

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

REVISION APPLICATION NO. 17 OF 2022

BETWEEN

CENTRAL ELECTRICALS INTERNATIONAL LIMITED APPLICANT

AND

AUGUSTINO MACHOTA..... RESPONDENT

JUDGMENT

Date of the last Order: 15/08/2022
Date of Judgment: 19/08/2022

B. E. K. Mganga, J.

On 1st July 2016 Central Electricals International Limited, the herein applicant and Augustino Machota, the herein respondent, entered two years fixed term contract of employment that expired on 30th June 2018. In the said fixed term contract, respondent was employed as an engineer. After expiry of the said two years fixed term contract, the parties entered another contract. Applicant alleges that the contract the parties entered after expiry of the said two years contract was a one year fixed term contract and that it came to an end on 31st January 2020 but the respondent alleges that it was a two years fixed term

contract and that it was expected to expire beyond that period. It is undisputed by the parties that on 3rd January 2020, applicant served the respondent with a notice of non-renewal of the contract.

On 23rd January 2020, respondent referred Labour dispute No. CMA/DSM/KIN/70/2020 before the Commission for Mediation and Arbitration henceforth CMA claiming to be paid TZS 24,600,000/= being salary for the remaining period of the contract on ground that applicant breached the contract. On 21st December 2021, Hon Mhanika, J, Arbitrator, issued an award that the parties had two years fixed term contract and that there was breach of contract by the applicant. Based on those findings, the arbitrator awarded the respondent to be paid TZS 26,650,000/= being salary for the remaining 12 months period on the contract and one month salary for January 2020.

Applicant was aggrieved by the said award hence this application for revision. In the affidavit affirmed by Hafeez Twawer, the principal officer of the applicant in support of the Notice of Application raised three issues namely: -

- 1. Whether it was proper for the arbitrator to rule that respondent has entered a two-year contract with the applicant while on record the respondent's contract was for one year.*

2. *Whether it was proper for the arbitrator to order that the respondent be paid the remaining 12 months' salary including salary for January 2020 making a total of 13 months' salary.*
3. *Whether it was proper for the arbitrator to rule that the respondent's contract has been unlawfully terminated while applicant duly issued a notice of non-renewal on 31st December 2019 that after 31st January 2020 when the contract comes to an end the same will not be renewed.*
4. *Whether the award was properly procured.*
5. *Whether arbitrator considered circumstances of termination of the respondent.*

Respondent exercised his right under the provisions of Rule 24 of the Labour Court Rules, GN. No. 106 of 2007 and opted to file only the Notice of Opposition to oppose the application.

As a way of reducing influx of litigants in the court corridors and by consent, the application was disposed by way of written submissions.

Arguing in favour of the application, Mr. Malik Seif Juma, learned advocate for the applicant, submitted on the 1st issue that parties had a one-year fixed term contract(exh. D1) commencing on 1st February 2019 expiring on 31st January 2020 and not a two-years fixed term contract. Counsel submitted that the arbitrator disregarded evidence that proved the period of the contract the parties entered to and made her findings based on the document that was not tendered. He concluded that the

said one-year contract between the parties expired and that there was neither breach nor termination.

On the 2nd issue it was submitted on behalf of the applicant that the arbitrator erred in law to order that respondent be paid 12 months salaries as the remaining period of the contract. He submitted further that respondent was awarded the said award in terms of section 40(1) of the Employment and Labour Relations Act [Cap. 366 R.E. 2019] while the dispute was not on unfair termination, rather, it was on breach of contract.

On the 3rd issue, counsel for the applicant submitted that the arbitrator erred to hold that the contract was unfairly terminated while applicant issued a notice to the respondent that there will be no renewal upon expiry of the contract on 31st January 2020.

On the 4th issue, counsel for the applicant submitted that applicant complied with the provisions of sections 31 and 42 of Cap. 366 R.E. 2019 (supra). He went on that respondent had no claim against the applicant because he was paid his terminal benefits. He cited the case of [Viettel Tanzania v. Naftar Mahenge and Another](#) , Labour Revision

No. 10 of 2019, HC(unreported) and concluded that the award was improperly procured.

Arguing on the 5th issue, counsel for the applicant submitted that arbitrator failed to consider circumstances of the respondent's termination. He went on that, the dispute being on breach of contract, respondent was supposed to prove existence of the contract that was breached. He maintained that the contract between the parties expired on 31st January 2020 hence there was no contract that was breached.

On his side, in his written submissions, respondent submitted that the said one-year fixed term contract (exh. D1) was fabricated and went contrary to email correspondences (exh. P1) that shows the agreement that was entered by the parties. He went on that; no evidence was adduced by the applicant disputing correctness of the said email correspondence (exh. P1). [p1 was not signed by the parties and came after D1 hence cannot be enforced It was an error by the arbitrator.]

On the 2nd issue, it was submission of the respondent that applicant breached the contract twelve months prior its expiry and that salary for January 2020 was not paid. It was submissions of the

respondent that the award of payment of thirteen months salaries was in order because he was awarded the remaining period of the contract.

