IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 245 OF 2020

(Arising from Labour Dispute No. CMA/DSM/ILA/R.982/16/1011)

BETWEEN

ARIEL GLASER PEDIATRIC AIDS HEALTH CARE INITIATIVE (AGPAHI).....APPLICANT

VERSUS

AMOS HAKI NSHEHA.....1ST RESPONDENT

JOHN BUSUNGU.....2ND RESPONDENT

NAOMI NYITAMBE.....3RD RESPONDENT

JUDGMENT

Date of Last Order: 1st December, 2021

Date of Judgement: 18th March, 2022

I. Arufani, J.

The respondents in this application were employed by the applicant on different dates to work on fixed term contract intended to last up to 29th September, 2016. While the first respondent (Amos Haki Nsheha) was employed from 30th October 2014 to 29th September 2016, the second respondent (John Busungu) was employed from 30th September 2014 to 29th September 2016 and the third respondent (Naomi Nyitambe) was employed from 26th April 2015 to 29th September 2016.

On 4th August, 2016 the applicant served all the respondents with one month notice sent to them through email indicating the applicant's intention of not renewing their respective contracts upon expiration of their fixed term contract on 29th September, 2016. The respondents were aggrieved by the termination of their contract of employment and lodged their complaints before the Commission for Mediation and Arbitration (hereinafter referred as the CMA) averring that, termination of their contract of employment was unfair as they had reasonable expectation of renewal of their contracts of employment. The respondents' complaint was registered by the CMA as Labour Dispute No. CMA/DSM/ILA/R.982/16/1011.

After hearing the evidence from both sides, Hon. Ng'washi, Y, the trial Arbitrator found termination of employment of the respondents was both substantively and procedurally unfair and on 5th June, 2020 he ordered the applicant to pay the respondents the sum of USD 297,900 being compensation for salaries of contract of two years the respondents were expecting would have been renewed plus one month salary for each respondent in lieu of notice. As the applicant was dissatisfied by the award of the CMA, they filed the application at hand in this court.

The applicant is beseeching the court to call and examine the proceedings and award issued by the CMA so as to satisfy itself as to the correctness and rationality of the finding of the CMA. The applicant is also urging the court to revise, quash and set aside the proceedings and findings in the award issued by the CMA. The application is supported by the affidavit sworn by Sekela Mwakyusa, an Executive Director of the applicant and it was rebutted by the counter affidavit sworn by Deusidedit Daniel Madeleke Luteja, advocate for the respondent. The legal issues which the applicant is urging the court to use to revise the proceedings and award of the CMA are listed at paragraph 4 of the affidavit supporting the application and they are reading as follows:-

a. *Whether it was proper for the trial arbitrator to make such a finding and declare existence of reasonable expectation of renewal of the fixed term of employment contracts of respondents and ordered employer to pay USD: 297,900 even after the proof of service of 28 days' notice from employer regarding its intention of non-renewal of the employment contracts of respondents.*
b. *Whether it was in law valid for the trial arbitrator to ignore the guidance in Rule 4 (5) of the Employment and Labour Relations (Code of Good practice) GN. 42 in ordering employer to firstly discharge the burden of proof*

in a case that demanded proof of existence of reasonable expectation of renewal of fixed term of contract by employee.

c. *Whether the trial arbitrator properly guided by relevant provisions of law in admitting all disputed evidence.*
d. *Whether the trial arbitrator properly evaluated the evidence presented before her in deciding the matter in favour of the respondents.*

While the applicant was represented in the application by Kariwa & Co. Advocates, the respondents were represented By Ndurumah Keya Majembe, Advocates. The counsel for the parties prayed and allowed to argue the application by way of written submissions. I commend both sides for complying with the time frame given to them by the court to file their written submission in the court.

The counsel for the applicant prayed to adopt the affidavit supporting the application and started with the fourth issue which states whether the trial arbitrator properly evaluated the evidence presented before the CMA in deciding the matter in favour of the respondents. The counsel for the applicant stated that, the Arbitrator misdirected herself by holding that the termination was unfair as the employer never issued 28 days' notice of termination of the

respondents' employment contracts as required by paragraph 18.1 and 19.1 of their employment agreements.

