

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

**LABOUR REVISION NO. 151 OF 2023**

*(Arising from the Labour Dispute No. CMA/DSM/KIN/265)/2021/130/2021)*

**SUDI MANGARA.....1<sup>ST</sup> APPLICANT**

**LAZARUS NNKO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**NGOME SAVINGS AND CREDIT**

**COOPERATIVE SOCIETY LTD.....RESPONDENT**

**JUDGEMENT**

Date of last order: 07<sup>th</sup> Sept. 2023

Date of judgement: 22<sup>ND</sup> Sept. 2023

**OPIYO, J.**

Being resentful with the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] the applicants has filed this application under the provisions of Rules 24 (1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) and 28 (1) (c) (d) and (2) of the Labour Court Rules, GN. No. 106 of 2017 and Sections 91 (l) (a) (b), (2) (a) (b) (c), (4) (a) (b) and 94 (l) (b) (i) of the Employment and Labour Relations Act No. 6 [CAP 366 RE 2019] as amended from time to time

[herein to be referred to as ELRA] and any other enabling provision of the law, praying for an order in the following terms:-

1. That this Honorable Court be pleased to call for records of the Commission for Mediation and Arbitration in the proceeding of the original Labour Dispute No. CMA/DSM/KIN/265/2021/130/2021, revise it, and set it aside.
2. That this Honorable Court grant the applicant severance pay subject to the respondent's breach of contract.
3. That this Honorable Court be pleased to grant such other reliefs or orders in favour of the applicant as it may deem fit and just to grant.

The gist of the dispute as gathered from the CMA record and the parties' pleadings are as hereunder. The applicants were employed by the respondent in Managerial cadre, but in different department under fixed term contract of three (3) years. Their relationship turned hostile on 18<sup>th</sup> June 2021 when the notice of non-renewal was issued by the respondent. Being not satisfied with employer's decision the applicants filed the matter to the Commission. At CMA the arbitrator found that the termination of contract was fair as there was no reasonable expectation

of renewal, rather they were just handing over the office. Being annoyed with the award the applicants filed this application.

In supporting the application, the applicants filed their sworn affidavits. Disputing the application, the counter affidavit sworn by Mr. Julius Elizei Chalamila, respondent's Principal Officer was filed. The applicants' affidavit at paragraph 3.8 contained four legal issues challenging the decision of the arbitrator. These issues are: -

- a) Whether there was no any proper administration of respondent before the boards meetings sat on 17<sup>th</sup> June 2021.
- b) Whether the Honorable trial arbitrator was right to declare the letters dated 31<sup>st</sup> May 2021 which were issued by the respondent in extending the employment contracts to the applicants to be null and void.
- c) Whether the applicant's employment can be affected by internal administrative disputes of the respondent.
- d) Whether the applicants continued working after the 14<sup>th</sup> June 2021 followed by being paid with their usual salary does not entitle them to a renewed.

The hearing of the matter proceeded orally the applicant was represented by Mr. Myambebele Mweli, Advocate while the respondent was represented by Mr. Vedastus Majura.

In his submissions, the Applicant's counsel Mr. Mweli started with issue No. 4 by submitting that the applicants were employees of respondent for a 3 years contract which ended in 2018. Thereafter it was renewed to more three years which ended on 14<sup>th</sup> June 2021. He stated that before its expiry on 10<sup>th</sup> May 2021 the respondent served the applicant with notice of non-renewal of their employment. However, when it reached 31<sup>th</sup> May, 2021 before their employment come to an end, the respondent issued them with another letter dated 31<sup>st</sup> May, 2021 informing the applicants that the respondent had revoked the previous letter that refused renewal (exhibit P4 and P9). Their employment contracts were extended for more three years from 15<sup>th</sup> June 2024. However while the applicants were continuing with performance of their duties, very unfortunately on 18<sup>th</sup> June, 2021 they were informed by the respondent to hand over their office duties to other assignees claiming that their employment had come to an end.

