IN THE HIGH COURT OF TANZANIA

[LABOUR DIVISION]

AT MTWARA

APPLICATION FOR LABOUR REVISION NO. 14 OF 2019

(Arising from the Commission for Mediation and Arbitration Award by Hon. I. Adam (Arbitrator) on 5th July, 2019 at Mtwara in Labour Dispute No. CMA/MTW/LD/34/20180)

REVINA RAPHAEL BIGAMBO..... APPLICANT

VERSUS

DANGOTE INDUSTRIES LTD.....1ST RESPONDENT

DANGOTE CEMENT LTD.....2ND RESPONDENT

16 April & 2 June, 2020

RULING

DYANSOBERA, J.:

The applicant Revina Raphael Bigambo has, by way of notice of application and chamber summons supported by an affidavit, filed this Labour Revision on the following grounds:-

i. That this court be pleased to call and examine the records of Labour Dispute at Mtwara, the Commission for Mediation and Arbitration.

ii. That the applicant seeks to set aside the impugned of (sic) Arbitrator's Award an logical and which has been improperly and illegally procured in favour of the respondent

iii. That this Honourable be pleased to make an order that the applicant be paid of the employment remuneration to being breaching of the contract of employment from the date of termination to the date of end of contract, the applicant to be paid all employment rights as from the date of the breach of fixed term of contract up to the date of final payments and no less than twenty two months remuneration with compensation for the remain period of contract of employment.

iv. That, this Honourable Court may be pleased to make an order that the applicant to be paid all employment rights per CMA F 1 with the applicant's claims on her opening statements and the applicant's claims. The applicant to be paid 23 months remained period of contract of employment, transportation cost, classic bus fare from Mtwara town to Tanga Region, daily subsistence allowances from the date of termination to the date of final payment, transportation cost, working days before terminating the contract of employment, annual

leave and annual leave allowance, one month remuneration dues of notice, severance pay, Certificate of Service and the general damages for unfair treated and defamation.

v. Any other relief that this Honourable Court may deem fit to grant.

The grounds upon which the applicant relies in support his application according to paragraph 25 of her affidavit sworn on 19th July, 2019, are to the following effect:

1. Whether the Award issued on 5th July, 2019 was illegal
2. Whether the Award was ambiguous
3. Whether there was failure to analyse the documentary evidence submitted during the mediation session
4. Whether there was failure on part of the Arbitrator to take into account and evaluate evidence.
5. Whether there was failure to grant the applicant's claims in that she had applied for various claims plus being reinstated for breaching of the fixed term of contract which was the main cause of the termination.
6. Whether the applicant is entitled to general damages as compensation for the injury and mental torture.
7. Whether the said Award was granted without consideration

A brief background leading to this application is the following. The applicant was the employee of the respondent in the capacity of Chief Officer, Human Resource Management Administrator. The parties had entered into a 24 months' fixed term contract. The contract was signed on 2nd March, 2016. Under Clause 10 of the contract, it was stipulated that the employee should be paid a Gross salary of 2, 500,000 per month inclusive of all allowances, in addition, the employer was required to pay 10% as Social Security Contribution and 5% of Employee's gross salary as Skills Development levy. Likewise, it was stipulated under clause 2 of the contract of employment, *inter alia*:

> "Terms of Employment: the employee shall commence her services on 18th January, 2016 and shall continue for Twenty Four (24) months. The contract shall automatically be terminated at the end of completion of Twenty Four (24) months which shall be 17th January, 2018...".

Despite those terms, the applicant reported on work on 7th April, 2016. On 6th October, 2016 she was confirmed in her employment vide DIL/PF/No. 902820. The applicant continued working with the respondent but on 5th April, 2018 she was served with . a notice of termination vide a letter Ref.

No. DCL/TZ/PF 902820/18 informing her that her contract of employment would terminate automatically on 6th April, 2018.

The applicant was aggrieved and on 9th May, 2018 she referred a labour dispute to the Commission for Mediation and Arbitration at Mtwara. The dispute was registered as CMA/MTWR/34/2018. In the complaint form, titled, "Referral of a Dispute to the Commission for Mediation and Arbitration" also known as F 1, the applicant was claiming:-

1. Ujira wa muda wa mkataba Tshs. 57, 500,000
2. Gharama za mizigo na nauli: Tshs. 15, 000,000
3. Malipo ya fidia ya madhila: Tshs. 10, 500,000
4. Posho za kujikimu za kila siku: Tshs. 96.000

At paragraph 4 of F 1 on the outcome of mediation, the applicant averred:

MWAJIRI AAMRIWE KUNILIPA STAHILI ZOTE KIAJIRA NA STAHILI ZA UKOMO WA KUVUNJA MKATABA WA AJIRA. MWAJIRI AAMRIWE KUNILIPA MUDA ULIOBAKI KWA MUJIBU WA MKATABA WA AJIRA KWA MIEZI 23 ILIYOBAKI KATIKA MKATABA WA AJIRA, ALIPWE GHARAMA ZA USAFIRI WA MZIGO MTWARA HADI DSM, NAULI HADI TANGA, POSHO ZA KUJIKIMU KWA KILA SIKU HAD SIKU ZA KUTEKELEZA.