The counsel for the applicant stated that, the applicant disagreed with the finding of the Arbitrator as the requirement of 28 days' notice is not applicable in the respondents' employment agreements because the period of their fixed term agreements had expired. To support his submission, he referred the court to the case of **I. O. T. (Travelling Bags) V. Thomas Soko & Others**, Labour Revision No. 131 of 2015 where it was stated that, the notice of informing the employees their fixed term contract would have not been renewed was not a notice of termination of their contracts but a notice of informing them their contract would have not been renewed as their contract would have terminated automatically after the expiration of its period.

He argued that an employment contract may be terminated by either side giving the other side one month notice. He contended that, though the 28 days' notice was not mandatory in the instant case but the applicant did go far out of her legitimate way by notifying all the respondents about their intention of not renewing their respective contracts upon its expiration on 29th September,

2016. He argued that, the said notice was communicated to the respondent on 4th August, 2016 and the respondents acknowledged in the evidence they adduced before the CMA to have received the email relating to the said notice.

The applicant's counsel argued that, although the respondents acknowledged in their evidence to have received the said notice but the Arbitrator was of the opinion that the notices were not acceptable as they were issued by way of email and not by way of letters as per the parties' agreements. He went on arguing that, after the expiration of the respondents' employment agreements the applicant never allowed the respondents to continue to work without a new contract. He argued that, if the respondents would have been allowed to work for even a single day after expiration of their contract, they would have pleaded presumption of doctrine of reasonable expectation of renewal of their employment contract.

He submitted that, in a fixed term contract of employment a clause in the contract signed by the parties by itself is a formal notice advising the parties about their final working date. He argued that the respondents were required to abide with the terms of their contract of employment which contained a specific recital which strict

them from rely on speculative notions including the legal presumption of renewal of the contract. He referred the court to recital 22 (3) and (4) of their employment contracts which alerted the respondents that, no reasonable expectation of new contract unless parties agreed and signed the same. He also referred the court to Rule 4 (5) of the GN. No. 42 of 2007 which states a fixed term contract of employment terminate automatically when the agreed period expires.

He argued in relation to the second legal issue raised in the affidavit of the applicant that, the Arbitrator erred in law and fact when she ordered the applicant (employer) to prove existence of reasonable expectation of new contract of employment of the respondents. He argued that, on 22nd March, 2017 the Arbitrator framed the issues for determination in the matter and ordered the respondents to start proving their case. However, when the matter came for hearing on 17th May, 2017 the Arbitrator overturned its previous order and ordered the applicant to start proving existence of reasonable expectation of renewal of the respondents' contract of employment.

He argued that, the turnaround of the proceedings amounted to a miscarriage of justice and added the Arbitrator was *functus officio*

and had no power to reverse her previous order. He referred the court to Rule 4 (5) of GN. No. 42 of 2007 and stated that it makes clear that if employee alleges reasonable expectation of renewal of his contract the burden to prove the said allegation lies on the employee. He submitted that, the Arbitrator failed to properly guide herself on the correct importation of the cited rule and shifted the burden to the employer.

He argued that, in a situation like that the employer cannot enter into the minds of the employees and establish factors which make them to believe existence of reasonable expectation of renewal of their contracts of employment. He argued further that, it is a general rule that when the High Court realize any defect in a court's proceedings, the remedy available is to remit the matter back for retrial de novo to cure the procedural irregularities noted. To support his argument, he referred the court to the case of **Fataheli Manji V. R**, [1966] EA 344 where it was stated under what circumstances retrial of a case may be ordered.

The counsel for the applicant argued in relation to the third legal issues raised in the affidavit of the applicant which asks whether the trial Arbitrator properly guided by relevant provision of the law in

admitting all disputed evidence. He argued that, the respondents tendered 23 exhibits and all of them were admitted only because they were listed as annexures served to the applicant. He cited exhibit H14 which he said was prepared after the termination of the employment of the respondent and it does not show the maker, addressee, and it bears neither stamp nor signature of the applicant but it was admitted in the case as an exhibit.

