



6/8/2010
IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO 53 OF 2009

DAR ES SALAAM BAPTIST SEC. SCHOOL..... APPLICANTS

VERSUS

ENOCK OGALA..... RESPONDENT

(Original CMA/DSM/KIN-ILA/5303/08/165)

RULING

R.M. RWEYEMAMU, J.

The respondent/ employee successfully referred a suit of unfair termination of a 2 year fixed term contract the Commission for Mediation and Arbitration (CMA). The contract had expired, the issue raised by the respondent was that the applicant/employer had created a reasonable expectation of renewal in terms of section 36 (iii) of the Employment and Labour Relations Act, 6/2004 (the Act) read together with Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) (the Code) GN. 42/2007.

The law provides;

(a) "termination of employment" includes-

(i)...

(ii)...

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(iii) A failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;..."

And rule 4 (3-5) of the Code provides that:

- "(2) Where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provides otherwise.*
- (3) Subject to sub-rule (2), a fixed term contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract and circumstances warrants it.*
- (4) Subject to sub-rule (3), the failure to renew a fixed – term contract in circumstance where the employee reasonably expects a renewal of the contract may be considered to be an unfair termination.*
- (5) Where fixed term contract is not renewed and the employee claims a 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."*

The CMA decided in this case that although the contract was for a fixed period, there was reasonable expectation of its renewal, thus its termination on 2/9/2008 amounted to unfair termination. Based on that conclusion it awarded the following:

- 12 months pay at the rate of shillings 280,000/= per month for unfair termination totaling shillings 3,360,000/= under section 40 (1) (c) of the Act.
- Severance pay under section 42(1) of the Act being shillings 144,000/= (shs. 226,000/= less 82,000/= already paid.

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- Dismissed the accrued leave claims as unpayable under the law.

The employer was aggrieved by the decision, applied for its decision and submitted that the employee cannot be paid for services not rendered. The respondent submitted that the employer had created reasonable expectation or renewal, as such the contract was renewed and the termination letter amounted to unfair termination.

Facts adduced by the employee at the CMA based upon which a finding of reasonable expectation of renewal was found were as follows:

- The heading of the contract that "two years work contract (renewable) creates an impression to a reasonable person that the probability of renewal were high
- The fixed term contract was supposed to expire on 31/8/2008 but the employer had placed the employee to be on staff duty roster from 17-21 November 2008.
- On the undisputed facts that the contract commenced on 1/9/2006 to expire on 31/8/2008, yet it was terminated on 2/9/2008.

These facts were undisputed save for the interpretation to put on them. I have carefully considered the parties arguments and the CMA reasoning in the award, and find no basis of faulting the CMA conclusion that the employee had reasonable expectation of renewal. First, if there were no expectation of renewal, the contract would have expired automatically with no need to write a termination letter. Two, It is not otherwise explainable

why the employer included the employee in a duty roster beyond the contract period. In the result, I find the application to have no merit and dismiss it.

R.M.Rweyemamu

JUDGE

6/8/2010

Date: 06/8/2010

Coram: Hon. R.M. Rweyemamu, J.

Applicant:

For Applicant:- Kyaruzi Advocate for

Respondent:-

For Respondent: Present in person

C.C. Josephine Mbasha

COURT: This matter is for ruling. Apologies for delay made.

Ruling delivered this 6/8/2010 in presence of parties as above.

Right of Appeal Explained.

R. M. Rweyemamu

JUDGE

6/8/2010