

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

REVISION NO. 464 OF 2021

JOSEPH CHARLES SILWAMBA APPLICANT

VERSUS

G4S SECURE SOLUTION (T) LTD RESPONDENT

(From the decision of the Commission for Mediation and Arbitration at Kinondoni)

(Kiangi, Arbitrator)

Dated 16th November, 2021

in

REF: CMA/DSM/KIN/830/2020/386/2020

JUDGEMENT

11th August & 18th August 2022

Rwizile, J

The applicant has filed the present application against the decision of the Commission for Mediation and Arbitration (CMA) dated 16th November 2021. The applicant is calling upon this court to invoke its revisionary powers to call for, examine the proceeding and the award of the CMA.

The application is supported by the applicant's affidavit which were disputed by the counter affidavit sworn by Imelda Lutebinga, respondent's Principal Officer. Grounds for revision advanced are as follows;

- a) *Whether there was a fixed one year term contract entered between respondent and applicant that started on 28th October, 2019 and ended on 27th October, 2020.*
- b) *If there was no one year fixed term contract entered between the respondent and the applicant, what was the applicant's employment status.*
- c) *Whether the applicant was working under specific task with the respondent.*
- d) *Whether the applicant was fairly terminated according to the law.*
- e) *Whether it was proper for respondent to remove the applicant from her computer system when the applicant was on vacation even before termination.*
- f) *Whether the evidence tendered before the CMA was properly analysed.*
- g) *Whether the applicant was given an opportunity to be heard before termination of his employment according to the law.*
- h) *Whether the applicant was properly awarded his entitlement.*

Factually, the applicant was the employee of the respondent (formally known as G4S Security Services Tanzania Limited) as a security officer.

He entered into a one-year fixed term contract starting from 28th October, 2011 to 27th October, 2012.

From 28th October, 2012, this contract was neither verbally or otherwise renewed or terminated. The applicant allegedly continued to work at different places as assigned by the respondent until his contract was terminated on 27th November, 2020.

The applicant worked at Morogoro station from 01st September, 2014 until 30th March, 2020 when he was returned to Dar es Salaam without being paid travel allowances. The applicant filed a dispute at the CMA in protest. The dispute was successfully mediated on payment of TZS. 750,000.00 in two instalments. On 16th April, the applicant was forced to take 12 days leave which ended on 27th April, 2020 and was paid TZS. 68,000.00 as a leave allowance on 31st May, 2020. While on leave the applicant was removed from the respondent's computer system. It continued like that until when he was terminated.

The applicant, after the removal of his name from the respondent's computer system, he continued going to work but was not assigned any duties. On 27th October, 2020, the applicant was informed by the Assistant Human Resources Officer that he is no longer wanted and should not be seen at the respondent's offices. He was ordered to handover the

respondent's tools of work. He referred the matter to the CMA, which was unsuccessful, hence this application.

The hearing was made orally. The respondent was represented by Mr. Mosses Kiondo, learned Advocate. Mr. Joseph who appeared in person, submitted all the issue stated in the affidavit generally that he was employed for one-year fixed contract on 20th October, 2011 which came to an end on 27th October, 2012 as evidenced in exhibit D1. He stated that he continued to work with the respondent without any contract until 20th October, 2020. He continued to submit that on 01st September, 2014 he was transferred to Mikumi-Morogoro and worked there until 14th April, 2020 when returned to Dar es Salaam (DSM). He stated further that he was promised to be paid transport costs to DSM as exhibit D2 shows but was not paid.

Mr Joseph submitted further that when he claimed for it, he was forced to go for leave of 12 days upon signing a letter on 16th April, 2020 which was supposed to end on 27th April, 2020. He stated that, when he went for leave, he was removed from the payroll. When he reported on 28th April, 2020, he was told, he was terminated because of his absence. The applicant was keen and stated that he filed a dispute at the CMA and during mediation he was paid TZS 750,000.00.

He stated that, when their dispute at the CMA was concluded, he reported for work on 21st October, 2020. He further, argued, he was asked to explain why he referred the dispute to the CMA and why he was absent from work. He was terminated on 27th October, 2020. He prayed, the CMA award be quashed and an order for reinstatement without loss of benefits be made.