It was further submitted that, the act of the respondent was purely against her former decision in exhibits P4 and P9 and it is against provisions of the law, as per Section 36(a)(iii) of Employment and Labour Relations Act Cap 366 RE 2019 read together with rule 4(3) and (4) of GN. No. 42 of 2007. According to him, the above provisions warrant employment contract to be in continuation if an employee continues with his tasks after the expiration of his contract, as was discussed in the case of **G4S Secure solutions (T) Ltd Vs. Abbas Mpewa**, Rev No. 52 of 2021, High Court of Tanzania, Labour Division, at Dar es salaam, (unreported) at last paragraph of page 9. Also, the case of **Daram Singh Hanspalel and Sons Ltd Vs. Oswald Christopher Charles and another**, Rev No. 69 of 2021, High Court of Tanzania, Labour Division, at Arusha, (unreported) at Pg. 17,18 and 19. In the alternative, since the applicants were issued with letter date 31<sup>st</sup> May 2021 extending their contracts, both had expectation of renew for 3 more years. Also, the case of **AAR Health Carare T. Ltd Vs. Evard Peter Rwelamira**, Rev. No. 08 of 2020 High Court Labour Division at page 11 first paragraph.

Mr. Mlyambelele submitted that, the respondent paid the applicants the monthly salary of June 2021 after they were asked to hand over office

to another person. On that basis, he is of the view that, that alone signify that the respondent recognized the applicants' employment contract to be in continuation.

On the 1<sup>st</sup> issue as to whether there was no proper administration of the respondent board meeting that sat on 17<sup>th</sup> June, 2021, Mr. Mlyambebele stated that the respondent's meeting was proper and the letters issued as exhibits 4 and 9 were correct, as the said administration was appointed on 28<sup>th</sup> May 2021 as justified by respondent under para 5(1) of the counter affidavit. He concluded that, since the Board was appointed on 28<sup>th</sup> May 2021 and the letter was issued on 31<sup>st</sup> May, 2021 it was written by proper authority after its appointment.

On the 3<sup>rd</sup> issue whether the trial arbitrator was right to declare the letters dated 31<sup>st</sup> May 2021 (Exhibit P5 and P9 which were issued by the respondent to be null and void. Mr. Mlyambebele submitted that it was very wrong for the trial arbitrator to declare the letters null and void on the fact that the said letters were not objected while they were tendered. Second, there was no any fraud report stating that the said letters were procured unlawfully. He added that, this allegation could have legal stance if the respondent had raised an alarm to a responsible

organ such as police force challenging the validity of the said letters. Since that was not done it was wrong to decide that the letters were null and void. Insisting his position, he cited the case of **Eupharacie Mathew Rimisho t/a Emari provisions store and Emar Company Ltd Vs. Tema Enterprises Ltd and another**, Civil Appeal No. 270 of 2018 Court of Appeal at Pg. 21 where according to him, emphasised the need to report fraud to the relevant authorities. But in the matter before us, as there was no such allegation that was raised in relation to the letters they remained lawful. On that stand he is of the view that, it was wrong for the arbitrator to declare the same as null and void.

On the last issue as to whether the employment contract of the applicants could be affected by internal disputes of the respondent? The Counsel submitted that the employment contract can never be affected by disputes of employers. He contended that the law is there to protect employees deeming their tenure of employment. Therefore, even if there is an allegation that letters were issued by a non-existing Board, that cannot jeopardise the rights of the applicants who were lawful employees. They thus prayed for this court to quash and set aside the CMA award.

In opposition, Mr. Majura opted to argue all grounds jointly. He submitted that the respondent is a cooperative society in form of a SACCOS. Being a SACCOS, her daily business are run by the Board, including the mandate to employ the society employees, to review contract or otherwise, and all decisions are done through the Board resolutions. Mr. Majura submitted that the applicants had employment renewable contract of 3 years. He stated that, it is well known that in case of renewal, the applicants would write a letter to the respondent and the same is discussed in the Board meeting and the outcome communicated to them. If successful, they were to be supplied with employment contracts.

