

TANZANIA / JUDGMENT

kabwe said kibamba vs azam media limited 2022 tzhcld 854 8 july 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION (AT DAR ES SALAAM) REVISION NO. 114 OF 2021 KABWE SAID KIBAMBA.....
APPLICANT VERSUS AZAM MEDIA LIMITED..... RESPONDENT

JUDGEMENT

S, M, MAGHIMBI, J. The applicant herein was employed by the respondent as a Customer Service Agent in a fixed term contract of one year which commenced on 01/08/2014 (exhibit D2). The contract was renewed on similar terms for several times. The last contract entered by the parties which is the subject matter of this application commenced on 01/08/2017 and agreed to end on 31/07/2018. After the last contract expired the; respondent did not renew it. Following such decision, the applicant was aggrieved and felt that he was unfairly terminated from employment. He therefore referred the matter to the Commission for Mediation and Arbitration (CMA) claiming for unfair termination, praying to be reinstated without loss of remuneration. The CMA dismissed the claim, aggrieved by the CMA's award, the applicant filed the present application on the following grounds:-

- i. That the Learned Arbitrator was wrong to hold that the applicant has no legitimate expectation for renewal of her employment contract with the respondent.
 - ii. That the Learned Arbitrator failed to hold the parties to the Employment contract was on the wrong from the beginning.
 - iii. That the Learned Arbitrator improperly; assessed the evidences adduced during the hearing and held: to assess some of the key evidence submitted and give the finding on it leading to the improper and illogical findings of the award.
 - iv. That the Learned Arbitrator wrongly hold that the terminal benefits were; is no bank deposit proof of the same, tendered at CMA as proof. The application was argued by way of written submissions. Before this court, the applicant was represented by Mr. Karonda Said Kibamba, Personal Representative whereas Ms. Zainabu Salumu, Learned Counsel appeared for the respondent.
- 2 Submitting on the first ground, Mr. Kibamba submitted that the reasoning of the Arbitrator was not in accordance with the law and established legal principles. That Rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, (GN 42 of 2007) (The Code) provide for automatic expiration of the contract except when the contract provides otherwise. He argued that terms of the contract are the ones

which creates legitimate expectation of renewal of the contract in question as it was held in the case of National ft) Oil Limited v. Jaferry Dotto Msensemi & 3 others. Revision No. 558 of 2016, High Court, Dar es salaam (unreported). As to the second ground Mr. Kibamba was submitted that the Arbitrator made an error for failure to point out first the legitimacy of the employment contract between the parties. He argued that the Arbitrator was supposed to determine whether the applicant who was employed as a Customer Service Agent qualified to work under fixed term contract pursuant to section 14(l)(b) of the Employment and Labour Relations Act, (Cap 366 RE 2019) ('ELRA'). He stated that as per exhibit D2, the applicant was neither employed as a professional to conduct a professional task nor employed under specific task or engaged in a contract for unspecified time, therefore the employment relationship between the applicant and the respondent was based on wrong contract from the beginning. He insisted that the applicant's contract was not in accordance with section 14(1) of ELRA. To support his submission, he cited the case of Denis Kalua Said v. Flamengo Cafeteria, Revision No. 210 of 2010 LCCD 2011-2012. Mr. Kibamba went on submitting that the applicant's termination was in violation of Section 38 of ELRA. The third ground was that the learned Arbitrator improperly assessed the evidences adduced during the hearing and ignored to assess some of the key evidence submitted and give the finding on it leading to the improper and illogical findings of the Arbitrator. Mr. Kibamba submitted that there is no proof that the applicant was duly paid his terminal benefits and that the salary slip (exhibit D7) is not a proof of payment of the terminal benefits. He therefore urged the court to quash and set aside the CMA's decision. Responding to the first ground, Ms. Salum submitted that the Arbitrator was right in law and fact to hold that there was no expectation of renewal because the applicant was served with the notice of non-renewal of the said contract. She submitted that the contract was for fixed period of one year hence it expired upon the agreed time pursuant to Rule 4(2) of the Code. To support her submissions, he cited 4 several decisions including the case of Dar es salaam Baptist Secondary School Vs. Enock Ogala, Revision No. 53 of 2009 High Court Labour Division, Dar es Salaam (unreported). She continued to submit that the applicant acknowledged receipt of the notice of non-renewal on 31/08/2018, the fact which does not amount to expectation of renewal of the said contract. She concluded that the notice was served to the applicant to remind him that his employment contract will come to an end on 31/08/2018. As to the second ground, Ms. Salum submitted that the parties herein had a valid employment contract. The applicant applied for the job on 05/07/2014 directly to the Human Resource Manager of the respondent with his certificates, he qualified to be issued with a fixed term contract. She argued that it is during cross examination at the CMA when the applicant revealed that he is a professional, the fact which was unknown to the respondent. She insisted that the employment contract between the parties was valid. On the last ground, Ms. Salum submitted that the applicant was duly paid through his bank accounts and that the proof of payment of his terminal benefits is exhibit D7 which indicates that he was paid the salary of July 2018, annual leave and severance pay. Further that the applicant was notified of the end of contract as evidenced by exhibit D6. She therefore urged the court not to grant the prayers sought by the applicant and the application be dismissed for lack of merit. After considering the rival

