

TANZANIA / JUDGMENT

JUDGMENT TANESCO vs

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19 June 2024

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA LABOUR REVISION NO. 25773 OF 2023 (Arising from Labour Dispute
No. CMA/MBY/112/2019) TANZANIA ELECTRICITY SUPPLY CO. LIMITED
APPLICANT VERSUS GEORGE AUSTIN MTIESA.....1ST RESPONDENT
EMMANUEL SIMKOKO.....2ND RESPONDENT SALIM
ADAM.....3RD RESPONDENT IBRAHIM
MWANDIWA.....4TH RESPONDENT DEO
WILBERT.....5TH RESPONDENT FRANCIS
MALILA.....6TH RESPONDENT HASSAN
MTUMBUKA.....7TH RESPONDENT DENIS
NCHUMBUKA.....8TH RESPONDENT FELIX A.
SHIBANDA.....9TH RESPONDENT ENOCK
KIBIKI.....10TH RESPONDENT YONA G.
MWANDYEDYE.....11TH RESPONDENT SATO
MWAIHOJO.....12TH RESPONDENT HASSAN
BORI.....13TH RESPONDENT PETRO
SIMFUKWE.....14TH RESPONDENT BOAZ
MWANDAMBO.....15TH RESPONDENT 1 GEORGE
OTIENO.....16TH RESPONDENT ELIZABETH SAMSON
MAHALI.....17TH RESPONDENT

JUDGMENT

Date of last Order: 19th June, 2024 Date of Ruling: 20th August, 2024 KAWISHE, J.: The application for revision has been brought by way of Notice of Application made under the provisions of sections 91 (1) (a), (b), (2) (b), 94 (1) (b) (i) and (3) (a) (i) of the Employment and Labour Relations Act (Cap. 366, R. E. 2019) and Rule 24 (1), (2) (a), (b), (c), (d), (e) and (f), Rule 24 (3) (a), (b), (c), (d) and Rule 28 (1) (a), (c), (d) and (e) of the Labour Court Rules, 2007 GN No. 106 of 2007. The prayers sought by the applicant are;

- i. That this Court be pleased to call the record of proceeding of the CMA and its award in Labour Dispute No. CMA/MBY/112/2019, revise it and set aside the award delivered by Anita Kazimoto, dated 28th January, 2022. ii. Any other relief this Court may deem fit and just to

grant. 2 The application is supported by an affidavit sworn by Thadeo Godfrey Mwabulambo, advocate and Principal Officer of the Applicant. In reply the respondents filed a joint counter affidavit objecting to the same. The brief facts of this matter are as follows: The respondents were employed by the applicant under Specific Task Employee Contracts as meter readers, telephone operators and artisans. When the respondents' contracts came to an end, the applicant issued them with notice of not intending to renew their contracts hence, paid them one-month salary in lieu of Notice and issued them certificate of service. The respondents were aggrieved with such decision thus, lodged a complaint at the Commission for Mediation and Arbitration (CMA) at Mbeya and the matter was decided in their favour. Aggrieved with CMA's decision, the applicant lodged a Revision Application at the High Court at Mbeya. Successfully, the respondents raised a preliminary objection on point of law that, the application was incompetent as it was supported by an incurable affidavit hence, on 18th August, 2022 the application was struck out. The applicant lodged an application for extension of time so as she can lodge another application. The applicant was granted 14 days to file a fresh application which is now the subject before this court. 3 By leave of the court the parties agreed the matter to be disposed of by way of written submission. Mr. Joseph E. Tibaijuka and Thadeo G. Mwabulambo, learned State Attorneys represented the applicant while the respondents fended for themselves. Submitting in support of the application, Mr. Tibaijuka prayed the affidavit sworn by Thadeo G. Mwabulambo be adopted to form part of his submission. Submitting on the first legal issue, he argued that, the testimony of a sole witness of the applicant revealed that, the respondents were under a contract of specific task employment as seen in the second paragraph of the third page of the CMA's award. It was his submission that, the Arbitrator required documentary evidence to prove the type of relationship but if the Arbitrator could have moved herself to the opening statement, she could have found that, the applicant's testimony corroborated the contents of the opening statement of the parties. Mr. Tibaijuka further submitted that, the applicant and respondents had an employment relationship of a three months fixed term contract. He added that, the applicant issued thirty days' notice to the respondents to the effect that at the end of the contract on 30th September, 2019 there shall be no renewal of the contract. He argued that, section 36(a)(iii) of 4 the Employment and Labour Relations Act (the ELRA) is relevant in this dispute. Mr. Tibaijuka further submitted that, a fixed term contract seemed to be unfairly terminated if the employer refused to renew the contract while, there is the existence of expectation of renewal. Bolstering his submission, he cited the case of Msafiri Sobo vs. CRDB Bank PLC. Civil Appeal No. 34/2020, Court of Appeal of Tanzania sitting at Dar es salaam. Mr. Tibaijuka contended that, the Arbitrator failed to evaluate the testimonies of witnesses and found that, there was an expectation of renewal of the contract to the respondent. That, the arbitrator failed to consider the fact that, the applicant testified that, there was a reasonable notice. That, the reason for concluding the contract was the change of the system from the use of analog meter to LUKU system hence, the applicant cannot employ meter readers and debt collectors. Submitting on second legal issue, Mr. Tibaijuka argued that, the CMA had to take into consideration testimonies and the evidence of the parties. That, unfortunately, the CMA presumed the facts which were not adduced by either

