

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION APPLICATION NO. 189 OF 2023**

*(Arising from an Award issue don 11/07/2023 by Hon. Wilbard G.M, Arbitrator, in Labour dispute No. CMA/DSM/139/2022/109/22 at Ilala)*

**SULEIMAN EDWARD KATEGILE ..... APPLICANT**

**VERSUS**

**CBD HOTEL LIMITED ..... RESPONDENT**

**JUDGMENT**

*Date of last Order: 22/09/2023  
Date of judgment: 27/09/2023*

**B. E. K. Mganga, J.**

On 19<sup>th</sup> January 2021, applicant and respondent entered a one-year fixed term contract of employment expiring on 18<sup>th</sup> January 2022. In the said contract, applicant was employed as Public Area Attendant. On 10<sup>th</sup> March 2022, applicant filed Labour Complaint No. CMA/DSM/139/2022/109/22 before the Commission for Mediation and Arbitration (CMA) for breach of contract. In the Referral Form (CMA F1), applicant indicated that the said fixed term contract expired on 19<sup>th</sup> January 2022 and that, the contract was renewed automatically as he

continued to work until on 19<sup>th</sup> February 2022. In the said CMA F1, applicant indicated further that, he was claiming to be paid 11 months' salary compensation from February 2022 to January 2023, severance pay, unpaid annual leave and be issued with a certificate of service.

On 11<sup>th</sup> July 2023, Hon. Wilbard G.M, Arbitrator, having heard evidence of the parties issued an award that the contract of employment between the parties expired and that there was no clause for automatic renewal. With those findings, the arbitrator concluded that applicant did not prove that there was legitimate expectation for renewal and dismissed the complaint.

Applicant was unhappy with the said award, as a result, he filed this application for revision. In his affidavit in support of the application, applicant raised three grounds namely: -

- 1. That, the arbitrator erred both in law and facts in holding that the contract of employment expired on 18<sup>th</sup> January 2022 while applicant continued to work after expiration of the said contract.*
- 2. That, the arbitrator erred both in law and facts to ignore a letter (exhibit S2) that was issued by the respondent to the applicant.*
- 3. That, the arbitrator erred both in law and facts for failure to interpret properly the provisions of Rule 4(2), (3), (4) and (5) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 on legitimate expectation to renew a fixed term contract.*

In resisting the application, respondent filed both the Notice of Opposition and the Counter Affidavit affirmed by Bhavin Valand, her principal officer.

When the application was called on for hearing, applicant was represented by Mr. Jackson Mhando, from TAROTWU, a Trade Union, while respondent was represented by Ms. Prisca Nchimbi and Mr. Daniel Yona, learned Advocates.

In arguing the application on behalf of the applicant, Mr. Mhando submitted generally that, the arbitrator erred not to consider exhibit S2 and further that, she wrongly interpreted the provisions of Rule 4(2), (3), (4) and (5) of the Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007. Mr. Mhando submitted further that, applicant had a one-year fixed term contract starting from 19<sup>th</sup> January 2021 and expired on 21<sup>st</sup> January 2022. He added that, on 22<sup>nd</sup> January 2022, respondent served applicant with a letter (exhibit S2) showing that the contract will expire on 22<sup>nd</sup> February 2022. He went on that; applicant was terminated on 19<sup>th</sup> February 2022 after he has worked for 2 months after expiry of the initial contract. It was submission by Mr. Mhando that, respondent breached the contract of the applicant while 10 months were remaining. He concluded by praying the court to allow

the application and award applicant TZS 2,800,000/= as salary for the remaining period of the contract.

Resisting the application, Ms. Nchimbi learned counsel for the respondent submitted that, the contract between the parties expired on 19<sup>th</sup> January 2022, the date they agreed that it will expire. She submitted further that, on 20<sup>th</sup> January 2022 respondent notified applicant that there will be no renewal of the contract. She went on that, DW2 testified that, on 20<sup>th</sup> January 2022, respondent served applicant with termination letter and that applicant signed the said letter on 22<sup>nd</sup> January 2022. Counsel for the respondent submitted further that, applicant (PW1) testified that he worked for four (4) days after expiration of the said one-year fixed term contract and that, the said four days amounted to automatic renewal of the contract. She was quick to submit that, applicant was allowed to work for one more month to facilitate handing over because he was returning from his annual leave.

