

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 51 OF 2021

G4S SECURE SOLUTIONS (T) LIMITED APPLICANT

VERSUS

CELINA APIYO ODEMBA RESPONDENT

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

(Ngaruka, Arbitrator)

Dated 23rd November 2020

in

REF: CMA/DSM/KIN/838/19

JUDGEMENT

15th May & 25th August 2022

Rwizile J

The applicant **G4S SECURE SOLUTIONS (T) LIMITED** asked this Court to call and revise the proceedings, the award and decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/838/19 dated 23rd November, 2020.

Briefly, the facts of this case are that the respondent was engaged by the applicant as a security guard at the US Embassy in Dar es Salaam under a fixed term contract of five years. The contract expired on 31st December, 2019 and got an extension of six months from 01st February, 2019 to 31st July, 2019.

The extension was followed by another extension of one month commencing from 01st August, 2019 to 31st August, 2019. This time however, was followed by another extension of one month. It started from 01st September, 2019 to 30th September, 2019 and the last extension of one month ended on 31st October, 2019. The applicant issued to the respondent, a notice to end contract.

Upon termination, she was paid her final dues. The respondent was aggrieved by termination, she filed a complaint at the CMA claiming for breach of her employment contract and payment of unexpired term of five years at a tune of TZS. 24,348,244.05, leave and certificate of service to make a total sum of TZS. 24,825,660.60. The CMA entered an award in favour of the respondent. The applicant was not therefore happy, hence this application.

The application was supported by an affidavit of Imelda Lutebinga principal officer of the applicant with the grounds as follows: -

- a. *That the award is tainted with illegality on the face of record.*
- b. *The arbitrator erred in law and in facts for holding that there was reasonable expectation of renewal of the respondent's fixed term contract, while there was no renewal clause in the said contract.*

- c. *That the arbitrator erred in law and in facts for awarding the complainant/respondent a compensation pursuant to section 40(1)(c) of the Employment and Labour Relations Act, [Cap 366 R.E. 2019], which remedy is for unfair termination claims and not breach of contract as the respondent claimed in her CMA Form No. 1.*
- d. *That the arbitrator erred in law and in facts for awarding the respondent severance pay while the respondent was under a fixed term contract which expired by effluxion of time.*
- e. *That the trial arbitrator erred in law and in facts for ordering payment of a one-month salary in lieu of a notice, while the said contract was a fixed term contract, essentially a notice in itself, and which contract terminates upon its expiration.*
- f. *That the arbitrator erred in law and in facts for failure to assess and/or analyse evidence both oral and documentary tendered by the applicant henceforth reached on a wrong final decision.*

The application was heard orally. The applicant was represented by Moses Kiondo, learned Counsel, whereas the respondent was represented by Denis Mwamkwala, a Personal Representative.

Mr. Kiondo submitted on issue (a) and (b) together that there was no expectation of renewal. He stated that the first contract was for five years,

extended to six months from 01st February, 2019 to 31st July 2019. He stated further that, it was then followed by an extension of one month from 01st August to 31st August, 2019. Thereafter came another one-month contract, until 31st October, 2019. He stated further that after expiration of the last contract, the applicant issued a notice to end the contract.

He stated that all contracts had no renewable clause and therefore, termination was by the contract itself. To support his submission, he cited rule 4(2) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007. He insisted, the contract terminated automatically when the period stated therein expired.

Submitting on another issue, Mr. Kiondo was of the view that, the award was based on section 40(c) of the Employment and Labour Relations Act (ELRA) [CAP. 366 R.E. 2019] providing for payment of 12 months remuneration. In his view it was not proper because the contract was a fixed term.

Submitting on the succeeding issue, according to him, awarding of severance payment is a remedy for unfair termination as governed by section 42 of the ELRA which provides for it to be paid upon continuation of service when, it was a fixed term contract.

Mr. Kiondo submitted further on the other issue, that there was no need of a notice payment because the contract itself was a notice. He supported his submission by citing rule 4(2) Of G.N. No. 42 of 2007. In the applicant's view, there was no need for payment of notice to that effect.