In reply, Mr. Kiondo submitted that the applicant was employed in a one-year contract which ended on 27th October 2019, according to exhibit D1. He stated that, the contract was renewed by default because he continued to work until terminated on the last renewal of the contract which started on 28th October, 2019 and was supposed to end on 27th October, 2020. He continued to stated that the applicant was in Morogoro. When he was transferred to DSM, he was paid TZS. 500,000.00 as transfer costs. He further submitted that the applicant did not accept to work until payment of other amount due to transfer.

Mr. Kiondo stated that the applicant had no proof of other claims of transfer and so he did not work. He was therefore terminated because he did not go to work for over five days. He stated further that the applicant filed a labour dispute No. CMA/DSM/KIN/567/2020/278, which was terminated due to the agreement on 19th October, 2020 and was paid TZS 750,000.00

Mr. Kiondo submitted that there was no agreement for him to go back to work as he was paid everything. He continued to comment that the applicant filed another dispute at CMA which gave rise to this application. He then stated that the application was filed out of time but was paid one month notice. He argued further that there was no permanent contract because the fixed term contract was just by default. And so, he prayed, the application be dismissed as it has no merit.

In re-joining, Mr. Joseph submitted that G4S secure solutions employed him and not the respondent. He was of the view that the contract, exhibit D1 clause 4,8,12 (b, c and d) and 17 were all not complied with. He continued to argue that the contract had no automatic renewal. He said, he was not paid his transport allowance but only substance allowance. He was only paid the total of TZS. 500,000.00. He stated that he was not paid 1.5 tons costs of which when raised caused him problems. He narrated that; he was paid TZS. 750,000.00 for the purpose of deal with the case of transport costs and then continue working. He was then terminated illegally.

Having gone through the pleadings and submissions of each party, CMA proceedings and exhibits tendered, this court is to determine;

Whether the employment contract between the applicant and the respondent ended by itself or there was unfair termination

There is no dispute that the applicant was an employee of the respondent under one-year fixed contract which is exhibit D2.

Then, he continued to work without being given another contract until 27th October, 2020 when he was terminated. The dispute is on the employment relationship of the parties on whether the contract entered by the parties was renewed by default or changed into a permanent contract.

As it is evidenced under exhibit D1, parties to this case, had first a fixed term contract from 28th October, 2011 to 27th October, 2012. In consulting the law under rule 4(3) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007, it provides that, where an employee continues to work after the expiry of the contract there is an automatic renewal by default.

From the above cited provision, it is proved that after the contract entered by the parties ended and the applicant continued to work it resulted to the renewal by default and but did not to turn into a permanent contract.

For that matter, I agree with the learned advocate that the contract of the applicant was renewed by default. This also has been proved by the

applicant himself by stating that even though his former employer was known as G4S Security Services Tanzania Limited it was changed to G4S Secure Solutions (T) LTD then the first contract was enforceable even when the name of the company was changed.

The applicant stated that he was unfairly terminated. Based on the terms of the contract, it was renewed by default. In the case of **Ibrahim Mgunga & 3 others v African Muslim Agency**, Civil Appeal No. 476 of 2020, Court of Appeal of Tanzania at Kigoma at pages 12-13, it stated:

"...We entirely agree that indeed, in determining the existence of a reasonable expectation of renewal of a fixed term contract, the number of times the contract has been renewed is one of the factors to be considered..."

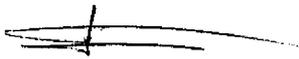
But in the case at hand, the applicant has been working under such terms and conditions since 2012 when his first contract expired. It was renewed by default, since he went on working for the next 8 years under the same terms. It is clear to me that there was a contract pending between the parties. But this did not make it, a permanent contract. In my view, it remained fixed as it was entered and was renewed by default for the period of 8 years.

There is evidence that the applicant was terminated on 27th October 2020. This is the time the contract renewed by default was coming to an end. The respondent admitted that the terms of the same agreement applied to his termination and it was proceeded by the case before the CMA, which the applicant claims was for transfer terms from Mikimi to Dsm.

In my considered opinion, the applicant who was working with the respondent for 9 years could not by any stretch of imagination think his contract could not be renewed. In actual fact, he thought he was in a permanent contract of employment.

Therefore, the applicant ought to be compensated having been in assumption that his contract existed. That being the case, there was a contract existing. Its termination had to follow the procedure. Therefore, the applicant is to be compensation the period of 12 months at the salary of 165,000, per month which is a total of 1,980,000. The application is therefore granted and the CMA award is hereby quashed and set aside. No order as to costs.




K. Rwizile

JUDGE

18.08.2022