

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

REVISION NO. 512 OF 2021

(Arising from Labour Dispute No. CMA/DSM/ILA/185/2021 of Commission for Mediation and Arbitrator (CMA), Hon. Lucia Chrisantus Chacha, Arbitrator).

EBRAHIM HAJI CHARITABLE HEALTH CENTER APPLICANT
VERSUS

MADINA MOHAMED JUMANNE RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The applicant herein filed the present application challenging the decision of the Commission for Mediation and Arbitration ("CMA") in Labour Dispute No. CMA/DSM/ILA/185/2021 delivered on 30/11/2021 by Hon. Lucia C. Chacha, Arbitrator. The application is supported by an affidavit deponed by Ms. Joan Kubwela Makaranga, the applicant's Principal Officer dated 27/12/2021. On the other hand, the respondent vehemently challenged the application through the counter affidavit sworn by herself.

Briefly, the dispute leading to the current application started from the respondent alleged to be unfair termination. The respondent was employed by the applicant as a Receptionist/Cashier in a one-year fixed term contract which commenced on 06/06/2020 and agreed to end on

05/06/2021. After the mentioned contract expired, the applicant did not renew it. The record reveals that before expiry of the contract the respondent was served with the notice of non-renewal of the contract. Aggrieved by the non-renewal, the respondent referred the matter to the CMA where it was found that she was unfairly terminated on the ground of misconduct. Following the CMA's findings, the respondent was awarded a total of TZS. 2,460,000/= being 6 months' salaries as compensation for the alleged unfair termination. Being dissatisfied by the CMA's award the applicant filed the present application raising the following legal issues:-

- a. Whether the arbitrator was properly moved to hold that the respondent was unfairly terminated while it was undisputed that the contract of employment had expired and she was duly notified as per the terms of the contract.
- b. Whether the award was legally justifiable.
- c. Whether the arbitrator was legally held that the reason for non-renewal are minor.
- d. Whether the arbitrator misconceived the facts of the case.

- e. Whether upon expiration of fixed term employment contract the applicant (employer) is obliged to prove reason(s)for non-renewal.
- f. The Commission erred in law to entertain the matter which was time barred.

On the date of hearing the applicant was represented by Mr. Frank Martin, Learned Counsel whereas the respondent appeared in person, unrepresented. Arguing in support of the application, Mr. Frank abandoned the last issue that the dispute at the CMA was time barred. As to the first and third issues, Mr. Frank submitted that the CMA erred in holding that the respondent was unfairly terminated and by also holding that the reasons for termination were minor. That according to the employment contract (exhibit D1), it clearly provided for its commencement and expiry, a fixed term contract of one year which commenced on 06/06/2020 and ended on 05/06/2021. He continued to submit that para 12 of the contract provides for its termination, in particular para 12(3) where it says that the contract may be terminated by either party giving the other one month's notice or payment in lieu of notice. He argued that from that perspective, the exhibit received by the CMA (exhibit D2) in which the heading is "*TAARIFA YA KUTOTARAJIA KUONGEZA MKATABA WA AJIRA*" was written on 05/05/2021 and was

served to the respondent on the same day arguing that it is evidence that the parties agreed to terminate the contract.

Mr. Frank went on to submit that the contract was renewable and in the case of non-renewal, the parties had to notify one another. He argued that since the contract was ending on 06/06/2021, the one-month notice was issued to the respondent. Further that because the applicant had informed the respondent of the non-renewal of the contract, then the termination was according to the contract. He further submitted that in the CMA Form No. 1, at the clause which asks when the dispute arose, the respondent replied that the dispute arose on 05/06/2021 which is the date that according to the contract, it was coming to an end and the notice was served accordingly. He hence submitted that it was wrong for the arbitrator to hold that the respondent was unfairly terminated or that her contract was not renewed because the contract was terminated according to the agreement therein.

Mr. Frank argued that Section 41(1)(b)(ii) of the ELRA provides for notice of termination and the period provided therein shall not be less than 28 days if the employee is employed on a monthly basis. He added that sub section 2 of the same section 41 provides that an agreement

may provide for another period that is longer than sub section 1 provided that the agreed notice period should be of equal duration for both employer and employee. He submitted that looking at exhibit D2, the notice was according to the law and the terms of the contract. Mr. Frank also argued that it was not proper to say that the termination of the respondent was for minor reasons, contending that he did not see the relevance of the word minor. He therefore, submitted that the CMA erred in holding that the termination was unfair.