Lastly, Mr. Kiondo made it clear that the CMA did not deal with evidence properly as it shows that, the respondent was paid leave. According to him, there was no expectation for renewal. He sought support in the cited cases of **G4S Secure Solutions (T) Limited v Abbas Mpewa**, Revision No. 52 of 2021, High Court at Dar es Salaam at page 7 and **Suleiman Hassan Stima v G4S Secure Solutions Tanzania Limited**, Revision Application No. 47 of 2021, High Court at Dar es Salaam at page 5.

By reply, Mr. Denis argued on the first two issues that there were expectations of renewal of the contract because of the contracts between the applicant and the US Embassy. He stated that the contract was extended due to availability of the contracts from US embassy.

Mr. Denis argued further based on exhibit RD5 at page 2, the US Embassy gave directives on how to extend contracts. He said, the respondent was expecting another contract. He stated that exhibit RD1 when read together with exhibit RD5 shows expectation of renewal of the contract. As well, he added, the arbitrator was right to award 12 months

remuneration because the respondent was expecting another five years and seven months as per exhibit RD5.

On severance pay and notice, it was argued that, the order was legally made by the arbitrator. He stated further, the respondent was terminated before the contract expired as provided for under clause two of exhibit RD1. According to him, the notice to end the contract was on 01st November 2019, when he was on duty.

In conclusion, he said, the decisions referred by the applicant's counsel are distinguishable because the US Embassy and the applicant raised expectation of renewal. He prayed, the application be dismissed.

In a rejoinder, Mr. Kiondo submitted that exhibit RD5 shows there was no extension of the contract by the US Embassy. He stated that, the notice was given on 01st November, 2019 and was based on failure to get extension of contract from Us Embassy. He stated that previous renewal does not amount to reasonable expectation. He asked, this application be granted.

Having gone through submissions of the parties, I consider one key point for determination is, *if by the conduct of the parties, there was expectation of renewal of the contract.*

I have to start with section 36(a)(iii) of the Employment and Labour Relations Act [CAP 366 R.E. 2019] read with Rule 4(3) & (4) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007, which provide that termination of employment includes failure to renew a fixed term contract. Further, in law, as according to the rules, fixed term contracts may be renewed by default, if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it.

The proceedings shows that there is no dispute that the respondent was the employee of the applicant. Also, the respondent was employed in a fixed term contract of five. Upon expiry of the same, he got other extensions for six month and three times for the period of one month each. This is as per exhibits RD 1, RD4, RD2 and RD3 respectively.

Going through evidence before the CMA, I have found that the last contract started on 1st October, 2019 and ended on 01st November, 2019. According to exhibit RD6 which is the end of employment contract letter, the respondent was informed of no extension a day after the last contract came to an end. In other words, the last contract of one month was to end on 31st October, 2019, but she worked until 01st November, 2019.

Based on the terms of rule 4(3) of the Code of Good Practice, I find it proper, to agree with the respondent that there was an automatic extension of the previous contract. This answers the issue whether, there was expectations of renewal of the same contract. For the reasons stated above, I find no need to fault the arbitrator when held that there was expectation of renewal of the contract on the side of the respondent.

In law, it is considered unfair termination, if one terminates a contract without following the procedure as provided for under rule 4(4) of G.N. No. 42 of 2007 which states: -

"Subject to sub rule (3), the failure to renew a fixed term contract in circumstances where the employee reasonably expects a renewal of, the contracts may be considered to be an unfair termination."

For this matter it has been proved that the expectation for renewal was for the last employment contract of one month. In law, it is not unfair termination because the respondent was in a contract of one month. Section 35 of the ELRA provides: -

"The provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts."

Since there is evidence that the respondent worked one day in a new contract. It follows therefore that she is to be paid unexpired term of one month. Therefore, this application has merit and it partly allowed. The payment of 12 months awarded is set aside, as I quash the terms of the award. I substitute for it, one month salary. No order as to costs.




A.K. Rwizile

JUDGE

25.08.2022