

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

REVISION APPLICATION NO. 6323 OF 2024

*(Arising from Award issued on 21/2/2024 by Hon. Mikidadi, A, Arbitrator, in Labour Dispute No.
CMA/DSM/TMK/15/2022/28/2022 at Temeke)*

HELENA MWAINI & ANOTHER..... APPLICANTS

VERSUS

AL-HASEEB JEWELLRY LIMITED..... RESPONDENT

EXPARTE JUDGMENT

*Date of Last Order: 13/05/2024
Date of Judgment: 27/05/2024*

B. E. K. Mganga, J.

Brief facts of this are that, on 2nd January 2021, Al-Haseeb Jewellery Limited, the abovementioned respondent employed Helena Mwaine and Zawadi Jacob Selemeni, the hereinabove applicants for one year fixed term contract of employment. In the said fixed term contract of employment, it was that applicants were employed as Machine operator/packing/ loading and that the said contract was expiring on 31st December 2021. It is undisputed by the parties that, applicants continued to work with the respondent after expiry of the said contract. It is further undisputed by the parties that, on 10th January 2022,

respondent wrote a termination letter that was served to Helena Mwaine, the first applicant on 31st January 2022 and Zawadi Jacobo Selemani, the 2nd applicant on 1st February 2022.

Aggrieved with termination of their employment, on 21st January 2022, applicants filed labour dispute No. CMA/DSM/TMK/15/2022/28/2022 before the Commission for Mediation and Arbitration (CMA) at Temeke complaining that respondent breached their employment contracts. In the referral Form (CMA F1) applicants indicated that each was claiming to be paid TZS 100,000/= being one month salary in lieu of notice, TZS 38,461/= being unpaid salaries for ten days, TZS 100,000/=being unpaid leave, TZS 1,100,000/= being eleven months salaries remaining of the contract and TZS 26,923 being severance pay for one year. In total, applicants indicated that they were claiming to be paid a total of TZS 2,730,768/=.

On 21st February 2024, having heard evidence of the parties, Hon. Mikidadi, A, Arbitrator, issued an award holding that applicants continued to work after expiry of their one year fixed term contract without making follow up to the respondent and that, the said contract had no clause for renewal hence the contracts expired. The arbitrator further held that,

there was no breach of contracts and that procedures were adhered to, by the respondent and dismissed the dispute.

Applicants were aggrieved by the said award hence this application for revision. In support of the Notice of Application, applicants filed the affidavit sworn by Helena Mwaine, the 1st applicant. In the said affidavit, applicants raised four grounds of revision namely that:-

- 1. That the Honourable Arbitrator erred in law and facts by holding that the respondent did not breach the contract of the applicants rather the contract expired despite the fact that both applicants had worked ten(10) days consecutively under expected renewal.*
- 2. That, the Honourable Arbitrator erred in law and facts by considering evidence that was never brought before the Commission for Mediation and Arbitration to decide that the respondent issued a cessation while the alleged notice was never brought before the Commission.*
- 3. That the Arbitrator erred in law by disregarding evidence that the respondent issued a notice to breach the renewed contract that was tendered and admitted as exhibit.*
- 4. That the arbitrator erred in facts in holding that applicants were paid by the respondent on the expiry of the contract despite the fact that no evidence was presented by the respondent to prove that both applicants were paid by the respondent.*

Respondent though served on 28th March 2023 with the application, did not file either the Notice of Opposition or the Counter Affidavit to oppose this application hence this exparte judgment.

Arguing in support of the 1st ground of the application on behalf of the applicants, Ms. Isabella Alex, from TASIWU, a trade union, submitted that, contracts of the applicants expired on 31st December 2021 but they continued to work until on 10th January 2022, the date they were terminated. She further submitted that, the arbitrator erred in law and in fact in holding that respondent did not breach the contracts while applicants worked for 10 days in the contracts that were renewed by default.

On the 2nd ground, Ms. Alex submitted that, the arbitrator erred in law in holding that applicants were served with the notice while there is no notice or evidence relating to notice that was tendered by the respondent.

Arguing the 3rd ground, Ms. Alex submitted that, the arbitrator failed to consider termination letters (exhibits P2 and P2.1) that were written on 10th January 2022 showing that respondent was in breach of the contracts of the applicants that was renewed by default. She further submitted that, applicants were employees of the respondent since 2019 and their one year fixed term contracts were being renewed by default.

Arguing the 4th ground, Ms. Alex submitted that, the arbitrator erred in law in holding that applicants were paid their terminal benefits

while they were not paid terminal benefits on the contracts that were renewed by default. She added that, no evidence was adduced by the respondent to prove that applicants were paid their terminal benefits. She further referred the court to the provisions of Rule 4(3) of The Employment and Labour Relations (Code of Good Practice) Rules, GN. No. 42 of 2007 to support her submissions that a contract can be renewed by default. She went on that, applicants continued to work for 10 days after expiry of their contract on 31st December 2021 up to 10 January 2022.

With those submissions, Ms. Alex prayed the court to allow this application, revise the CMA award and order respondent to pay applicants as they prayed in the CMA F1.

