IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 167 OF 2021

(From the decision of the Commission for Mediation and Arbitration of DSM at Kinondoni) **(Muhanika: Arbitrator)** dated 15th day of December 2020 in Labour Dispute No. CMA/DSM/KIN/917/19

BETWEEN

KHADIJA MURTAZA BHIMJI ..... APPLICANT

VERSUS

REGENCY MEDICAL CENTRE LTD..... RESPONDENT

JUDGEMENT

K. T. R. MTEULE, J

21st July, 2022 & 17th August, 2022

This Revision application emanates from the decision of the Commission for Mediation and Arbitration of Dar es salaam, Kinondoni (CMA), asking for this court to call for the record of Labour Dispute No. CMA/DSM/KIN/917/19 revise and set aside the award therein delivered on 15th December, 2020 by Honourable Muhanika, Arbitrator. The applicant is praying for any other order the Court deems just and equitable to grant.

I find it appropriate at this point, to give a brief facts leading to this application as grasped from CMA record, affidavit and counter affidavit filed by the parties. The applicant was employed by the respondent as Pediatrician under a fixed term contract. The last contract commenced

on 1st January, 2019 and ended on 31st December, 2019. Their relationship changed on 31st December, 2019 after when the Applicant was informed by her employer that her contract would not be renewed. Aggrieved by the decision, the applicant filed the matter in the CMA on 31st December, 2019 claiming for 12 months compensation for unfair termination and discrimination. After the determination of the matter, the Commission found there to have neither termination nor discrimination and awarded nothing to the Applicant. Being dissatisfied with the decision, the Applicant preferred this revision application.

The applicant advanced four grounds of revision as stated at paragraph 11 of her affidavit as follows; -

i) That the Arbitrator erred in law and fact by disregarding the entirely evidence adduced by the applicant.

ii) That, the arbitrator erred in law and facts by entertaining the respondent's testimony that was not supported by any evidence.

iii) That, the arbitrator erred in law and fact by deciding basing on medical history of the complainant which was given without following due process.

iv) That, the Honurable arbitrator erred in law and in fact by holding that, the applicant was not unfairly terminated.

The application was argued by a way of written submissions. The applicant was represented by Ms. Asella Kokushubila Arcard while Hamisa Nkya appeared for the respondent. Applicant managed to file written submissions despite of having the scheduling orders given in the presence of both parties. I appreciate applicant's submissions. The application will be determined basing on this Applicant's submissions.

Having gone through the applicant's' submissions and the parties sworn statements in the affidavit and counter affidavit together with the record of the CMA, I am inclined to address two issues. The issues are, firstly, **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award** and secondly**, to what reliefs are the parties entitled?**

In addressing the first issue, I take note of the Applicant's submissions. In the **first** ground for revision, the Applicant's counsel asserted that the arbitrator disregarded the entire evidence adduced by the Applicant. I will address this ground along with the second ground which claims that the arbitrator entertained the Respondent testimony which was not supported by evidence. The Applicant's counsel averred that the respondent failed to observe the terms of their employment contract and there was no meeting of mind in terminating applicant's employment. Under such circumstances she is of the view that the

terms of contract were not respected and the arbitrator did not consider the evidence to that effect. Supporting her argument, she cited the case of **Reni International Co. Ltd v. Geita Gold Mining Ltd, Civil Appeal No. 453 of 2019, Court of Appeal of Tanzania, at Dodoma, (unreported).**

It is not in dispute that the Applicant was employed on a fixed term contract and that her employment ended as a result on non-renewal of the said contract. In the CMA, the arbitrator found that the applicant's employment contract was not terminated but came to an end after expiry. The employment contract indicating to be of fixed term contract was tendered and admitted as Exhibit D-1 (employment contract).

Guided by the terms of the contract which was on fixed period, and provisions of Rule 4 (2) of GN. No. 42 of 2007 and Section 36 (a) (iii) of 4 the Employment and Labour Relation Act, Cap 366 R.E 2002 the arbitrator concluded that there was no termination of contract. Rule 4 provides:-

> *"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."*

It is clear from the wording of Rule 4 that a fixed term contract terminates automatically unless provided otherwise in the contract.

In this respect, I see a misconception on the part of the applicant when she claims that the respondent terminated her employment. In line with the provision of Rule 4 of GN 42 of 2007, and the nature of the parties' contract, one cannot claim that the notice issued to the Applicant amounted to termination. It could have been different 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 my view, the arbitrator was properly guided by the evidence of the contract of the parties and the testimony of DW1. She could not have been reached into a better conclusion than she had done basing on the evidence adduced in the CMA.

The Applicant alleged discrimination caused by her pregnancy. According to her, discrimination was the reasons for her contract termination which happened after she became pregnant. This was an allegation which needed specific evidence to prove discrimination and to prove the fact that the contract ended due to her pregnancy. Since it is apparent that the contract expired automatically, the allegation that it was terminated based on discrimination against her for being pregnant is unfounded, since the parties' contract speaks when it will end.

I have also considered the applicants claim of Respondents disclosure of her medical report. It is alleged that the report came into the Respondent's knowledge when the applicant attended treatment in the Respondent's hospital. In my view this should not be treated as a labour dispute because the information was accessed by the Respondent in a client/customer relationship and not employment relationship. Since the employment contract expired automatically, there is no evidence that the medical report contributed anything to end the said contract. I therefore find this assertion unfounded.

In a very passive way, the applicant showed a concern on renewability of the contract. To claim a reasonable expectation of renewal there are conditions which must be met in the terms of the contract. It was held in the case of **National Oil (T) Limited 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. This was not the case in the instant matter.

From the foregoing it is my holding that since there has been no termination of employment contract and that there was no proved renewal expectation on the part of the applicant then I see no reason to differ with the arbitrator's findings. This finding renders the first issue 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 on the ground that applicant's employment come to an end after having been expired.

Having found that the first issue is answered negatively, the only relief available is to dismiss the application for being unfounded. 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 17th Day of August, 2022

KATARINA REVOCATI MTEULE
JUDGE
17/08/2022