party. Reinforcing his argument, he cited the case of Abubakari I.H Kilongo and Alex Alen vs. The Republic, Criminal Appeal No. 230 5 of 2021 CAT (unreported), Lutter Symphorian Nelson vs. AG and Ibrahim Said Msabaha [2000] T.L.R 419. Regarding legal issue number 3, the learned State Attorney submitted that, a public servant is required under section 32A of the Public Service Act (Cap. 298, R.E. 2019) the respondents were required to exhaust all remedies provided under the public Service Act before seeking remedies provided for in labour laws. He added that, the complaint should have been referred to the Public Service Commission and once aggrieved, the final appellate entity is the President as per section 25 of the Public Service Act (supra) could approach the CMA. It was his further submission that, if the respondents were not public servants, they worked for the applicant for not less than a year as the applicant kept on renewing their contracts with the availability of task. He averred that, the respondents never worked for the applicant under single task contract for six months. Thus, they were not covered under Sub Part E of the ELRA, as provided for under section 35 of the ELRA. He added that, the CMA erred in applying section 37 of the ELRA which is under Sub Part E in determining the matter of unfair termination. He insisted that, there was no unfair termination as held by the CMA. 6 Arguing on the fourth legal issue Mr. Tibaijuka submitted that, there was no unfair termination of the contract and the applicant decided not to renew the contract reasonably hence, was not proper for CMA to award payment of compensation under section 40(1)(c) of the ELRA. Regarding the fifth legal issue he submitted that, the CMA was wrong to order the respondents to be paid one-month salary in lieu of notice while it is on record that the applicant paid the same to the respondents. As a result, thereof, the CMA erred to order the applicant to pay the same again. The learned State Attorney prayed the application be allowed by revising and setting aside the CMA's award. In their joint reply the respondents submitted on the first legal issue that, the Arbitrator was right to hold that the respondents were unfairly terminated. That, the employer failed to prove that, the termination was fair as provided for under section 37(1) of the Employment and Labour Relations Act (ELRA). The respondents further submitted that, the CMA properly evaluated the evidence as the applicant issued a notice of termination before following the procedures of termination and the respondents had legal expectations as per rule 4(4) of Employment and Labour Relations (Code of Good Practice), 2007 (the Code). 7 The respondents averred that, not all the respondents were employed under the same task as some were under meter reading, holes digging and clearing bushes. That, not all the respondents' contracts were ending at the same time. They further averred that, Essau David Mzuri, the applicant's witness admitted that, termination procedures were not followed. That the respondents were not paid leave, severance pay and certificate of service. On the second legal issue the respondents submitted that, from both sides there is no dispute that, the applicant and the respondents had a contract of employment hence, the presumption of the Arbitrator on the existence of the oral contract between the parties does not affect the decision reached. Responding to the third legal issue, the respondents submitted that, it is not disputed that, the CMA has no jurisdiction to entertain a matter whose parties are public servants. However, there are exceptions to the point that, where the matter or claim does not arise from disciplinary actions. It was their contention that, in the