As to the second issue of whether the award was legally justifiable, he submitted that at page 10, 2nd para of the impugned award, the CMA awarded a compensation of 6 months for unfairly terminating the respondent both procedurally and substantively. He strongly contested such an award because the respondent was on a fixed term contract. He argued that where the employee was in a fixed term contract and it is found that the termination was unfair, then the compensation is for the remaining period of the contract. He alluded that in this contract, the contract came to an end thus, no basis of the 6 months awarded while there was no any remaining period of the contract. To support his preposition, he cited the case of **Jordan University College vs Flavia Joseph (Labour Revision 23 of**

2019) [2020] TZHCLD 3822 (08 December 2020) where Hon. Muruke, J, among many things she discussed, she referred to the case **Azama Rajabu Mbilanga Vs. Shield Security Services Limited, Rev. No. 113/2019** whereby the following words were quoted:-

"seems the applicant was under a fixed term contract, she was entitled to be paid the remaining salaries of the said months".

Mr. Frank argued that in the case at hand, according to the cited decision, it is not clear where the six months' salaries compensation came into being while it is undisputed that the respondent was under fixed term contract. He went on to submit that when you look at the CMA Form No. 1, on page 3 of the nature of the dispute, the respondent ticked the nature of dispute as termination of employment. Further that even during mediation, the dispute was termination of employment. The counsel argued that if the party is complaining of termination of employment, then the compensation is to be a salary of not less than 12 months. To support his submissions, he referred the court to Section 40(1)(c) of the ELRA and firmly added that they do not see justification of 6 months' salary. He submitted further that in the cited case of **Jordan University** (supra), the court also held that there is no unfair termination in a fixed term contract. He continued to submit that in the

case at hand, there is no dispute that the respondent was under a fixed term contract but the award does not fall under fixed term contract, hence the issue whether the award is legally justifiable.

Coming to the fourth and fifth issues, Mr. Frank submitted that at page 7-8 of the award, the CMA held that exhibit D2 does not prove termination, but it shows the reasons which are minor and supposed to be rectified by the employer and not to terminate the contract. He strongly submitted that exhibit D2 did not carry any minor issues, it is a notice that shows that the contract will come to an end. He further contended that at page 9 of the contested award, the CMA held that the contract was terminated because of the behavior of the respondent, submitting that such argument is based on misconception of the facts. He submitted that the contract was terminated because of time, it expired and not because of the reasons listed by the CMA.

Mr. Frank went on to argue that the standard of proof in labour matters is on balance of probabilities and not beyond reasonable doubts. That the reasons for termination were listed at the CMA and the employer was not under any duty to prove why the fixed term contract was not renewed on its expiration. The counsel also argued that much as they understand that it is the duty of the employer to prove that the

reasons for termination were fair, in this case the principle does not apply because the respondent was not fired, he insisted that her fixed term contract came to an end.

It was further argued that the fact a contract is entered by consent of both parties, either party cannot force the other party to continue with contract if that term has come to an end and what the applicant did in this case is non-renewal of the contract and not unfairly terminating the contract as wrongly found by the arbitrator. In conclusion Mr. Frank submitted that the employer ended the contract as per the terms of that contract and the decision of the CMA that there were no justifiable reasons to terminate the contract is erroneous. He therefore, prayed for the CMA's award to be set aside, he also urged the court to hold that there was no expectation of renewal and any other relief that the court may deem fit to grant.

Responding to the application the respondent submitted that the employer thought her behavior was not proper, but he did not inform her until when they were terminating the contract. She questioned why she was not called at the disciplinary committee stating that the notice was issued for 15 days and the other days she was asked to take leave. Further that when she went back to work on 01st it is when she was told

that the contract came to an end. She emphasized that she has never been called at any disciplinary hearing and that there was no justifiable reason for her termination. The respondent concluded that the award of the CMA is proper and prayed for the application to be dismissed.

In rejoinder Mr. Frank reiterated his submission in chief. He further contended that the respondent has submitted out of what she deponed in counter affidavit. He stated that the issue that she was given a notice of 15 days is not true and it is an issue of evidence but it was not even testified at the CMA so she cannot bring it here. He reiterated his submission that the respondent was issued with a notice on 05/05/2021 and she signed to have received it. Further that in the said notice, there is nowhere showing that the notice is of 16 days therefore, her allegations are baseless. He thus, urged the court to find that the termination was just an end of contract and was not unfair as alleged.