Before the CMA, evidence was given and received. In her evidence, the applicant Revina Raphael Bigambo testified as follows. She was employed by Dangote Industries which was later called Dangote Cement. The contract started on 2nd March, 2016 but paragraph 2 of the contract (exhibit AP 1) stated that the contract was to commence on 18th January, 201 and come to an end on 17th January, 2018. She worked in the capacity of Chief Officer, HAM Administration and was being paid Tshs. 2, 500,000/= per month. She pressed that she officially started working on 2nd March, 2016 and not on 7th April, 2016 and that she agreed with the terms and conditions of the contract. On 5th April, 2018 she was served with the termination letter (exhibit AP 2). She is against the said decision on the grounds that the contract of employment did not stipulate that the same would come to an end on 6th April, 2018 and that there were not agreed changes as per paragraph 22 of the contract.

On cross examination, the applicant replied that before being employed by the respondent she was working with Maweni Limestone from 1st December, 2014 up to 28th February, 2016 and stated that at Dangote she started in December, 2015. On the question on what she understood by the term automatic termination, the applicant stated that it means "muda ukifika mkataba unakwisha". The applicant also admitted that during the

leave, she was stating the date she started working with her employer. As to when she submitted her employment documents she said that it was on 7th April, 2016 when she went to the work for the second time. With regard to discrimination, the applicant told the CMA that she was given a short notice and her health was adversely affected by the termination. It was her further testimony that after the termination she went on working for a month and three days. She admitted that there were not written instructions authorizing her to carry on the work after the termination. Further that, there was not any term justifying her continuing with the contract but argued that there was a promise that she would be given another contract for 24 months. On the payment of terminal benefits, the applicant said that she was paid six days' salary but the employer failed to repatriate her to Dar es Salaam.

She reiterated to be paid her terminal benefits.

In defending the labour dispute, Mr. Fadhila Mrabyo, an employee of Dangote Industries, as HRO testified for the respondent. He recalled that the applicant started working with the respondent in April, 2016 on a fixed employment contract as evidenced by Exhibit AP 1. The contract was signed on 2nd March, 2016 but it was operative with effect from 7th April, 2016 when the Biodata forms were filled in. The witness in stressing that

the contract commenced on the date the applicant started working, that is on 7th April, 2016 and was coming to an end on 6th April, 2018 produced in evidence one of the leave forms the applicant was filling in -exhibit D 2. It was argued on part of the respondent that according to the letter Exhibit AP 2, the applicant was entitled to salary for the days worked and repatriation allowance to Dar es Salaam. The respondent's witness admitted that the change of her names did not entail the change in the employment. The respondent denied to have contravened Clause 17A of the contract and argued that the letter dated 5.4.2016 was not 30 days' notice but was a letter reminding the applicant that her contract would come to an end on 6th April, 2018. He admitted that exhibit AP 2 does not show the applicant's terminal benefits. The respondent, also, through her witness admitted that the applicant was not repatriated to Dar es Salaam.

After hearing the evidence of the parties, the Honourable Arbitrator, in the Award, granted the following reliefs.

1. Malipo ya likizo yake katika kipindi cha mkataba wake mpaka ulipokwisha. Siku 28, kwa kila baada ya miezi 12 sawa na mshahara wa mwezi mmoja. Tshs. 2, 500,000/=. Hivyo kwa miezi 24 sawa na Tshs. 5, 000,000/=
2. Kiinua mgongo Tshs. 1, 346,100 (aya ya 19 ya mkataba)

3. Gharama za usafiri kutoka Mtwara kwenda Tanga (place of recruitment). Mizigo, nauli yake watoto. wawili na mwenzi (mume) kwa mujibu wa Biodata yake ya tarehe 7.4.2016. Gharama hizo kwa mujibu wa sera za Kampuni au mkataba"