He argued that, the said problem extended to exhibit H17 which was admitted in the case without following the conditions stipulated under section 18 of the Electronic Transaction Act, 2015. At the end the counsel for the applicant prayed the court to quash the award issued by the CMA and declare the respondents were fairly terminated after the expiration of their contract of employment and there was no reasonable expectation for the renewal of their contracts of employment as it was not proved by the respondents.

In his reply, the counsel for the Respondents prayed to adopt the whole of his counter affidavit as part of his submission. The counsel for the respondents stated that, he will move the court by demonstrating that, firstly; the respondents managed to establish by evidence the objective basis as sufficient reasons or grounds for the

Arbitrator to invoke the doctrine of reasonable expectation of renewal of their contract, secondly; it is an established principle in our labour law that the employer has the burden to prove termination was fair, thirdly; there was no illegalities on the part of the Arbitrator in the admission of exhibits and fourthly, the requirement of 28 days' notice in fixed term contract does not vitiate the invocation of the doctrine of reasonable expectation of renewal of the contracts of respondents and the Arbitrator cannot be faulted in the present case.

He decided to argue the first and fourth legal issues raised by the applicant jointly and argued the rest of the grounds separately. He stated in relation to the first and fourth issues that, section 36 (a) (iii) of the Employment and Labour Relations Act No. 6 of 2004 (hereinafter will be referred as the ELRA) read together with rule 4 (4) of the GN. No. 42 of 2007 provides for the circumstances upon which reasonable expectation for renewal of a fixed term contract of employment may arises. He submitted that, reasonable expectation for renewal of a fixed term contract may arise where there is a fixed term contract and where there is a reasonable expectation of renewal of the contract by an employee.

The counsel for the respondent argued that, the respondent tendered exhibits H1, H2, H3, H10, H11 and H16 which were admitted in the case to prove the respondents' previous and last employment agreements with the applicant which were renewed time after time. He stated the said evidence were not challenged. He went on stating that, the respondents' credentials were used to solicit for a new project for five years which was awarded by the Centre for Decease Control and Prevention (CDC) as appearing in exhibit H14 attached in the respondents' counter affidavit.

It was the respondents' counsel submission that, the respondent tendered exhibit H8 before the CMA which shows on 29th August, 2016 the applicant and the country representative for the CDC resolved that, those whose credentials were used to bid for the new project including the respondents would be included in the new project. He submitted that, the involvement of the respondents in the bid for the new project for the CDC which was awarded to the applicant, sufficiently established the basis upon which the respondents could have higher their expectation of renewal of their contract of employment in the form of undertakings made by the applicant.

He argued that there was much compelling undertaking on the part of the first respondent (Amos Haki Nsheha) by the applicant through a letter dated 1st May, 2015 admitted in the case as exhibit H13. He stated the said undertaking is in consonance with Rule 4 (5) of the GN. No. 42 of 2007. He went on submitting that, the applicant has not disputed the previous renewal of the respondents' contract on similar term basis given the nature of the respondents' employment.

He argued further that, the respondents' expectation of renewal of their contracts was very much put alive by the applicant's failure to issue a 28 days' notice to the respondents as per the requirement of clause 19.1 or their contract. He stated the said clause clearly provides for the manner in which the same is to be effected to either party who wishes to exercise the right which is by letter. He submitted that the email dated 4th August, 2016 (exhibit A2) was not a 28 days' notice to the respondents as it was not issued in compliance with the requirement of clause 19.1 of the contracts. He stated that, use of the respondents' credentials, skills to secure the new project was supporting the conclusion that, the respondent had

reasonable expectation of renewal of their contract basing on the undertaking of renewal as provided in their employment agreements.

He distinguished the case of **I. O. T. Traveling Bags** (supra) with the present matter by stating that, in the cited case the notice was issued two days before expiration of the contract and notice was found properly issued basing on the circumstances of the case. While in the present case, there is a clear clause in the contracts of the parties which requires the applicant to issue 28 days' notice in the case of termination of the contracts and the said notice to be issued in the prescribed manner. He submitted that, the purported notice in the present case was issued contrary to the mandatory provision of the agreements hence there was no notice issued to the respondents by the applicant.