After considering the rival submissions of the parties, CMA and court records as well as applicable laws I find the court is called upon to determine the following issues; whether the respondent was unfairly terminated from employment, whether the contract automatically terminated and what reliefs are the parties entitled to.

Starting with the first issue as to whether the respondent was unfairly terminated, in her award, the arbitrator found that the respondent was unfairly terminated from employment on the ground of misconduct. The CMA's finding is based on the wording of exhibit D2 a letter tittle "*TAARIFA YA KUTOTARAJIA KUONGEZA MKATABA WA AJIRA*". For easy of reference, I reproduce the relevant part of exh. D2:-

"Taarifa hii ya kutotarajia kuongeza mkataba mpya wa Ajira ni kutokana na makubaliano ya Mkataba wako wa Ajira wa tarehe 05 June 2020 unaoisha muda wake tarehe 06 June 2021. Hii imetokana na ofisi kutoridhishwa na mwenendo wako ikiwa ni pamoja na kuwa na maonyo ya nidhamu na kuwa kwenye matazamio ya kimwenendo bila kubadilika."

Simple translation of the quotation above is that it is a notice of non-renewal of the contract based on the employment agreement dated 05 June 2020 which will end on 06 June 2021. This notice was given following the office's dissatisfaction of the applicant's conducts, various disciplinary warnings served to her and failure to improve her conduct regardless of the fact that she was under assessment.

On the other hand, the applicant wants this court to fault the Arbitrator's findings that the respondent was unfairly terminated and

find that the termination in this case was due to time factor, automatic termination. In the instant matter, the employment contract (exhibit D1) entered by the parties commenced on 06/06/2020 and agreed to end on 05/06/2021. The relevant contract did not provide for its renewal and the record shows that on 05/05/2021, the respondent was served with the notice of non-renewal of the contract. I have noted the respondent's allegation that she was served with the notice of non-renewal 15 days before expire of the contract. To the contrary, her allegation is not supported by the evidence in record. Exhibit D2 shows that the respondent received the notice on the same date 05/05/2021.

It is a settled law that, a fixed term contract shall terminate automatically upon expiry of the agreed term. This is provided for under Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. 42 of 2007 (the Code) which provides that:-

"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".

In line with the above provision of the law, it is my view that, when the agreed period of the contract expires the employer is not liable to follow any stipulated procedures for termination of employment

since the contract itself provides for notice of its termination. This is the position of this court in the case of **Tunakopesha Ltd v. Moses Mwasiposya, Labour Revision No. 17 of 2011** (unreported) where it was held that:-

"... if the contract had indeed been for a fixed specific period, there would have been no need for notice of termination."

In this case it is my finding that the respondent was not terminated before expiry of the contract. She served the applicant until expiry of the agreed term therefore the contract terminated automatically as in terms of Rule 4(2) of the Code. I further fault the Arbitrator's findings that the respondent was terminated for misconduct. Much as misconduct was mentioned in the notice of non-renewal of the contract as quoted above, it was not the reason for termination of the respondent's employment contract. The contract was terminated automatically upon expiry of the agreed term because the employer did not intend to renew. Had the applicant pleaded and established expectation of renewal, the argument would have been different. Therefore, there was no unfair termination in the matter at hand as held by the CMA.

Coming to the last issue as to the parties' reliefs, the CMA awarded the respondent 6 months salaries as compensation for the alleged unfair termination. Since it is found that the respondent's termination was automatic in this case, then she is not entitled to any remedies. As correctly argued by Mr. Frank, the remedies of unfair termination are awarded to an employee who has been unfairly terminated from employment which is not the case in the matter at hand. I have also considered Mr. Frank's submission on the remedies of breach of a fixed term contract, has the situation at hand been so. Indeed, it is the court's position that in cases of breach of contract the affected employee is awarded the remaining period of the contract as it was held in the case of **Azama Rajabu Mbilanga** (supra), however, that is not the case in this matter.

In the result, as it is found that the respondent's contract automatically came to an end, I find the present application to have merits and it is allowed by revising and setting aside the CMA's award.

It is so ordered.

Dated at Dar es Salaam this 31st day of August, 2022.




S.M. MAGHIMBI
JUDGE