Responding to the applicant's complaint in relation to exhibit S2, counsel for the respondent submitted that, the said exhibit was tendered by applicant himself hence he cannot be heard complaining. Ms. Nchimbi strongly submitted that there was no new contract that was breached by the respondent and further that, there was no legitimate expectation for

renewal because the contract between the parties (exhibit S1) did not provide for renewal.

Counsel for the respondent submitted further that, Rule 4(4) of GN. No. 42 of 2007(supra) does not apply in the circumstances of the application at hand. She added that, no evidence was adduced by the applicant to prove that Rule 4(5) of GN. No. 42 of 2007 (supra) was applicable as there was no suggestion of renewal of the contract. To bolster her submissions, learned counsel for the respondent referred the Court to the case of ***Rosamistika Siwema (Administratrix of the Estate of Joseph Mandago) v. Add International Tanzania***, Revision No. 498 of 2019, HC (unreported).

As to why applicant was not paid terminal benefits, Ms. Nchimbi submitted that according to evidence of DW2, applicant was not untraceable. She added that, applicant is entitled to be paid terminal benefits as reflected in Exhibit S2. Learned counsel concluded her submission by praying the court to dismiss this application for want of merit.

In rejoinder, Mr. Mhando submitted that, on 22<sup>nd</sup> January 2022, applicant was served with exhibit S2 showing that the contract expired on 19<sup>th</sup> January 2022. In his rejoinder submission, Mr. Mhando conceded that applicant was on leave and that he reported at work on 19<sup>th</sup>

January 2022. He conceded further that, the one-year fixed term contract of employment between the parties had no clause relating to renewal of contract.

I have examined evidence of the parties in the CMA record and considered rival submissions made on behalf of the parties in this application. From submissions of the parties, there are three issues namely (i) whether, the contract of employment between the parties was renewed, (ii) whether, respondent breached that contract and (iii) to what reliefs are the parties entitled to.

In his evidence, Suleiman Edward Kategile (PW1) testified that, on 19<sup>th</sup> January 2021, he entered a one-year fixed term contract of employment with the respondent (exhibit S1) and that, the said contract expired on 18<sup>th</sup> January 2022. PW1 testified further that, on 22<sup>nd</sup> January 2022, respondent served him with a letter (exhibit S2) showing that his employment will come to an end on 19<sup>th</sup> February 2022. PW1 also testified that, by that time, he had already worked for four (4) days after the said fixed term contract had expired. I should point out that both exhibit S1 and S2 were tendered by the applicant without objection from the respondent.

While under cross examination, applicant (PW1) testified that, in December 2021, he was on leave and that he came back in January 2022 on the date he cannot recall. He testified further that, he was supposed to be served with the notice in December 2021, but he was on leave. He testified further that; he was informed by the respondent that February 2022 was end of his employment.

I should point out at this juncture that, I have examined exhibit S2 dated 20<sup>th</sup> January 2022 and find that, it clearly informed applicant that respondent will not renew the contract and that the said contract will expire on 19/02/2022. In exhibit S2, applicant was informed that he will be paid salary for the last month, leave pay for 7 days untaken, severance pay and will be issued with a certificate of service.

On the other hand, it was evidence of Jane Msenga (DW2) the author of exhibit S2 that, applicant's fixed term contract (exhibit S1) expired on 19<sup>th</sup> January 2022. DW2 testified further that, on 19<sup>th</sup> January 2022 she informed applicant that there will be no renewal of his contract of employment and that, on 20<sup>th</sup> January 2022, she served applicant with exhibit S2. She testified further that, after being served with exhibit S2 on 20<sup>th</sup> January 2022, applicant took the said exhibit without signing on ground that he will discuss with his friend before

signing. DW2 also testified that, applicant signed exhibit S2 on 22<sup>nd</sup> January 2022. While under cross examination, DW2 maintained that she served the applicant with exhibit S2 on 20<sup>th</sup> January 2022 and that applicant prayed to sign the said exhibit on the other date.