The above award was granted after Arbitrator had made a finding that there was no breach of contract. For clarity and ease of reference, his findings as seen at pages 12, ;13 and 14 of the CMA's typed proceedins of the Award are as hereunder:

"Hoja ya kwanza: Tume imepitia vielelezo vya pande zote na ushahidi na kuona kwamba mkataba wa mlalamikaji ni miezi 24 ambapo alianza rasmi tarehe 7.4.2016 kama inavyoonyeshwa kwenye kielelezo D 1 kilichowasilishwa mbele ya Tume aya ya 2 ambapo imeelezwa wazi kwamba mlalamikaji/mfanyakazi mkataba wake unaanza tarehe 18.01.2016 had tarehe 17.4.2018 japokuwa alianza tarehe 07.04.2016. Mlalamikaji kwa kuzingatia muda wa miezi 24 kama mkataba wake ulivokwisha alitoa taarifa ya kwisha kwa mkataba huo tarehe 05.04.2018 ikiwa na maana kwamba miezi 24 kuanzia 07/04/2016.

Kanuni ya 4 (2) TS 42 nanukuu:-

> "Where the contract is a fixed term contract, the contract shall terminate automatically . when the agreed period expires, unless the contract provides otherwise"

Hivyo kutokana na mazingira hayo Tume inathibitisha hoja hii kwamba mkataba ulikwisha sawa na makubaliano yaliyowekwa kati ya mlalamikaji (Mfanyakazi) na Mlalamikiwa (Mwajiri).

On the second issue, that is whether the procedure was followed, the Arbitrator having resolved that there was no breach of contract, this second issue was found to have no basis. Nonetheless, the Arbitrator found that the respondent complied with the procedure by issuing a notice on 5...2018 (Exhibit D B)

On reasonable expectation on part of the applicant, the Arbitrator considered the provisions of sub-rules (4) and (5) of rule 4 of GN No. 42 of 2007, concluded that after the applicant was served with the said notice she did not go on working and failed to establish that she had any expectations and was not given another contract.

With respect to the existence of discriminatory actions, the Arbitrator found that there was none.

At the hearing of this application, Michael Deogratias Mgombozi, Trade Union Officer, duly authorised, represented the applicant, in the time, the respondent enjoyed the services of Mr. Stephen L. Lekey, learned advocate of Zion Attorneys. The hearing was conducted in writing.

Supporting the revision, Mr. Michael Deogratias Mgombozi, hereinafter referred to as the applicant's representative, submitted at length but his submission, in principle, reveal the following. The parties entered into a contract of two years period with remuneration of Tshs. 2, 586, 122.07 and the place of recruitment was Dar es Salaam. The applicant was employed and worked in the capacity of Chief Officer, HAM Administration. According to the applicant's representative, the contract was due for renewal or expiry on 17th January, 2018 as per the employment contract. He submitted that the commencement date of the contract was 2nd March, 2016 and was to come to an end on 17th January, 2018. Counsel for the applicant stated that the applicant reported on duty on 15th March, 2016 and continued to work until on 6th April, 2018 when the employment contract was terminated by the respondent. The applicant was aggrieved by the termination on grounds that there was not 30 days' notice issued on the termination, the reason given by the respondent on the termination that it since the contract was a fixed contract, it

automatically came to an end was misconceived, since the contract was to come to an end on 17th January, 2018 but was terminated on 6th April, 2018 while the applicant continued working, the applicant had developed a reasonable expectation that the contract had been renewed on similar terms. On that basis, counsel for the applicant argued that the nature of the contract was that it was renewable for the next twenty four months taking into account that the applicant worked for 3 months more after the expiry of the contractual period.

On 6th April, 2018 the respondent terminated the contract without giving a 30 days' notice of termination and this violated Clause 17A of the contract. By then, the applicant had already served two months. After the said termination, the applicant took the labour dispute to the Commission for Mediation and Arbitration.

Before the Commission for Mediation and Arbitration, the applicant sought the following reliefs; namely, one month's remuneration in lieu of notice pay, (unexpired) remaining period of 23 months, annual leave, severance pay, repatriation costs, subsistence allowance and compensation for unfair termination as general damages.