case at hand, the matter involved termination of contract unfairly and not arising from disciplinary action. The respondents in fortifying their arguments cited the case of 8 Rombo District Council & Another vs. Hamisi Haji Mfinanga, Civil Appeal No. 246 of 2022 CAT at page 4-6 (unreported). On the 4th, 5th and 6th legal issues they submitted that, the Arbitrator was right to order payment of three months compensation as there was unfair termination and the applicant admitted to have not followed the proper procedures for termination. They insisted that the respondents fall under section 43(3)(1)(a), (b) and (c) of the ELRA. They prayed to the court to dismiss the application with costs. In rejoinder, Mr. Tibaijuka on the first legal issue argued that, the Arbitrator seriously failed to analyze the evidence hence, totally misdirected herself by holding that, the termination was unfair. The applicant's argued that, the nature of the employment contract between the applicant and the respondents was a fixed term contract. That, as per section 36(a)(iii) of the ELRA a fixed term contract deemed to be unfairly terminated when the employer failed to renew a contract while, there was a reasonable expectation of renewal. The learned counsel added that, the employee has a burden of proving the existence of expectations of renewal. He insisted that, the respondents did not demonstrate on how they expected the contract to be renewed. He added that rule 4 of the 9 Code provides that fixed term is automatically terminated when the agreed period expires. Where there is expectation of renewal but the employer fails to do so then it amounts to unfair termination. That under rule 4(5) of the Code, the respondents have not discharged their duty to prove expectation. He contended that the respondents are wrong to submit that the employer failed to prove that the termination was fair. The learned counsel faulted the respondents on their contention that the applicant's witness admitted that the termination of the contract did not follow procedures. His argument was to the effect that the witness testified that the respondents were given notice of not intending to renew the contracts. Regarding the second legal issue he rejoined by reiterating their submission in chief. He added that, the decision of the Arbitrator based on the assumed facts. That, the Arbitrator did not consider the evidence adduced by the witness as the Arbitrator assumed the employment contract was unfairly terminated and there was an oral contract. On the third legal issue rejoined that, the issue of unfair termination or breach of contract in the employment contract involves procedures and reasons for doing so. That, the Public Service Act through the Public Service Commission has power to entertain such cause of action. He 10 further submitted that, the cited case by the respondents, Rombo District Council & Another (supra) is distinguishable as it was about the claim of substantial and repatriation allowances which the Public Service Act and its regulations do not provide for its remedies. He reiterated their prayer that the application be allowed. Both parties made their final submission where they did final touches to the submission and testimonies made during the oral hearing. I will refer the final submission in the course of deliberating on this matter. Having gone through the submission of both parties. The issues calling for determination are as follows:

- i. Whether the CMA was correct to decide that termination of the respondents was both substantive and procedurally unfair. ii. Whether the Arbitrator properly evaluated and analyzed the evidence before her. iii. Whether the CMA correctly awarded the reliefs to the respondents. iv. Whether the respondents were public servants as per the relevant laws. In determining this matter, I will respond to the issues raised in seriatim and symmetrically with labour laws. It is trite law that, termination of an employment contract must be for a fair reason, that is of substantive fairness and must follow fair procedures. In deciding whether a termination is fair or not, I will take into consideration the provisions of section 37 (1) and (2) of the Employment and Labour Relations Act (supra) and Rule 12(1) of the Employment and Labour Relations (Code of Good Practice) G.N 42 of 2007. The provisions of section 37 provides that: “37(1) It shall be unlawful for an employer to terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove-
- (a) that the reason for the termination is valid;
- (b) that the reason is a fair reason-
- (i) related to the employee’s conduct, capacity or compatibility; or (ii) based on the operational requirement of the employer, and
- (c) that the employment was terminated in accordance with a fair reason. Rule 12 (1) provides that: “Any employer, arbitrator or judge who is required to decide as to termination for misconduct is unfair shall consider:-
- a) Whether or not the employee contravened a rule or standard regulating conduct relating to employment.
- b) If the rule or standard was contravened, whether or not (i) it is reasonable (ii) it is clear and unambiguous (iii) the employee was aware of it, or could reasonably be expected to be aware of it (iv) it has been consistently applied by the employer and (v) termination is an appropriate sanction for contravening it.” In line with quotations above, looking at the case at hand, there is a common understanding between the parties that the applicant and the respondents were in employment relationship of renewable three months contract. Before I proceed to the type of contract between the parties, I wish though not exhaustively to touch briefly on the type of a contract which can be terminated. An employee’s contract is deemed terminated when the employee is dismissed from work or barred from undertaking the duties assigned to him or her while the employee’s contract still subsists. For instance, where a public servant who is employed on permanent and pensionable terms is terminated before the statutory retirement age. If the termination does to involve disciplinary matters, then in my view is a termination of contract which is not due. In the alternative, for permanent and pensionable public servants when the statutory retirement age clicks, one has to leave the office. Thus, it is an automatic termination and the employee is entitled to the statutory retirement benefits. No notice of termination is required under this type of