He contended that, they are refuting the invitation by the counsel for the applicant that clause 22 (3) and (4) of the respondents' contract constitutes a waiver on the applicability of the doctrine of reasonable expectation of renewal of the contract. He said the law is very clear on the conditions to be applied in applying the said doctrine. He submitted that, by involving the respondents in the initial stages of procuring the project in CDC and by letters dully

confirmed that there was an intention on the part of the applicant to renew the respondents' employment agreements to the intended project, it established a reasonable expectation of renewal of the respondents' employment agreements.

He argued in relation to the second issue that, it is a trite law that in any proceedings concerning the claim of unfair termination of an employment by the employer, the employer has a duty under section 39 of the ELRA to prove that termination was fair. The counsel for the respondents submitted that, as the respondents claimed for unfair termination of their employment in the CMA Form No. 1 the duty was on the applicant to prove termination was fair and not unfair. He cited in his submission Rule 24 (3) of GN. No. 42 of 2007 and states it provides for two options. He stated that, the first option is that, a party who makes opening statement ought to present his case first and secondly, if the dispute is hinged on allegation of unfair termination the employer is required to start adducing its evidence.

He referred the court to the case of **CSI Electrical Limited V. Sadick Devid Mponda**, Revision No. 904 of 2019, HCLD at DSM (unreported) where the court was faced with the similar issue. He

argued that, though the reason for termination of the respondents' contract was not purely on termination perse, but under the circumstances of the present matter the root of the dispute was termination. He submitted that, under that circumstance there is no illegality committed by the Arbitrator in its ruling which ordered the applicant to start adducing evidence before the CMA. He therefore refuted the invitation of the counsel for the applicant praying the court to order retrial of the matter.

The counsel for the respondents submitted in relation to the third issue that, on admitting exhibits in court, three conditions must be established that is to say relevance of evidence, authenticity or credibility of evidence and competence of evidence. He argued that, the stated position of the law can be seeing in the case of **Arusha City Council and Another, V. MS/ (T) Limited**, High Court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam, Civil Case No. 45 of 2018, also cited the case of **DPP V. Mirzai Pirbakhshi @ Hadji & 3 others** Court of Appeal of Tanzania at Dar es Salaam in Criminal Appeal No. 493 of 2016 where it was stated that, when the evidence is original, relevant and the person sought to

tender the same has knowledge on the exhibits is sufficient to make the evidence admissible in court.

He submitted that, if the counsel of the applicant is challenging originality of the documents admitted in the case as exhibits the right time to challenge the same was during cross examination. He went on submitting that, as there is no proof that the applicant was denied the chance to challenge the documents through cross examination the said argument must fail. At the end, the counsel for the respondent prayed the court to find no merits in the present application for revision and find no reason to interfere with the finding of the Arbitrator.

After going through the rival submission from the counsel for the parties, the court has found the centre of dispute in this application is whether there was reasonable expectation for renewal of the respondents' employment agreements. In determining the said issue, the court will be guided by the legal issues raised by the applicant and argued in the submission filed in this court by the counsel for the parties. I will start with the second issue, then I will proceed to deal with the first and fourth issues jointly and thereafter I will deal with the third issue and lastly will be the reliefs' parties are entitled.

Starting with the second issue the court has found it states whether the Arbitrator ignored guidance provided under Rule 4 (5) of the GN. No. 42 of 2007 in ordering the applicant to start adducing evidence to prove existence of reasonable expectation of renewal of the fixed term contracts of the respondents. The court has found the cited provision of the law states clearly that, where fixed term contract is not renewed and the employee claims a reasonable expectation of renewal of the employment agreement the employee is required to demonstrate there is an objective basis for the expectation such as previous renewal and employer's undertaking to renew.