According to the submission by applicant's representative, the grievances were that the parties had a fixed contract of 24 months running

from 18th January, 2016 to 17th January, 2018 as stated in exhibit AP 1. The contract expired without notice of termination and the applicant continued working until on 6th April, 2018 when the respondent issued a termination letter. The reason given for termination was that the fixed contract had expired was but a misconception. Counsel for the applicant stressed that the nature of the contract was a renewable term contract for the next 24 months on the same terms and the applicant worked for the respondents for more than 3 months after the expiry of the contractual period, hence the contract was for a specific term contract. A complaint has been raised against the Arbitrator on his not finding that the fixed term of contract was of a specific period, which failure, according to the learned counsel, violated section 14 (1) of the Employment and Labour Relations Act. Further, the Arbitrator is blamed for not considering and evaluating the applicant's evidence and submission and the law in the light of the applicant's submission and facts adduced at the arbitration. Learned counsel pressed that in the circumstances of the case, the applicant developed reasonable expectation of that contract had been renewed on similar terms. Reliance was made on the case of **Dar es Salaam Baptist Secondary School v. Enock Ogala**, Revision No. 53 of 2009 on the authority that where the contract is a fixed term contract, the contract shall

terminate automatically when the agreed period expires, unless the contract provided otherwise or if there was no expectation of renewal, the contract would have expired automatically without any need to need to write a termination letter. Counsel for the applicant also relied on the case of **Mtambua Shamte and 64 others v. Care Sanitation and Supplies at Dar es Salaam**, Revision No. 154 of 2010 which expounded that the principles of unfair termination do not apply specific tasks or fixed term of contracts which come to an end on the specified time or completion of a specific task and that under specific tasks or fixed term, the applicable principles apply under conditions specified under section 36 (a) (iii) of the Employment and Labour Relations Act, No. 6 of 2007 read with rule 4 (4) of the GN. No. 42 of 2007). Counsel challenged the propriety of the Arbitrator's finding that the applicant's employment contract was legally terminated after the expiration of the period of the contract of employment.

With respect to the right to work, counsel for the applicant argued that the Arbitrator failed to note that the applicant had the right to work; the rights which are not only constitutional as provided for under Article 22 of the Constitution of the United Republic of Tanzania but are also enshrined in international bodies. This court was referred to Article 4 of the

ILO Convention on Termination of Employment, Article 23 (1) and the Universal Declaration of Human Rights, 1948, International Covenant on Economic and Social and Cultural Rights, 1966 and the cases of **Augustine Masatu v. Mwanza Textiles Ltd**, Civil Case No. 2 of 1986 and the provisions of section 37 (2) of the Employment and Labour Relations Act. This court was also referred to the case of **Madata Makoye and Others v. TICTS Ltd**, Revision No. 236 of 2013 at p. 43 the on the guiding principle of fairness for employers who elect to impose a penalty upon employees.

Counsel for the applicant also complained against the procedure adopted by the Arbitrator went contrary to rule 8 (1 (b) and (c) of the Code of Good Practice as she was denied her fundamental right of being heard through consultation; an error which goes to the root of the matter and is fatal. Reference was made on the cases of **Registered Trustees of Vignan Education Foundation (Tanzania) v. Dr. Ali Mzige,** Revision No. 764 of 2018 and **Bidco. Oil and Soap Ltd v. Robert Matonya and 2 others**, Revision No. 70 of 2009. It was learned counsel's further contention that the act of terminating the applicant which denied her opportunity of being heard is contrary to human rights. In support of his argument, he relied on the following cases, namely, the **Registered**

Trustees of Vignan Education Foundation (Tanzania) v. Dr. Ali Mzige and **Wilbert Kanuti Mrope v. Dar es Salaam University College of Education**, Revision No. 449 of 2018

The other complaint raised by the applicant is that the award was ambiguous. It was argued on part of the applicant that the Arbitrator misdirected himself under page 14 in finding that the termination was fair and there was no remedy; the finding which is contrary to section 44 of Employment and Labour Relations Act.

The applicant complained also that the Arbitrator failed to pay the applicant all her statutory terminal benefits and urges the court to step into his shoes and pay the applicant the following claimed entitlements:-

i. One month remuneration as per section 41 (1) (b) (ii), 41 (2) section 44 (1) (d) read together with section 41 (5) of the ELRA and Clause 17 (c) of the Contract of Employment Tshs. 2, 500,000

ii. Annual leave pay due to the applicant was entitled under section 44 (1) (b) of the ELRA–annual leave 24 days with section 31 Tshs. 2,500,000

iii. Annual leave pay accrued during incomplete leave cycle under section 44 (1) (c) provides that the annual leave for 24 days with section 31 (1) Tshs. 2,500,000

iv. Severance pay according to the contract of employment (exhibit P 1) in clause 19 and per section 44 (1) (e) and section 42 Tshs. 1, 346, 100

v. Remuneration of works done before the termination from 15th March, 2018 to 6th April, 2018 is equal to 21 days according to section 44 (1) (a) salary Tshs. 2, 500,000 /6 x21= Tshs. 2, 091,234.00

vi. Payment of 32 months remaining of the renewal similar contract in lieu of reinstatement equal to Tshs. 2,500,000/=x 23= Tshs. 59,480,80 for the respondent breaching terms of contract which resulted into unfair breaching of contract of the parties. Case law referred to, **Good Samaritan v. Joseph Robert Saveri** , Labour Revision No. 165 of 2011