employment. Having briefly touched on the contract which can be terminated, I revert to the issue at hand. According to the information available, 13 respondents' contracts were for various tasks such as; meter reading, holes digging and bush clearing from 2017 to 2019 when the applicant issued the respondents a notice of thirty days. That, the notice informed the respondents that, the applicant would not renew their contract when they will come to an end. The reasons attached thereto were that they were changing their system by introducing LUKU instead of those meters used and they had no other task to offer. Mr. Mtiesa witness for the applicants/respondents when testified before the CMA stated that, the respondents were issued with dismissal letters before notice. On the other hand, Mr. Mzuri, witness for the respondent/applicant told the CMA that the respondents were issued with notice of intention of not to renew their contracts. The notices were attached to the complaints to the Commission though were not tendered nor admitted as exhibits. On perusing the attached documents, I came across the notice addressed to George Mtiesa, stating: "Yah: TAARIFA YA KUTOONGEZEWA MKATABA WAKO WA KAZI MAALUM". Literally interpreted, Re: NOTICE OF NOT RENEWING YOUR CONTRACT ON SPECIFIC TASK. It is dated 30th August, 2019 and a Certificate of Service stating that the contract ended, dated 30th September, 2019. There were also notices and certificates issued to the other respondents. In this matter at the conclusion the CMA decided that 14 the respondents' contracts were terminated unfairly. The applicant challenges the decision by stating the vice versa. In determining whether the respondents' contracts were terminated fairly, a glance on the provisions of section 38(1) of the Employment and Labour Relation Act (the ELRA) will shade light on the way forward. The ELRA provides for the procedures to be adhered to by an employer when terminating an employee. For easy of reference I reproduce it hereunder: "38(1) In any termination for operational requirements (retrenchment), the employer shall comply with the following principles, that is to say, he shall-

- (a) give notice of any intention to retrench as soon as it is contemplated;
- (b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;
- (c) consult prior to retrenchment or redundancy on ...“ In this application, the employer, the applicant through Mr. Mzuri told the CMA that they gave the respondents thirty days' notice that their contracts will not be renewed as required by the law. Did the employer/applicant follow the procedures set forth by the law? Mr. Mtiesa testified before the CMA testified that together with the other respondents were employed on specific contracts. That, they became permanent 15 employees due to the nature of the work they were doing. It has to be noted that, both parties admitted that their relationship was by a specific contract. In examination in chief, Mr. Mtiesa stated that, they became permanent employees of the applicant because they were contributing to the National Social Security Fund (NSSF). He prayed that the documents be used as evidence but the CMA did not admit the same. The witness further testified that, they had different tasks including meter reading, digging pole

holes and clearing bushes. When cross examined, he responded that, he was employed in 1998 but without a contract. When further cross examined, he responded that, he was given a contract in 2017 and the same was for three months. He stated that he did not remember the terms and conditions of contract. He added that, it was a permanent contract. He responded further that, the termination letter they received stated that the tasks ended. In addition, Mr. Mtiesa stated that, the contract was terminated three months prior to the end of the contract. That, they were unfairly terminated because there was no meeting on termination was conducted. Upon re-examination he stated that he was the only one with a three-months contract among the respondents/applicants. He continued to respond that he had a permanent contract. Led by their learned counsel, Mr. Mtiesa responded that what he 16 was asked by the respondent/applicant's counsel was non-existing contract. That he does not have the contract which he was given by the respondent/applicant in 2017. That, he signed contracts from 2017 to 2019. On the other hand, Mr. Mzuri stated that the respondents were employed under specific task and their contracts ended in September