submissions of the parties, CMA and court records as well as relevant laws my findings. I will start with the second ground whereby the applicant is challenging the validity of the contract between the parties herein. This ground need not to detain me much. To begin with, the issue of validity of the contract was not the basis of his; complaint at the CMA, neither was it framed as an issue for determination. Therefore, since the same did not transpire in the CMA proceedings, it can not be brought at this revisional stage to be determined. Further to that, the issue requires evidence to be determined. At this stage the court's powers are limited to what was decided by the lower court (CMA) and not otherwise. Thus, such ground lacks merit and is dismissed accordingly. Moving to the first ground, that the applicant had legitimate expectation of renewal of the contract since his previous contracts were renewed. The record shows that the applicant's employment contract commenced on 01/08/2017 and agreed to end on 31/07/2018. The respondent strongly alleges that the notice of non-renewal (exhibit D6) was served to the applicant on 10/07/2018 but he signed the same on 31/07/2018 which was the date of end of his employment contract. The position of the law is clear that the fixed term contract shall terminate automatically upon expiry of the agreed term. This is pursuant to Rule 4(2) of the Code which provides as follows: - 'Rule 4(2) where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise.' In the matter at hand, although the applicant alleges that he was not notified of the expiry of his employment contract on time, the position of the law is that upon expiry of the agreed term, then the contract shall terminate automatically, unless the contract provides otherwise. In the EXD2; the employment contract, the extension of the contract was subject to a mutual agreement between the parties. This was evidenced by EXD3 and EXD4. However, the renewal agreements were to be read together with the original contract EXD2 which provided for extension on mutual agreement. Since the respondent had no interest to renew the contract, the notice was served on the applicant and served to him on 31/07/2018. This concludes that the contract was terminated as per the agreed terms in EXD2. I have also noted that the applicant claims reasonable expectation of renewal of the said contract, as per Rule 4(5) of the Code. In a claim of reasonable expectations of renewal, the burden shifts to the employee to establish reasonable expectation thereto. The wording of the relevant quoted: - 'Rule 4(5) where fixed term contract is not renewed and the employee claims reasonable expectation of renewal, the employee shall demonstrate that there is an objective basis for the expectation such as previous renewals, employer's undertakings to renew.' It is an established principle of law that previous renewal alone does not stand as a reasonable expectation of renewal of the contract. In the case of National Oil (T) Ltd. v. Jaffery Dotto Mseseni & 3 others, Revision No. 558 of 2016 (unreported) it was held that; - 'The question of previous renewal of employment contract is not an absolute factor for an employee to create a reasonable expectation, reasonable expectation is only created where the contract of employment explicitly elaborates the intention of the employer to renew a fixed term contract when it comes to an end.' On the basis of the above decision, it is my strong view that the applicant has failed to establish the reasonable expectations of renewal. It

follows that the applicant's employment contract was duly terminated upon the agreed term. The other issue is whether the notice of non- renewal was issued one month before expiry of the said contract. Such allegation is not the position of the law since Rule 4(2) of the Code quoted above provides that the contract will terminate automatically upon expiry of the agreed term. The contract (EXD2) is also silent on the employer's obligation to issue one month notice of termination of the contract. In the result I find the present application to be lacking merits hence I see no reason to fault the CMA's decision. This application is hereby dismissed. It is so ordered. Dated at Dar es Salaam this 08th July, SJ^^AGHIMBI JUDGE 9

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