On the 3rd issue, respondent submitted that the issuance of a notice of non-renewal does not suffice to conclude that procedures for termination were followed. He went on that section 41 of Cap. 366 R.E. 2019 (supra) cited by the applicant relates to notice of termination hence inapplicable to the application at hand and not notice of non-renewal [I Agree section. 41 deals with notice of termination and not non-renewal]

On the 4th issue, respondent submitted that applicant did not dispute that he (respondent) was not paid salary for January 2020. He further submitted that if the contract expired automatically, then, applicant cannot be heard submitting that she paid all terminal benefits to him.

It was the respondent's submissions on the 5th issue that, applicant did not bring any witness to challenge the authenticity of email correspondences (exh. P1) that shows that parties had a two-years fixed term contract. He maintained that there was breach of the contract.

The central issue of controversy between the parties is on the duration of the contract they entered and whether; the contract expired automatically or was prematurely terminated. While applicant testified that they had a one-year fixed term contract, respondent testified that they had a two-years fixed term contract.

It was evidence of Hirna Rathod (DW1) that Respondent was employed as an engineer for a fixed term contract of one year (exh. D1) at monthly salary of TZS 2,050,000/= from 1st February 2019 expiring on 31st January 2020. DW1 testified further that, on 31st December 2019 applicant served the respondent with a notice of non-renewal (exh D2) via WhatsApp and that on 3rd January 2020, respondent collected the hard copy.

On the other hand, it was evidence of Augustino Machota (PW), the applicant, that he was notified that he will continue to work for the period of two years. Respondent tendered email correspondences (exh.P2) to that effect. He testified further that, on 27th July 2019 he was called in a meeting wherein, he was informed that he will be terminated and that, while in the said meeting, a one-year fixed term contract was brought to his attention. He also testified that on the same date, i.e., 27th July 2019, he was served with a notice to attend the

disciplinary hearing (exh. P2). In his evidence, PW1 tendered email correspondences between himself and one **Hussein Somji** (exh. P3) dated 24th September 2019 showing that they had agreed to sign a two-years fixed term contract. He testified further while in chief that, on 3rd January 2020, he was served with a notice of non-renewal of the contract upon expiry on 31st January 2020 and that, he continued to work until on 31st January 2020. While under cross examination, PW1, respondent admitted that on 1st February 2019, he signed the contract between the applicant and himself (exh. D1). He admitted further that, after 31st January 2020, he did not go to work and further that, there is no any other contract that was signed between him and the applicant.

I have examined exhibit D1 and find that it is a one-year fixed term contract commencing on 1st February 2019 and expiring on 31st January 2020 and that it was signed by respondent on 1st February 2020. I have also noted that, the notice for non-renewal that was tendered by DW1 and by the respondent as exhibit P4, shows that a one-year fixed term contract between the parties commenced on 1st February 2019 and was expiring on 31st January 2020. In the said non-renewal notice, it was expressly stated that (i) the contract was for one year and that (ii) upon expiration, there will be no renewal. The said

non-renewal is evidence of both the applicant and the respondent. I can therefore safely conclude that the parties had a one-year fixed term contract that expired on 31st January 2020 and that respondent was served with a notice of non-renewal prior expiry of the said contract.

The arbitrator relied on email correspondence between the parties and concluded that the parties had a two-years fixed term contract. That findings and conclusion were erroneously reached. I am of that view because (i) the said email correspondences were not signed by the parties, (ii) the email correspondences were dated 24th September 2019 while the one-year fixed term contract (exh.D1) was signed on 1st February 2019. Therefore, if parties wanted to change the period of the contract, they were supposed to sign a new contract or an addendum to exhibit D1, and (iii) **Hussein Somji** was not called by the respondent to testify on authenticity of the emails that he alleges was communicated to his by the said Hussein Somji. Failure to call the said Hussein Somji, created doubt that the said email correspondences might have been authored by any other person other than the said Hussein Somji and possibly by the respondent himself. That said and done, I find that the arbitrator erred in her findings to rely on of the email communications

and further in holding that the parties had a two-years fixed terms contract.

Before I go on to make my final findings and decision, I find that it is important to comment on one procedural issue that I have found to be improper in this application. In the application at hand, I noted that the notice of non-renewal was tendered as exhibit D2 by the applicant and then as exhibit P4 by the respondent. This was not proper because the same exhibit cannot be tendered twice in the same proceedings. Since it was first tendered by the applicant, then, in his evidence, respondent was supposed only to refer to it and not to tender it again. That said, all the same, it did not occasion injustice or vitiate proceedings in this application.

Having found that the parties had a one-year fixed term contract and that the same expired automatically, I hold that the arbitrator erred to award the respondent 12 months salaries being the remaining period on the alleged two-years fixed term contract that did not exist. I therefore quash that order. What I have discussed herein above disposes the whole application. I will therefore not discuss the remaining issues.

Respondent was also awarded to be paid salary for January 2020 as he was not paid. I have examined evidence of the parties and find that PW1 testified that he was not paid salary for January 2020. That evidence was not shaken. It is in evidence of the parties that monthly salary of the respondent was TZS 2,050,000/=. I therefore order that applicant should pay the respondent that amount as he is entitled to.

For the foregoing, I allow the application, quash, and set aside the award to the extent explained.

Dated at Dar es Salaam this 19th August 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 19th August 2022 in chambers in the presence of Ritha Mahoo, Advocate for the respondent but in the absence of the applicant.



B. E. K. Mganga
JUDGE