2019. He further testified that, the contracts were of one to three months. That the respondents were employed in various specific tasks including meter reading. That the technology changed from analog meters to LUKU technology, digging holes now done by prisoners and villagers of the area concerned. That, the notice of intention of not to extend time was issued referring to the time each contract will be ending. Upon cross examination, the respondent's/applicant's witness did not tender the notice before the commission. Upon re-examination he responded that the complaint does not relate to retrenchment. Was the termination in accordance with the provisions of the ELRA? One of the conditions stated under section 38(1)(a) of the ELRA is to give notice of any intention to retrench as soon as it is contemplated. Did the applicant issue notice to the respondents? The answer is drawn from the 17 testimony of Mr. Mzuri who stated that the respondents were issued with notice prior to the end of the contract. Meanwhile, Mr. Mtiesa's testimony is to the effect that they were issued with a termination letter before notice. Neither of the witnesses adduced any document to support the claim and the response thereto. It is a trite law that he who alleges must prove. See section 110 of the Evidence Act (Cap. 6 R. E. 2022) which states: "(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person." According to the provisions of the Evidence Act as quoted, the respondents were required to prove that they were unfairly terminated by the applicant. From the testimony of Mr. Mtiesa, that they were issued with a termination letter before notice were not proved. I hold so as the witness did not produce any evidence before the CMA to prove his allegations. It is settled law that, the burden of proof lies on the person who alleges the existence of any fact. The allegation that the respondents' employment was permanent due to the nature of the work they did has not been proved as required by the law. 18 The applicant's witness Mr. Mzuri testified that, the respondents' contract was periodic ranging from one month to three months. That the notice of intention of not to

extend the respondents' contract was issued before the end of the contract. On their side, the respondents admitted that, their contracts were specific task contracts. Mr. Mtiesa during examination in chief and cross examination responded that, their contracts were for three months but was permanent as they renewed contracts several times. Also, this was so stated under paragraph 3.2 of the applicant's affidavit. Where the applicant deponed that respondents' contract was for specific task, the applicant issued them with a notice of not intending to renew their contracts, paid them one-month salary in lieu of the notice and issued them with certificates of service. The respondents' joint counter affidavit denied the fact that they were issued with a notice before termination. The applicant's written submission reiterated her position that, the contract was a fixed term contract whereas, the respondents' submission insisted that the arbitrator decided rightly that the termination was unfair. As I have hinted earlier, unfair termination is occasioned where the termination did not follow the procedures provided for under the law. The contentious issue before me is the status of the termination. The 19 respondents built their case on the renewal of their contracts several times. According to their submission before the CMA and the submission on this application they alleged that they became permanent employees due to the nature of the work they were assigned to and renewal of contracts. That they had legal expectations of renewal. It is a settled principle that, an unfair termination exists where the employer does not notify the employee on his intention of not to renew their contract and where the contracts subsist. The applicant's learned counsel in his submission referred to rule 4 of the Code of Good Practice Rules, 2007 which provides that a fixed term contract comes to an end upon expiration of the agreed period. The respondents averred that, they had legal expectations as prescribed under rule 4(4) of the Employment and Labour Relations (Code of Good Practice), 2007. That, Mr. Mzuri admitted that termination procedures were not followed thus, their termination was unfair. From the submission before this court and the testimony given before the CMA, I am convinced that both parties agree that there existed a contract between them. Mr. Mtiesa admitted that their contracts were for three months but became permanent due to the nature of the work. The CMA's typed award, though not numbered, counting the pages it is page 5 to 6 held that the employer did not follow procedures as required by 20 section 37 of the ELRA. The honourable arbitrator also agreed with the applicant that working for a long time does not make an employee a permanent one. Starting with the legal expectation as alleged by the respondent, it is a settled principle that, renewal of a contract cannot be based on as a legal expectation. This position was clearly stated in the case of Ibrahim s/o Mgunga and Three Others vs. African Muslim Agency, Civil Appeal No. 476 of 2020 [2022] TZCA 345 [13 June 2022; TanzLII], wherein the Court of Appeal referenced the ruling of the Supreme Court of Zimbabwe in *Medecins Sans Frontiers (MSF) Belgium vs. Vengai Nhopi and Eleven Others*, Civil Appeal No. SC.278/16. The said court ruled that: "For an employee to discharge his burden of proof he must show that the employer acted in a manner upon which he formed a legitimate expectation to be re-engaged." The respondents in their submission stated that the nature of their work that is, meter reading made their employment permanent. He added that, they had expectation as per the Code. In my view, expectation is drawn from the terms of the contract and not the

