IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 396 OF 2021

TANZANIA ELECTRIC

SUPPLY COMPANY LTD ..... APPLICANT

VERSUS

ADAM YUSUF & 3 OTHERS ..... RESPONDENT

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

(Gerald: Arbitrator)

Dated 24th September, 2021

in

REF: CMA/DSM/UBG/746/18

JUDGEMENT

08th July & 19th August, 2022

Rwizile, J

This application emanates from the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/UBG/746/18. This Court has been asked to call for the records, proceedings and the award of the CMA, for the purposes of revising and setting it aside.

It was alleged that the respondents were employed by the applicant under specific task contract. The applicant renewed their contract several times due to availability of the projects.

The last contract came to an end on 31st July, 2017. This time, they were informed three days before its expiration, on 27th July, 2017, that there would be no further extensions. The respondents were not pleased. They therefore filed a labour complaint at the CMA alleging they were unfairly terminated. The CMA heard the dispute and found in favour of the respondents. The applicant was ordered to reinstate them. Being aggrieved with the decision, the applicant filed this application. The applicant filed two grounds for revision as hereunder: -

i. *That, the arbitrator erred in law and facts when he held the respondents were unfairly terminated as there was no valid reason for termination and the procedures was not followed.*
ii. *That, the arbitrator grossly failed to analyse and evaluate the evidence and testimonies of the applicant's witness hence heading to an unfair award.*

The hearing was oral. Both parties were represented. Miss Lightness Msura, State Attorney appeared for the applicant. The respondent was represented by Mr. Denis Mwamkwala, a Personal Representative.

M/S Msura submitted that the respondents were on fixed term contract with the applicant which started on 15th July 2017 to 31st July 2017. She stated that before the contract came to its end, the respondents were notified by the applicant of no further extension. It was argued, the notice for non-renewal was issued on 27th July 2017.

According to her, there was no notice for renewal of their contracts and therefore, it was not proper for the arbitrator to apply section 40 of Employment and Labour Relations Act [CAP. 366 R.E. 2019].

She further stated that, there is no unfair termination of a fixed term contract. To support her submission, she cited the case of **Tropical Contractors Limited v Juma Shabani and 2 others**, Revision No. 560 of 2018, High Court at Dar es Salaam at page 11.

On the second issue, she submitted that it was not proper for the CMA to hold that there were expectations of renewal. She stated that the respondents were supposed to prove it as under rule 4(5) of G.N. 42 of 2007. She stated that the respondents were issued with a notice, exhibit D2. It proves, the notice was issued before the contracts expired. To support her submission, she cited the cases of the **Board of Trustees of the Medical Stores Department v Robert Njau**, Revision No. 621 of 2019, High Court at Dar es Salaam at page 11 and **Paul James Lutome**

& 3 others v Bollore Transport & Logistics Tanzania Ltd, Revision No. 347 of 2019, High Court at Dar es Salaam at page 12.

In rebuttal, Mr Denis submitted that the respondents were employed by the applicant since 2012, until when they were terminated on 31st July 2017 as per exhibit AY1. He stated that the respondents were on fixed term contracts as per D2. Mr. Denis held the view that termination notice referred clause 10(a) of their contracts while there was no such a contract. He stated that if indeed there was such contract, the notice was supposed to be given in 7 days before the end of it. The respondents, he added, were terminated on 28th July 2017.

Mr. Denis continued to submit that exhibit D1 was not a contract because it contradicts section 14 of Act. He stated that contracts are fixed for at least 12 months and the notice was not in harmony with D1. In his view, the arbitrator was right to hold that the respondents should be reinstated. He stated that the respondents were working since 2012. He insisted, the contracts referred in the notice of termination were not tendered but was referred to clause 10(a) which does not exist in exhibit D1. He prayed, the application to be dismissed.

When re-joining, the learned Attorney submitted that exhibit D2 is not a contract but a notice of termination. She stated that the respondents did

not tender any contract to prove they were employed since 2012. She stated further that the respondents did not file a notice warranting the applicant to produce the said contracts. She stated further that section 14 of Act, provides types of contracts. In her view, the CMA held that the respondents' contracts were for a specific task as per section 14(c) of the Act.

In conclusion, she stated that exhibit D2, was admitted without objection and that the respondents were aware through the notice about ending of their contract. Further, she argued, the contract is for specific task, where a notice is in 4 days as per section 41(a) and (b)(ii) of the Act. The same was accordingly issued, 4 days before in compliance of the law. She asked this court to allow this application.

After hearing both parties, I think, the court has been called upon to determine *if the commission was right to hold that the respondents were unfairly terminated.*

I have to say first, there is no dispute that the respondents were on fixed term contract with the applicant under a specific task. Even though it has been stated that the respondents were employed by the applicant from 2012 but there is no evidence to prove the same.

The record has it that the respondents were all employed under specific tasks. Specific task is one types of the contracts stated under section 14(1)(c) of the Act. It is evident that in exhibit D1 for instance, Adamu Yusuph had a contract of 28 days from 01st February 2017 to 28th February 2017. It is also clear that other contracts were for 31 days and 30 days as well, which were about 4, that were in between 31 days from 01st March 2017 to 30th June 2017.

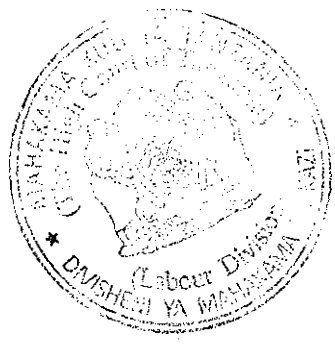
This equally applied to Michael John who also had a contract of 28 days from 01st February 2017 to 28th February 2017. Other contracts ranged from 15 to 31 days in between March to July 15th 2017.

Genes Shirima and Saidi Mohamed had more or less similar contracts in the same period. It is therefore clear to me, that they were having contracts of specific tasks with the applicant. The character of these contracts, is that they last as long as the task last. There is evidence further that the respondents were issued with a notice to end their employment contracts. This has been proved by exhibit D2 which states that the applicant has no intention to renew their contracts. Under rule 4(2) of the Employment and Labour Relations (Code of Good Practice) G.N. No. 42 of 2007 states: -

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

There was no termination that was uncalled for, since the respondents knew their contract were to end on agreed terms. More so, they were served with the notice of the intention not to renew the contract by the applicant. For that matter, I find, there was no unfair termination.

I thus quash the decision of the CMA and set aside all other orders. Each party to bear its own costs.



A.K. Rwizile

JUDGE

19.08.2022