I have examined evidence of the parties in the CMA record and find as pointed out hereinabove that, the one year fixed term contracts of employment of the applicants expired on 31st December 2021. It is also undisputed that, applicants continued to work with the respondent after expiry of the said contracts and that, on 10th January 2022, respondent wrote termination letters (exhibit P2 and P2.1) directed to Helena Mwaine and Zawadi Jacob Selemani, the applicants respectively. It was evidence of Helena Mwaine(PW1), 1st applicant and Zawadi Jacob

Selemani(PW2), 2nd applicant, Devota Nyoni(DW1), the latter being the only witness for the respondent, that termination of the applicants was on 6th January 2022 while their one year fixed term contract of employment expired on 31st December 2021. It is therefore undisputed that, applicant continued to work even after after epiry of their one year fixed term contracts.

It is undisputed that, Helena Mwaine (PW1), 1st applicant, was served with termination letter (exhibit P2) on 31st January 2022 while Zawadi Jacob Selemani (PW2), the 2nd applicant, was served with termination letter (exhibit P2.1) on 1st February 2022. The said exhibits P2 and P2.1 were also signed by Devota Nyoni(DW1) on the 31st January 2022 and 1st February 2022. In other words, applicants became aware of their termination of their employment contracts on 31st January 2022 and the 2nd February 2022 respectively and not on 10th January 2022, the date the respondent wrote termination letters (exhibit P2 and P2.1) respectively. It is my view that, 1st applicant was terminated on 31st January 2022 and 2nd applicant was terminated on 1st February 2022. I am of that view because, prior to those dates, applicants were unaware of the respondent's decision to terminate their employment. There is not evidence suggesting that before serving applicants with the

aforementioned termination letters, they were informed by the respondent that their contracts has been terminated. It is clear from evidence of the parties that, respondent terminated employment contracts of the applicants after their one year fixed term contract has been renewed by default. I therefore agree with Ms. Alex for the applicants that, the said one year fixed term contracts were renewed by default. In fact, Rule 4(3) of GN. No.42 of 2007(supra) is clear that, a fixed term contract of employment may be renewed by default if an employee continues to work after the expiry of the fixed term contract. That is what happened in the application at hand. It was therefore an error on part of the arbitrator to hold that contracts of the applicants came to an end after expiry of the agreed date on 31st December 2021. It was further an error on part of the arbitrator to hold that applicants were supposed to make follow up to the respondent to know whether a new contract will be entered or not. In allowing the applicants to continue to work after expiry of their contracts implied that the said fixed term contracts were renewed by default. Applicants had no such a duty of making follow up to the respondent.

It was testified by Devota Nyoni(DW1) on behalf of the respondent that, after expiry of the contracts of the applicants on 31st December

2021, applicants were notified by the Human Resources Manager that there will be no renewal of their contracts and that, they should stop coming to work. DW1 testified further that applicants continued to work for three days without the knowledge of the respondent until when they were served with termination letters. It was further evidence of DW1 that respondent opted not to renew fixed term contracts of the applicants due to poor performance and frequent asking for permissions for not attending at work.

I have considered evidence of DW1 and find that, the story that after expiry of the one year fixed term contracts applicants were notified not to attend at work is, after all, hearsay hence cannot be acted upon. I am of that view because, DW1 is an accountant and in her evidence, she did not claim that she was present when the Human Resources manager was notifying applicants not to attend at work after expiry of their contracts. Apart from that, I find evidence of DW1 full of lies because it is beyond imagination, by the nature of the duties applicants were performing, namely, machine operator/ packing/loading, to have continued to work for even a single day, without being noticed by the respondent. That story is laden with lies hence her evidence cannot be accepted. In the case of ***Patrick s/o Sanga v. The Republic,***

Criminal Appeal No. 213 of 2008, CAT(unreported), the Court of Appeal when deliberating on grounds for disbelieving a witness, held that:-

To us, there are many and varied good reasons for not believing a witness. These may include the fact that the witness has given improbable evidence; he/she has demonstrated a manifest intention or desire to lie; the evidence has been materially contradicted by another witness or witnesses; the evidence is laden with embellishments than facts; the witness has exhibited a clear partiality in order to deceive or achieve certain ends, etc..."

Guided by the above Court of Appeal decision, I find that DW1 is not worth to be believed.

It is my view therefore that, respondent decided to terminate employment of the applicant allegedly due to poor performance after they have worked under the new contract that was renewed by default. The allegation of poor performance is also not supported by evidence. Mores, procedures for termination of employment based on poor performance were not followed.

For all what I have discussed hereinabove, I conclude that, respondent breached the one year fixed term contracts of the applicants that were renewed by default after expiry of the contracts that ended on 31st December 2021. I further hold that, the said breach occurred on the dates applicants were served with exhibits P2 and P2.1 namely, on 31st December 2022 and 1st February 2022 after applicants have worked for

one month and not for three or ten days as alleged by the parties. The said contracts were breached while Eleven months were remaining. I therefore, direct respondent to pay TZS 1,100,000/= each applicant the said amount being salary for 11 months remaining of the contracts. In total respondent shall pay TZS 2,200,000/= to the applicants.

In the CMA F1, applicants prayed to be paid severance pay. In view, applicants are not entitled to severance pay because they did not complete a year working under the contracts that were renewed by default.

Dated in Dar es Salaam on this 27th May 2024.



B. E. K. Mganga

JUDGE

Judgment delivered on this 27th May 2024 in chambers in the presence of Helena Mwaine and Zawadi Jacob Selemani the Applicants but in the absence of the Respondent.



B. E. K. Mganga

JUDGE