mere renewal of a specific task contract. The respondent clearly stated that he was given a three months contract. Thus, it is a permanent employment. It is illogical for any rational individual to anticipate a subsequent renewal predicated on a solitary renewal. The Court of Appeal while deliberating on an appeal disputing termination of a contract of employment put it very clear. It was in the case of Msafiri Sobo vs. CRDB Bank PLC, (Civil Appeal No. 34 of

2020) [2024] TZCA 241 (25 March 2024) where the Court stated that: "... we determined that it was not reasonable to expect another renewal of an employment contract based on the evidence that it had been renewed once or twice." Given the position of the Court of Appeal and the fact that the respondents did not tender any evidence to prove unfair termination, I am convinced by the applicant's counsel that the termination was fairly done. Since the respondents were the claimants before the CMA were duty bound to prove that their contracts were terminated before they ended and that the termination was unfair. They submitted that they were issued with termination letter before the notice. They did not tender the letter nor the notice of intention of not to renew their contracts. It is a settled law that the court makes decision basing on the law, evidence adduced and the testimony, short of that, the court considers that the case is not proved to the required standards. To this point, it is my humble view that, the honourable arbitrator did not evaluate the evidence presented properly hence erred in deciding that the respondents' contracts were terminated unfairly. The 1st legal issue has merit. Therefore, the first issue is answered in the negative. On the second issue, whether honourable arbitrator properly evaluated and analyzed the evidence before her. I will not labour much on this issue as it has been dealt with substantively when I was responding to the first issue. The honourable arbitrator in her award presumed there was an oral contract between the applicant and the respondents. When perusing the CMA's handwritten proceedings as there is no typed proceedings, I found out that the respondents prayed that the CMA admit his documents to be part of his evidence. The honourable arbitrator did not admit them. I am alive that, the provisions of section 88(4) of the ELRA requires the arbitrator to deal with the substantial merits of the dispute with the minimum of legal formalities. Hopefully, this does not mean to leave the evidence unadmitted when the party prays for admission. Looking at the CMA's proceedings, on 21st January, 2020 the CMA ordered the parties to file documents to be relied upon and serve each other. Such documents were not tendered neither admitted. Nothing to that effect was recorded in the proceedings. As a result, the honourable arbitrator presumed that there was oral contract between the applicant and the respondents. This holding of the arbitrator contradicts the respondents' witness testimony. During re-examination, Mr. Mtiesa told the CMA that he was given and signed a contract in 2017 to 2019. How can the honourable arbitrator presume there was an oral contract? Though not tendered and admitted, the complainants filed copies of their contracts and notice served by the applicant. The honourable arbitrator recorded the evidence of Mr. Mtiesa that he signed contract but presumed there was oral contract. In their submission the respondents defended the decision of the CMA that, the presumption of oral contract did not prejudice the applicant. The applicant did not show how he was prejudiced. The