Mr. Majura argued that before expiration of the 2<sup>nd</sup> contract which ended on 14<sup>th</sup> June, 2021, the applicants as usual applied for the renewal of their contracts, but the Board resolved that their contracts were not going to be renewed. The Board that decided or resolved so was chaired by Michael Emmanuel Sanga (DW1). They were duly notified of the same as per Annexure SL 1 of the applicant's affidavit (exhibit P3) signed by vice chairman one O.S. Mateka. The letter categorically stated that their contract will come to an end on 14<sup>th</sup> June 2021.



It was further argued that, the board that was led by Sanga and Mateka were in power until 16<sup>th</sup> June, 2021 where the new Board came into power chaired by Kanali E.N. Marasa and Major M. M. Mlashani was a vice chairperson. The board chaired by Marasa and Mlashani came fully into power and assumed their role and responsibility as a newly appointed board on 16<sup>th</sup> June, 2021 as well testified by DW1, one Emmanuel Sanga by tendering exhibit D1 which was entitled *Hati ya Makabidhiano ya Ofisi ya Ngome SACCOS of June, 16<sup>th</sup> 2021*.

Regarding the allegation of Exhibit P4 and P9 for which applicants claim their employment contract was renewed, Mr. Majura argued that, as he said earlier and as per exhibit D1, the chairman E. Marasa and Mlashani assumed their role on 16<sup>th</sup> June 2021 and thus, it could not be possible for one of them be it Marasa or Mlashani to sign the letter dated 31<sup>st</sup> May, 2021 alleged to extend the applicants' contract of employment while by that time they were not yet in power. In addition, he stated that no Board meeting had passed resolution to extend the 3<sup>rd</sup> term contract of the applicants, while that Board was given the office and started its duty on 16<sup>th</sup> June 2021 as well stated in Exhibit D1. Thus, the trial arbitrator was correct to declare the said letter null and void.

On allegation to report the matter to the police, Mr. Majura argued that this allegation does not hold water at this point, on the reason that the one who signed the letter had no mandate to do so since all mandate is vested only to the Board.

He continued to submit that as admitted by other side that the 2<sup>nd</sup> term contract ended on 14<sup>th</sup> June, 2021 and they handed over the office on 18<sup>th</sup> June, 2021 that signify that their contract ended on 14<sup>th</sup> June, 2021, therefore, there was no problem giving them the full salary for June. Anyhow, the salary slips were not dated to show when they were paid the said salary (exhibit P5 and P10). By paying the full salary does not suffice to say that they were recognized by respondent as employees on 3<sup>rd</sup> term contract as they alleged.

On his view, the trial arbitrator was right to say that there was no employment between the parties as there was no renewal of contract after the contract expired, as emphasized at Pg. 14 of exhibit P1. He stated that, when the power was handed over to the new board, they were informed that their contract ended on 14<sup>th</sup>, and they had to handover the office to another person. Since there was no third term

contract, there is no breach that can be proved from the circumstances. Thus they prayed for this Court to uphold the CMA award.

In rejoinder, applicant reiterated his submission in chief. They insisted on the time the applicants remained in the office, by submitting that, they agreed that the 2<sup>nd</sup> contract ended on 14<sup>th</sup> June, 2021, but since the applicants remained in their offices until on the 17<sup>th</sup> June, 2021 when they were issued with letter requiring them to hand over the office to another assignee through exhibit P6 signify that they were continuing with their responsibilities by virtue of 3<sup>rd</sup> contract referred to in exhibits P4 and P9.

As regard as to whether the person who signed the letters in exhibit P4 and P9 had no mandate to do so, the counsel insisted that this is internal affair of the respondent that had nothing to do with the applicants. he thus reiterated his prayers he made in chief for the CMA award to be quashed and set aside.

