirement of issuing notice of non-renewal of the contract. He submitted that shows the applicant's contract expired automatically.

Concerning the third ground, the counsel for the respondent argued that, the arbitrator was right in his decision that, the applicant is not entitled to any relief or terminal benefit. He stated the applicant was paid all of his salaries and other dues up to his last day of service of his fixed term contract on 5th November, 2019. He argued that, reinstatement and severance pay as provided under Sections 40 (1) and 42 (1) of the ELRA are the remedies available to employees who are eligible to claim for unfair termination.

Further to that, the counsel for the respondent submitted that, under a fixed term contract an employee can only claim for wrongful termination or unfair labour practice as a result of breach of employment contract. To bolster his submission, he referred the court to the case of **Mtambua Shamte & 64 Others v. Care sanitation and Supplies**, Revision No. 154 of 2010. At the end he prayed the application be dismissed for want of merit.

Having considered the contesting submission from both sides and after going through the record of the matter and the applicable laws the court has found the issues to be determined in this application are:-

- i. Whether the applicant had reasonable expectation of renewal of his fixed term contract of employment.*

ii. What are the reliefs entitled to the parties?

To begin with the first issue, the applicant alleged that the arbitrator wrongly decided that there was no expectation of renewal while, after expiry of the first contract the contract was renewed by default for four (4) consecutive years. So, by the time he was served with a notice of non-renewal, he already had expectation of renewal of the contract. The respondent's counsel refuted the applicant's arguments as he contended that, the contract just come to an end on expiration of the contract period. Hence the arbitrator was correct in his decision that, there was no reasonable expectation of renewal.

It is a settled law that, a fixed term contract shall automatically come to an end when the agreed period expires. That position of the law is well provided under Rule 4 (2) of GN. No. 42 of 2007 which states that:-

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

[Emphasis added].

After examining the record of the matter, the court has noted that, the applicant was employed on 5th November, 2014 and the contract was fixed for 1 year without express term of renewal. It is undoubted fact that, the contract was renewed by default up to 6th November, 2019 being four consecutive years.

The duty to prove if there was reasonable expectation of renewal is vested to the employee. This is as per Rule 4 (5) of GN. 42 of 2007 which provides that:-

"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, employer's undertakings to renew".

The reasonable expectation of renewal of an employment contract, are created by the employer through his statements or daily conduct. The applicant's reason for his prospective renewal was the previous renewal of a contract. This court is of the view that, previous renewal of a contract is not a factor for the employee to create reasonable expectation. The respondent's act of renewing contracts by default was rebutted by the notice of non-renewal of contract issued on 18th October, 2019. This was also emphasized in

the case of **National Oil (T) Ltd.** (supra) cited in the submission of the respondent where Nyerere, J. (as she then 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."

This court is also of the considered view that, unlike in an unspecified period of a contract, in the specified period contract like the one in the matter at hand, the contract is itself a notice as it expressly states the date of termination of a contract. After expiry of the first contract, it is obvious that the same was renewed with the same terms and conditions. Therefore, the applicant was aware that duration of the contract was one (1) year. The law does not compel the employer to issue a thirty (30) days' notice of non-renewal of a contract. Therefore, this court finds the applicant's contention that the duration of notice was not sufficient to be devoid of merit. Under that circumstances the court find it has no reason to fault the arbitrator's finding that there was no reasonable expectation of renewal of the contract established by the applicant.

As regards to the second issue, the court has found the applicant claimed in his CMA F1 to be paid compensation for being unfairly terminated and any other reliefs. It was the CMA's finding that, the applicant is not entitled to any relief since he was not terminated from his employment but the contract just came to an end.

As found by the hon. arbitrator the applicant is not entitled to any compensation and other reliefs under sub part E of CAP 366 RE 2019 as claimed as the same are paid to the employees who were unfairly terminated. Also, concerning the severance pay, the law under section 42 (3) (c) of the ELRA is very clear that severance pay is not paid to employee whose contract has expired or ended because of the fixed time.

In the light of the above discussion, the court finds the application has no merit and is hereby dismissed in its entirety and the CMA award is accordingly confirmed. It is so ordered.

Dated at Dar es Salaam this 28th day of January, 2022.



I. Arufani

JUDGE

28/01/2022

Court: Judgement delivered today 28th day of January, 2022 in the presence of the applicant in person and in the presence of Mr. Mosses Kiondo, Advocate for the Respondent. Right of appeal to the Court of Appeal is fully explained to the parties.



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JUDGE

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Labour Court TZ.