The court has considered the argument by the counsel for the applicant that the Arbitrator misguided by ordering the applicant to start adducing evidence in the matter and find that, although it is true that the claims of the respondents were based on reasonable expectation of renewal of their contracts and the Arbitrator ordered the applicant to start adducing evidence in the matter but there is nothing showing the Arbitrator ignored the guidance provided in the above cited provision of the law.

The court has arrived to the above view after seeing that, the cited provision of the law does not state in demonstrating reasonable expectation of renewal of a fixed term contract of employment an employee is required to start adducing his or her evidence in a case. The issue as to who is required to start adducing evidence in a case as rightly argued by the counsel for the respondents is governed by Rule 24 (3) of the GN. No 67 of 2007 which states as follows:-

> *"The first person to make an opening statement shall present his case first throughout the proceedings. If the parties do not agree about who shall start, the Arbitrator shall be required to make a ruling in this regard.*
> *Provided that, in a dispute over an alleged unfair termination of employment, the employer will be required to start as it has to prove that the termination was fair."*

The wording of the above quoted provision of the law is very clear that, where the parties disagreed about who shall start to adduce evidence in a case the Arbitrator is required to make a ruling as to who is required to start adducing the evidence before the CMA. Since the issue as to who was supposed to start adducing evidence was raised by the parties as they failed to agree as to who was required to start adducing the evidence the Arbitrator was right under

the above quoted provision of the law to make a ruling as to who was supposed to start to adduce their evidence.

The court has also found that, the Arbitrator was right in finding the applicant was required to start adducing its evidence because the claims of the respondent was hinged on unfair termination of their contracts of employment. That is because the above quoted provision of the law read together with section 39 of the ELRA states clearly that in a claim of unfair termination of employment of an employee, the employer is required to start adducing evidence to prove termination of employment of an employee was both substantively and procedurally fair.

The argument by the counsel for the applicant that, it would have not been easy for the applicant to read the minds of the respondents who were alleging they had reasonable expectation of renewal of their contracts has been found by the court has no merit. The court has come to the stated finding after seeing the applicant was not required to read the minds of the respondents but to prove whether the respondents were terminated from their employment or not and if were terminated termination was both substantively and procedurally fair.

Therefore, although it is true that Rule 4 (5) of the GN. No. 42 of 2007 states the employee who is claiming reasonable expectation of renewal of his or her fixed term contract of employment is required to demonstrate that, there was an objective basis for the said expectation but that does not mean the employee must be required to start adducing evidence to establish the said claim. To the view of this court the claimed expectation is required to be seeing in the evidence adduced by the employee notwithstanding the employee was the first to adduce evidence or was the last to adduce the evidence in the case. The above view of this court is getting support from the case of **Abdallah Kidunda & Seven Another V. CM CO Ltd.,** [2014] LCCD 110 where it was held that, the burden of proof depends on what is being claimed and where the claim is on unfair termination the burden is on employer.

The court has considered another argument raised by the counsel for the applicant that, as the Arbitrator had already framed the issue and decided who was to start to adduce the evidence, he was *functus officio* to overturn its earlier decision and ordered the applicant to start adducing its evidence but failed to see any merit in the said argument. The court has come to the stated finding after

seeing that, although it is true that the Arbitrator had already ordered the respondents to start adducing their evidence but that decision could have not rendered the Arbitrator functus officio to vacate his previous order, which was made without complying with the requirement of the law as to who was required to start adducing evidence in a claim of unfair termination.

I now return to the first and fourth issues which states, the Arbitrator failed to evaluate the evidence adduced before the CMA as a result he erred in declaring there was a reasonable expectation of renewal of the respondents' fixed term contracts of employment, while there was proof of issuance of 28 days' notice of non-renewal of the contracts of employment of the respondents and also erred in ordering the applicant to pay the respondents the sum of USD 297,900.

The court has found the provision of the law governing expectation of renewal of fixed term contract of employment is section 36 (a) (iii) of the ELRA which states that, termination of employment includes failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renew. The above provision of the law is required to be read together with

Rule 4 of the GN. No. 42 of 2007 which deals with termination of employment by agreement.