I have dully considered the submission of both sides and painstakingly perused the CMA records plus pleadings relating to this application. Having gone through the parties' submissions and their sworn statements, I am inclined to deal with grounds for revision one by one in

the way the counsels for the parties have submitted on them with the aim of answering the main issue as to whether the applicant has adduced sufficient grounds for this court to exercise its power of revising the CMA award. At CMA, the arbitrator found that the termination was fair as the respondent was under fixed term contract; therefore, applicant was right to issue notice of non-renewal after the fixed term contract expired, the intention that she confirmed in her subsequent resolution.

I start with the issue as to whether applicants' contracts of employment were renewed. Supporting the application the applicants' Counsel alluded that the respondent's board meeting sat authorizing the applicants' employment to be renewed. He stated that the respondent's fault on her internal affairs regarding the renewal of the employment contract should not be used to punish the applicants. He further added that on June 2021 applicants received their salaries for the whole month. In such circumstance, he was of the view that applicants were still employed as their contracts were renewed.

Rival side maintained that the applicants had a fixed term contract of three years, renewable upon approval by the employer. However, the

board resolved that applicants' contracts would come to an end on 14<sup>th</sup> June 2021 and later the applicants merely handed over the office. They did not remain in the office connoting renewal after expiration of their employment contracts. Thus, allegation regarding applicant's employment contracts renewal lacks merits. Under the provision or Rule 4(2) of G.N No. 42 of 2007 it is an established principle of law that, when employment contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise.

In the current matter, it is undisputed that the respondent was employed under fixed term contract of three years, which was ending on 14<sup>th</sup> June 2021 as per Exhibit P1 (employment contract). The principle relating to adherence to the terms of employment contracts is well established in the case of **Hotel Sultan Palace Zanzibar vs. Daniel Laizer & Another**, Civil. Appl. No. 104 of 2004, Court of Appeal of Tanzania, (unreported) it was held: -

*"It is elementary that the employer and employee have to be guided by agreed term governing employment. Otherwise, it*

*would 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 above cited authority, as the applicants agreed to be employed under fixed term contracts expected to end on 14<sup>th</sup> June 2021, then applicant's allegation regarding extension of employment contract as per Exhibits P4 and P9 could only have a legal stand if the alleged extension was properly done by the relevant authority. Exhibits P4 and P9 were issued on 31<sup>st</sup> May 2021 purported to have been signed by someone on behalf of the chairman, Col. E.M. Mallasa indicated as the chairman of the board. According to the records he was chairman of the newly elected Board on 28<sup>th</sup> May 2021. This brings us to the issue whether exhibits P4 and P9 were valid? Exhibits P4 and P9 revoked the previous letters of 10<sup>th</sup> May 2021 (exhibits P3 and P9 collectively) that informed the applicants of respondent's refusal to renew their employment contracts? unlike exhibit P3 and P9 collectively of 10 May 2021 that made reference to the Boards resolution not to renew the applicant's employment contracts, the 31<sup>st</sup> May 2021 letters (exhibit P4 and P9) made reference to the Boards mandate in revoking the previous Board resolution reflected in 10<sup>th</sup> May letters. The said 31<sup>st</sup> May letters were seemingly issued without board resolution.

Under the constitution of the respondent admitted as exhibit D1 collectively, the board is the highest decision making organ in this organisation. It is the one that approves those to be hired and fired. In all, it is the one that delegates its mandate to the management of the respondent to work for the organisation under its supervision (see article 49 (1) (i)- iii). Both PW1 and PW2 who were the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively admitted that their employments were to be approved by the Board to be valid. The Boards reaches its decision through resolutions. The decision based on resolution by the board can only be varied by another board resolution. No officer of the organisation or a board member is mandated to vary the resolution of the Board in his/her personal capacity or in agency capacity that is not mandated by board resolution. It is on record that the new Board was handed over the office on 16<sup>th</sup> June 2021 and its first meeting was on 17<sup>th</sup> June 2021. It follows therefore that exhibits P4 and P9 purported to have been written on 31<sup>st</sup> May 2021 by Col. E .M. Malassa and signed on his behalf by the unknown was not valid for being made without mandate. It is not backed with any board resolution to that effect.