applicant's counsel submitted that the decision is defective. Every reasonable person knows the value of a defective decision. In my consideration, assuming the existence of an oral contract while, the parties did not submit the same was a bit strange as submitted by the applicant's counsel. Thus, it is my humbly view that, the honourable arbitrator did not evaluate the evidence properly hence arriving at a wrong decision. Accordingly, the second legal issue has merits. Thus, the second issue is answered in the negative. On the third issue whether the CMA correctly awarded the reliefs to the respondents. From the observation made in responding to the first issue where the response was that the CMA erred in holding that there was 24 unfair termination and the second issue where the answer is that the CMA did not evaluate properly the evidence. It follows that, since there was no unfair termination and no proper evaluation of evidence, subsequently the reliefs awarded by the CMA were wrongly determined. In that the third legal issue has merit. Therefore, the third issue is answered in the negative. Responding to the fourth issue, whether the respondents were public servants as per the relevant laws. I wish to refer to section 3 of the Public Service Act (Cap. 298, R. E. 2019) which defines a public servant. It states: "Public servant" for the purpose of this Act means a person holding or acting in a public service office." From this interpretation, do the respondents fall under public servants' category. In his submission, the applicant's counsel stated that the respondents never worked for the applicant under one single contract for six months, thus the respondents are not covered under Sub Part E of the ELRA. He added that, section 35 of the ELRA states: "The provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts." 25 The learned State Attorney added that, section 3 of the Public Service Act (Cap. 298, R. E. 2019) defines a public servant to mean a person holding or acting public service office. In that, section 32A of the Public Service Act (supra), requires public servants to exhaust remedies available before seeking remedies under labour laws. That, unfair termination of public servants is governed by the Public Service Act and not the ELRA. Thus, the CMA lacked jurisdiction in entertaining the matter. The respondents responded that, section 32A (supra) applies in disciplinary issue of public servants. Their matter did not originate in disciplinary actions. The applicant's learned State Attorney maintained that, the respondents did not qualify to be treated under Sub Part E of the ELRA. Technically, the learned State Attorney is telling the court that respondents are public servants by requiring to exhaust the remedies available under section 32A of the Public Service Act. The testimony of the respondents before the CMA and that of the applicant show that there were periodic contracts on specific tasks. The ELRA defines specific tasks to mean: "A task which is occasional or seasonal and is non-continuous in nature." 26 Indeed, the respondents' tasks were seasonal and occasional. They were employed to read meters, to dig holes for poles. The definition of the Public Servant entails a person holding or acting in a public service. The respondents were employed on specific tasks by the applicant which is a public institution. Thus, in my view, the respondents were public servants on specific tasks subject to renewal of contract. Public servants can be employed on permanent or contractual basis. Since the evidence available show that the

respondents' contracts were of one to three months, they did not qualify to be treated under Sub Part E of the ELRA. Therefore, the respondents were at the proper forum but their claims were unproven. Given the findings as to the 1st to the 3rd legal issues which in my view, are the basic claims, I see no need of attending the 4th, 5th and 6th legal issues separately. It will amount repetition of what I have stated. The response to the 1st and 2nd issues, covers these legal issues. Having ventured that much, I am of the view that, the CMA erred in holding that there was unfair termination as the respondents did not prove their claims to the balance of probability. Also, the honourable arbitrator did not evaluate the evidence adduced properly thus, reached an undesired decision. The respondents were at the proper forum but could not prove their claims, instead they complained that the applicant failed to 27 prove that it was fair termination. He who alleges must prove. The respondents did not discharge their duty to prove their claims to the standard required by the law. The respondents' contracts were terminated fairly according to the law, reasons were adduced to the effect that there was a change in the analog meters to LUKU technology hence, no more reading of meters. The digging of pole holes conducted by prisoner and villagers of the area concerned instead of casual workers like the respondents. The contracts being specific tasks expired at the end of the period automatically hence, the payment made to them was correct. Consequently, I hold that the application has merits. As a result, the proceedings, the award and the reliefs ordered by the CMA are hereby quashed and set aside. This being a labour case, I make no orders as to costs. It is so ordered. Right of appeal explained. DATED and DELIVERED at MBEYA this 20th day of August, 2024. E. L. KAWISHE JUDGE 28 Court: Judgment delivered virtually before Mr. Allan Shija, learned Senior State Attorney for the applicant and Mr. George Mtiesa, Boazi Mwandambo, Emmanuel Simkoko and Salim Adam respondents present. E. L. KAWISHE JUDGE 20/8/2024 29

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