While being guided by what is provided in the above cited provision of the law the court has found the argument by the counsel for the applicant in the present application that, the Arbitrator misdirected himself in finding the fixed term contracts of employment of the respondents were unfairly terminated as they were not served with 28 days' notice as provided under recitals 18.1 and 19.1 of the parties' contracts of employment. The court has found it is true as argued by the counsel for the applicant that, the Arbitrator stated at page 24 of the impugned award that the respondents were not issued with notices at all as the notices issued to them were issued by way of email and not by letter as provided under clause 19 of the parties' employment agreements.

The court has found that, as rightly argued by the counsel for the applicant the cited recitals does not relate to the renewal or non-renewal of the contracts of employment of the respondents but relates to the termination of agreements which are in existence. The court has found the recital in the agreements that relate to the renewal or non-renewal of the agreement is recital 1.2 which states

the contracts of the respondents might have been renewed on similar or different terms at the mutual consent of both parties. Therefore, the finding by the Arbitrator that the respondents were not issued with 28 days' notice provided under recitals 18 and 19 of the employment agreements of the parties was arrived erroneously as there was no such a requirement in the parties' agreements.

To the view of this court and as rightly argued by the counsel for the applicant even the notice of non-renewal of the parties' employment agreements issued to the respondents by way of email was issued out of courtesy as there was no such a requirement in the employment agreements of the parties. The court has found as stated in the case of **I. O. T. (Travelling Bags)** (supra) the notice issued by the applicant was a notice of non-renewal of the respondents' employment agreements and not the notice for termination of their employment agreements. The court has also found the issue of termination of a fixed term contract of employment as provided under Rule 4 (1) of the GN. No. 42 of 2007 is governed by the parties' agreement itself. In addition to that Rule 4 (2) of the GN. No. 42 of 2007 states clearly that a fixed term contract shall

terminate automatically when the agreed period expires, unless the contract provided otherwise.

The court has found clause 1.2 of the contracts entered by the parties in the present matter shows that, the parties' agreement would have ended on 29th September, 2016. Although the said clause states the agreements might have been extended by mutual consent of the parties but there was no mutual consent made by the parties. That being the position of the matter, the court has found the Arbitrator erred in finding the respondents were not issued with 28 days' notice provided under recitals 18.1 and 19.1 of the respondents' employment agreements as the said notice was inapplicable in the circumstances of the matter at hand.

Having arrived to the above finding, the next issue to determine here is whether the Arbitrator erred in declaring there was a reasonable expectation of renewal of the respondents' fixed term contracts of employment. The court has found that as stated earlier in this judgment, reasonable expectation of renewal of a fixed term contract of employment as provided under section 36 (a) (iii) of the ELRA read together with Rule 4 (5) of the GN. No. 42 of 2007 is looked into the previous renewals of the employment contract and

employer's undertaking to renew the contract. The issue here is whether the respondents managed to demonstrate the stated requirements.

The court has found that, as rightly argued by the counsel for the respondents there is no dispute that there were previous fixed term contracts of employment of the respondents which were renewed by the applicant. The stated finding of the court is getting support from the proceedings of the CMA which shows the respondents stated in their testimonies that, their previous fixed term contracts were renewed time after time. They also supported their testimony with their previous contracts which were admitted in the case as exhibits H1, H2, H3, H10, H11 and H16.

The court has also found that, though there was no mutual consent made by the parties to renew the agreements as provided under clause 1.2 of the parties' employment agreements, and the applicant issued emails to the respondents intimating its intension of non-renewal of the employment agreement, but the court has found there was undertaking made by the applicant which established reasonable expectation of renewal of the employment agreements entered by the parties.

The court has found that, as rightly argued by the counsel for the respondents, though the project upon which the respondents were working came to an end but the evidence adduced at the CMA by the respondents as appearing in exhibit H22 shows the respondents' names and their CVs were used to solicit for the new project from Centres for Disease Control and Prevention (CDC). The said project was obtained as indicated in exhibit H23. The court has also found that exhibit H19 shows the names, titles and salaries of the staffs who were working in the previous project including the respondents, for the budget details in funding the solicited project for Simiyu Region. That shows there was expectation that the respondents' employment agreements would have been renewed for the solicited project.