It is purported to have been signed by Moses Michael Mlashani (DW3), but his name does not appear in the documents as it would be

expected. In signing on behalf, it is the name of the person who affixes his signature that appears, not the name of the one in whose behalf the document is signed like what happened in exhibit P4 and P9. However, all in all, even if the letters were properly signed by the known member of the Board, still their validity would be questionable because they still lacked board resolution to validate them as rightly held by the CMA. It follows therefore that, whatever was done by Board members before they were validly in office becomes invalid and could not bind the respondent as it is not its decision.

The above finding answers both the first and second ground in the affirmative that there was no proper administration, (by the new management) of the respondent before handing over followed by their first board meeting of 17<sup>th</sup> June 2021 and therefore the CMA was right to declare the letters dated 31<sup>st</sup> May 2021 which were issued by the respondent in extending the employment contracts to the applicants to be null and void. This is especially upon finding that the board meeting of 17<sup>th</sup> June 2021 the respondent maintained his stand of not extending the applicants' contracts by directing them to handover the office and it was honored as per Exhibit P7 (handling letter).



In relation to validity of the letters, the applicants also argued that provided the exhibits were not objected while tendering and the invalidity of the matter was not reported to the police it, was wrong to hold the same as null and void. In my view this stance is also not founded. The nullity meant here is not due to fraud but lack of mandate of the person who signed the letters. No claim of the letter being forged was put forward by the respondent to warrant reporting to the police. The claim is that the new management that purported to have signed the letters had no mandate yet to do so. There is nothing to report to the police in the circumstances. The case of Eupharacie (supra) is therefore distinguishable and not relevant in our case.

Regarding the allegation of applicants continuing working after the 14<sup>th</sup> June 2021 when their previous contract ended followed by being paid their usual salary, thus entitling them to the renewal, I find no need to restrain much on this allegation, on the reasons of shortness of remaining in the office and the purpose for remaining there till 21<sup>st</sup> June 2021. It is on record that according to notice of non-renewal the applicants were directed to prepare the handover note by 14<sup>th</sup> June, that was by the date their contract was ending. But it seems by 14<sup>th</sup> June they had not yet finished preparation. I believe this is because of

volume of what was to be done as stated by DW3 that the respondent has a large number of members and many properties. So, a lot more time was required to put their records for hand over in place. Therefore, being given sometime after expiration of ones term to prepare a handover is not in law continuing with work that would lead to reasonable expectation of renewal entitling one to renewal reflected in the authorities cited by the applicants' counsel.

After all, as noted above the notice of non-renewal had already notified the applicants to get ready for handover before 14<sup>th</sup> June 2021 when their contract ended, but they did not comply. This led to the reminder to hand over the office on 16<sup>th</sup> June 2021 which was subsequently complied with on 21<sup>st</sup> June 2021 as per exhibit P7. This shows that due to the work involved, the few days the applicant remained in the office were only for the specific task of preparing handover which successfully also came to an end after six days from the date their contract ended and four days from reminder to hand over. That is on 21<sup>st</sup> June 2021. In my considered view, remaining in office after expiration of contract employment for few days and for specific purpose like smooth handover is not continuing with work raising reasonable expectation of renewal as claimed by the applicants.

On a serious note, the applicants also challenged the fact of being paid a monthly full salary if their contract ended by mid-month. On record, the applicant's remained in the office for about six days after expiration preparing handover note. So, by the time they completed the task, two third of a month had already elapsed. Out of courtesy, I believe, the respondent opted to pay the full salary in assumption that applicant worked for a bigger part of the month rather than a desire to continue applicants' employment as claimed by the applicants. Therefore in my view, payment of full salary was not in any way respondents conduct justifying renewal.

In the upshot, it is my finding that the application lacks merits. It is accordingly dismissed and hereby upheld the CMA award. I make no order as to costs.



A handwritten signature in blue ink, appearing to be "M. P. OPIYO", written over a light blue rectangular stamp.

**M. P. OPIYO,**

**JUDGE**

**22/9/2023**