It is my considered opinion that, evidence of the applicant does not prove that the said one-year fixed term contract of employment (exhibit S1) was renewed automatically. It is clear from evidence of DW2 that she informed applicant on 19<sup>th</sup> January 2022 that, there will be no renewal of his contract of employment. It can be argued that, the said contract expired on 18<sup>th</sup> January 2022 and that, on 19<sup>th</sup> January 2022 the said contract had already renewed automatically. That argument in my view, cannot be valid considering that applicant was on leave and there is no evidence on the date he returned in office for the respondent to be criticized that he did not inform applicant that there will be no renewal before expiration of the said contract. Considering circumstances of this application, I am of the considered view that, respondent cannot be condemned for serving applicant with exhibit S2 on 20<sup>th</sup> January 2022 after being informed on 19<sup>th</sup> January 2022 that there will be no renewal of the contract. In other words, In the circumstances of this application, applicant cannot rely on the provisions



of Rule 4(3) of GN. No. 42 of 2007(supra) to show that the contract was renewed automatically. Rule 4(3) of GN. No. 42 of 2007 (supra) provides: -

*"4(3) Subject to sub-rule (2), a fixed term contract may be renewed by default if an employee continues to work after expiry of the fixed term contract and **the circumstances warrants it.**" (Emphasis is mine)*

It is my view that, in deciding that the fixed term contract was renewed by default, the court or the Commission, must not only consider that an employee continued to work after expiry of the said fixed term, but must also consider circumstances if they warrant. As pointed hereinabove, after considering circumstances of this application, I am of the settled view that the said fixed term contract was not renewed by default and that the arbitrator's finding are justifiable.

In addition to the foregoing, there is no clause in the said one-year fixed term contract (exhibit S1) showing that there will be an automatic renewal. Applicant had a duty to prove that he had expectation of renewal and that, such expectation was reasonable. In fact, that position was held by the Court of Appeal in the case of [Vida Mwasala vs GIZ Deutsche Gesellschaft Internationale](#)

**Zusammenable (GIZ) GMBH** (Civil Appeal No.317 of 2020) [2023]

TZCA 17340 when it held *inter-alia* that:-

*"...it must be noted that this is a kind of termination that places a duty on the employee to prove not only that he had expectation of renewal but that such expectation was reasonable... Reasonable expectation of renewal is, in our view, **situational in that it depends on the circumstances of each case.** However, some common considerations have been developed to help standardize the factors."*(Emphasis is mine)

The Court of Appeal quoted what was held in the South African case of ***Dierks v. University of South Africa*** (1999) 20ILJ 1227 that: -

*"A number of criteria have been identified as considerations which have influenced the findings of past judgments of the Industrial and Labour Appeals Courts. **These include an approach involving the evaluation of all the surrounding circumstances, the significance or otherwise of the contractual stipulation, agreements,** undertakings by the employer or practice or custom in regard to renewal or re-employment, the availability of the post, the purpose of or reason for concluding the fixed term contract, inconsistent conduct, failure to give reasonable notice and nature of the employer's business."*(Emphasis is mine)

Having quoted the above South African case, the Court of Appeal in **Mwasala's case** (supra) held that:-

*"...We feel obliged to observe that fixed term contracts of employment would cease to serve their intended purpose if an employer as in the instant case would be stuck with an employee whose services are no longer needed under the new scheme. As we intimated earlier, **it is the employee's duty***

***to prove that the expectation of a renewal was reasonable.”***  
(Emphasis is mine)

It is my view that, applicant did not prove that the contract was renewed by default or that he had expectation of renewal. I therefore, confirm the CMA award and dismiss this application for want of merit.

Dated at Dar es salaam this 27<sup>th</sup> September 2023



B. E. K. Mganga  
**JUDGE**

Judgment delivered on 27<sup>th</sup> September 2023 in chambers in the presence of Suleiman Edward Kategile, the Applicant and Prisca Nchimbi, Advocate for the Respondent.



B. E. K. Mganga  
**JUDGE**