In addition to that, the court has also found there was a letter written by the applicant to the Branch Manager of Stanbic Bank Tanzania Limited which was admitted in the case as exhibit H13 which shows the applicant was promising the Branch Manager the employment of the first respondent would have continued after expiration of the fixed term contract which was in existence. Some

part of the said letter states:-

> *"... Despite the fact that his renewable contract will come to an end on 29th September 2016, it is the wish of the organization to continue working with Amos thereafter and renew his contract. With that information, we confirm that Amos can proceed with his loan application for 36 months and will continue to channel his salary through your Stanbic Bank account No. ...".*

It is the view of this court that, all of the above stated undertaking made by the applicant, sufficiently established that, despite the fact that the applicant had issued an email to all respondents intimating its intension of not renewing their employment agreements but the respondents had already formed reasonable expectations of renewal of their employment agreements. That caused the court to find that, failure to renew the employment agreements of the respondents who had formed a reasonable expectation of renew of their agreements was unfair termination of their agreements and that is as provided under Rule 4 (4) of the GN. No. 42 of 2007 which states as follows:-

> *"... the failure to renew a fixed term contract in circumstances where the employee reasonably expects a*

renewal of the contract may be considered to be an unfair termination."

In the premises, the court has found the Arbitrator was right in finding the employment agreements of the respondents were unfairly terminated as they had formed a reasonable expectation of renewal of their employment agreements. The court has found the applicant stated in relation to the third issue that, the Arbitrator erred in admitting all disputed evidence without being properly governed by the relevant laws. The counsel for the applicant argued that, some of the evidences were admitted only because were listed as annexures served to the applicant and stated a good example is exhibit H14 which was prepared after the termination of the employment of the respondents and it had no name of the maker, addressee, stamp or signature of the applicant. He also stated the same is applying to exhibit H17 which was admitted without following conditions stipulated under section 18 of the Electronic Transaction Act, 2015.

After going through the proceedings of the CMA and the exhibits alleged were admitted without following the conditions stipulated under the law, the court has failed to see any reason which can make it to fault the finding of the Arbitrator. The court has come

to the stated finding after seeing that the said exhibits were admitted in the matter after considering the rival arguments from both sides and the counsel for the applicant has not stated in his submission as to which provision of the law were violated in admission of the said exhibits in the case as evidence.

The court has found that, as rightly argued by the counsel for the respondents the position of the law in relation to admissibility of exhibit in court as stated in the case of **Arusha City Counsel & Another** (supra) is its relevancy, authenticity and credibility. Other condition for admissibility of evidence in court as stated in the case of the **DPP V. Mirzai Pirbakhshi** (supra) is who is competent to tender the exhibit and it was stated in the cited case is a witness who has the knowledge and he possessed the thing in question at some point in time, albeit shortly. As the applicant and its counsel has not stated what was violated in admitting the said exhibits the court has failed see any reason which can make it to fault the finding of the Arbitrator.

Coming to the last issue relating to the reliefs the parties are entitled the court has found that, after the Arbitrator found the respondents had proved they had formed reasonable expectation of

renewal of their employment agreements he ordered the applicant to pay the respondents the sum of USD 297,900 being the salaries they would have get for two years if their employment agreements would have been renewed and found the rest of the claims of the respondents were not proved. As the court has found the applicant has not managed to satisfy it that the Arbitrator erred in finding the respondents managed to establish their employment agreements were terminated while they had formed reasonable expectation of its renewal the court has found the application of the applicant cannot succeed.

In the final analysis the application for the applicant is hereby dismissed in its entirety for being devoid of merit. It is so ordered.

Dated at Dar es Salaam this 18th day of March, 2022.

I. Arufani

JUDGE

18/03/2022

Court: Judgment delivered today 18th day of March, 2022 in the present of Mr. Michael Kariwa, Advocate for the applicant and in the presence of the third respondent in person who is also ready to notify

the first and second respondents who are absent about the judgment of the court. Right of appeal to the Court of Appeal is fully explained.

I. Arufani

JUDGE

18/03/2022