

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

REVISION NO. 289 OF 2022

SALUM HUSSEIN KIMASHI APPLICANT

VERSUS

G4S SECURE SOLUTIONS (T) LIMITED RESPONDENT

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

(Chacha: Arbitrator)

Dated 29th July, 2020

in

REF: CMA/DSM/KIN/158/21/176/21

JUDGEMENT

07th & 24th February, 2023

Rwizile J

This application is for Revision. The applicant asked this Court to call, revise and set aside the proceedings and the award of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/838/19, dated 29th July, 2020.

Briefly, the applicant was the employee of the respondent as a security guard on a fixed term contract. His first contract was of five years which was renewed from time to time with different duration.

On 01st October, 2019, the applicant received a termination letter. He was not satisfied by termination.

He filed a labour dispute at CMA claiming for terminal benefits due to breach of contract. The dispute was found unmerited and dismissed. He then filed this application in protest.

The application is supported by the applicant's affidavit having grounds for revision as stated hereunder: -

- i. The arbitrator wrongly dismissed the application after proving that the applicant was at work on 01st October, 2019 after the end of one month employment contract on 30th September, 2019.*
- ii. The arbitrator wrongly dismissed the application after proving that the applicant was given the employment contract of six months and one month while the contract was supposed to be of twelve months.*
- iii. The arbitrator was wrong in holding that there was information of not renewing the contract on August, 2019 and that the applicant signed it while there was no evidence.*

The applicant appeared in person and argued his case orally. Mr. Moses Kiondo, learned Counsel appeared for the respondent.

The applicant argued all issues generally. He submitted that the respondent had no right to terminate his employment contract. He stated that after termination, he was paid some terminal dues as in terms of exhibit D4, which is not proper.

The applicant argued further that his second employment contract was extended to six months from 01st February, 2019 to 31st July, 2019.

Upon its expiry, he got another extension of one month from 01st August, 2019 to 31st August, 2019, which was followed by another one-month extension from 01st September, 2019 to 30th September, 2019.

It was his submission further that on 01st October, 2019 when he went to work, he got a termination letter. He continued submitting that, he filed a dispute at CMA but it was not heard properly. He was of the view that, the terms of the contract were not followed. He prayed the application be granted that he should be paid in terms of the first 5-year contract because the rest of the contracts were mere extensions.

Mr. Kiondo counter submitted generally that the respondent had a contract with US Embassy which was in correspondence with the

applicant's contracts. He said, as the first contract of five years expired, an extension for six months from 01st February, 2019 to 31st July, 2019 was entered. It was, he added, followed with two contracts of one month each commencing from 01st August, 2019 to 31st August, 2019 and from 01st September, 2019 to 30th September, 2019.

It was his submission that there was no further extension of the contract thereafter as shown in exhibit D1. It was his argument that the applicant was informed of the status by the respondent as per exhibit D2. It stated that, the applicant's contracts were so extended as it was submitted. The learned counsel held the view that the contract was of the fixed term and expired on the date fixed. He stated that there were no renewal clauses of the same and that the applicant knew it.

To support his assertion, the learned counsel cited rule 4 of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 and the case of **Maryshida Hamisi Nyabenda v G4S Secure Solutions (T) Ltd**, Revision No. 442 of 2021, High Court of Tanzania.

In a rejoinder, the applicant submitted that extension is not a new contract. In his view, he only signed one contract of five years in 2014. The extension of 6 months and those of one month each were not new contracts. He stated that he worked with US Embassy since 1986 until when he was terminated by G4S. He submitted further that he worked with different companies at US Embassy. He finalized by stating that he was employed by the respondent though, and not the US Embassy.

The contested issue here is *Whether termination of the applicant's contract followed the law.*

There is no dispute that the applicant was employed by the respondent under a fixed term contract. In clear terms, his first contract was for five years. It was renewed three times thereafter for 6 months and two renewals of one month each. This is according to exhibit D1 collectively and D7, and the applicant's evidence before the commission and submissions before this court.

Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007 states that termination of employment occurs;

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

Records show, the applicant had several employment contracts. The same were renewed as shown in exhibits D1 and D7. The contracts were; for five years (01st February, 2014 to 31st January, 2019) which was extended for six months (01st February, 2019 to 31st July, 2019), from 01st August, 2019 to 31st August, 2019 and the last one, for one month from 01st September, 2019 to 30th September, 2019.

It is apparent on all contracts that the applicant was an employee of the respondent. The first contract forms the basis of all this in order to easy reference it states as follows;

29th January, 2014

Dear Salum Hussein Kimashi,

RE: FIXED TERM CONTRACT OF EMPLOYMENT

We have the pleasure to offer you, employment as a Guard to work at the United States of America Embassy in Dar es Salaam, Tanzania for a period of FIVE years.

..."

The other contract was styled as hereunder. (D7)

"27th July, 2019

Dear Salum

RE: EXTENSION OF EMPLOYMENT CONTRACT AT THE US EMBASSY

... The US Embassy has extended G4S's current agreement for further one month ...

This being the case we consequently hereby extend your employment contract during this extension period of one (1) month. Should there be any further changes the same will be communicated in writings.

The two referred employment contracts above were between the respondent and the applicant plainly showing how the same started, when and how the renewals would be done. Thus, it was not between the applicant and the US Embassy as the applicant tended to infer in his submission.

Further, the applicant believed and submitted that the contract signed was of five years and does not accept the rest of the contracts. This is, I think, a misconception as well. The first contract of five years expired and then extended to such period as it has been clearly stated. On the last contract, both parties are in agreement, it was expiring on 30th September 2019. The applicant, indeed was used to be given a notice on whether to renew or not. The same last contract was plain in its words, it said...

Should there be any further changes the same will be communicated in writings. This means the contract was clear and free from ambiguities, that in case there is an extension, it ought to be communicated in writing.

The fact that the applicant went to work on 01st October, 2019, did not mean there was a renewal or such expectation. A termination letter was informing him that his employment contract with the respondent ended on 30th September, 2019.

For easy reference: -

01st October, 2019

Dear Salum,

RE: END OF EMPLOYMENT CONTRACT

...

Your employment contract with GAS ended on 30th September, 2019."

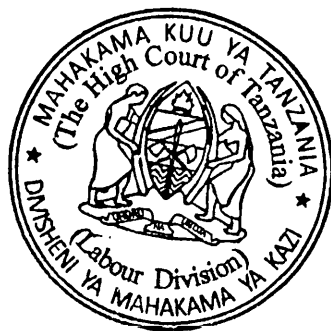
The contract ended on 30th September, 2019 but was given a letter on 01st October, 2019. The case of **Hotel Sultan Palace Zanzibar v Daniel Laizer & Another**, Civil Application No. 104 of 2004 held: -

"It is elementary that the employer and employee have to be guided by agreed terms governing employment. Otherwise, it could be a chaotic state of affairs if employees or employers were left to freely do as they like regarding the employment in issue."

Based on the wording of the contract given to the applicant, silence as to any extension until due date meant there was no extension. Had it been there, it could have been stated in writing. The applicant does not benefit therefore from the provisions of rule 4(3) of G.N. No. 42 of 2007, stating:

"Subject to sub-rule (2), a fixed term contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it."

The applicant did not work on the 1st day of October, it was on that day when he was given an end of work letter exhibit D2 stating the entitlements due to him on expiry of his contract. Under rule 4(4) of G.N. No. 42 of 2007, it is stated that failure to renew a fixed term contract in the circumstances where the employee reasonably expects a renewal of the contracts may be considered to be an unfair termination. I do not think this is indeed what happened as I have endeavoured to show before. For the foregoing reasons, this application lacks merit. It is dismissed with no order as to costs.



A.K. Rwizile

JUDGE

24.02.2023