The applicant also indicated that there was misdirection on the award: in that the Award- did not define and clarify the amount awarded-. It is contended on part of the applicant that she was entitled to repatriation costs, bus fare from Mtwara, Dar es Salaam to Tanga where the applicant

was recruited, daily subsistence allowance according to section 44 (1) (f) read together with section 43 (10 (a), (b) (c) and (2) of the ELRA, by Employment and Labour Relations Act (General Regulations) GN. No. 47 if 2017:-

Claimed by the applicant was also transport fare according to the contract of employment (Exhibit P 1) I clause 3 the place of recruited at Dar es Salaam, the applicant was recruited from Tanga and under section 44 (1) (f) read together with section 43 (1) (b) of the ELRA , Tshs. 4, 34, 100 for the applicant with three dependents. Further, transportation of the applicant according to the contract of employment (exhibit P 1) in clause 3 the place of recruited at Dar es Salaam was recruited from Tanga and under section 44 (1) (f) read together with section 43 (1) (b), equal Tshs. 15, 500,000 as defined by the Employment and Labour Relations Act (General Regulations), GN No. 47 of 2017 which under rule 16 (3) and (4) which provide that:-:

> (3)The tonnage entitlement for an employee shall be at least one and half tones.
>
> (4) The rate of tonnage allowance shall be determined.

The other entitlements the applicant claimed to be paid were substance expenses according to section 44 (1) (f) read together with section 43 (1,

(c), equal to Tshs. 2, 500,000x 26 = Tshs.65,000,000 as defined by the Employment and Labour Relations Act (General Regulations), GN No. 47 of 2017 which under rule 16 (1) which provide:

(1) the substance expenses provided for under section 43 (1) (c) of the Act shall be quantified to the daily basic wage or as may from time to time , be determined by the relevant wage board.

Other claims by the applicant are a certificate of service according to the contract of employment (exhibit P 1) in clause 3 the place of recruited at Dar es Salaam and under section 44 (1) (f) read together with section 43 (2) ;of the Employment and Labour Relations Act (General Regulations), GN No. 47 of 2017 which under rule 17 (3) and (4) provide which provides that A certificate of service provided for in section 43 (2) of the Act shall, be as prescribed in a form LAIF 10 set out in the second schedule to these regulations. Case laws referred to in support of this claim are, Commutation **& Transport Workers Union (T) COTWU (T), v. Fortunatus Chaneko,** Revision No. 27 of 2008 and **Gaspar Peter v. Mtwara Urban Water Supply Authority**, Civil Appeal No 37 of 2017'

It is the applicant's further claim that she is also entitled to general damages as compensation for injury and mental torture on the ground of discrimination. The Arbitrator contravened section 7 (4), an offence in

labour practice. She fortified her argument by citing the case of **Access Bank Tanzania Ltd v. Raphael Dismas**, Revision No. 39 of 2015.

On the date of employment, the applicant complained that the Arbitrator acted contrary to section 36 (a)(iii) of the ELRA in that there were no changes in the terms of the contract according to Clause 22 of the contract. The Arbitrator erred in holding that the applicant was employed on 7th April, 2016 by relying on the Biodata which is not a contract. .

On his part, Mr. Lekey, learned counsel for the respondent stated that the applicant has failed to point out the illegality in the award. He argued that the Arbitrator addressed both the procedural and substantive issues. He invited the court to find that the grounds set out by the applicant in her application have no merits and should be dismissed. He insisted that the contract of employment indicated that the applicant's services started on 7th April, 2016 and came to an end on 6th April, 2018 and relied on Exhibit D 1 and Exhibit D 2 to support his argument. He pressed that the contract ws not terminated but came to an end automatically. Counsel for the respondents relied on rule 4 (2) of the Rules. it was further submitted on part of the respondents that since the contract was for a fixed term, the requirement of notice could not arise.

As regards the applicant's terminal benefits, it was submitted for the respondents that the applicant got all her entitlements save that the applicant was entitled to repatriation to Dar es Salaam, her place of recruitment and not Tanga. With respect to general damages, learned counsel contended that the claim was not reflected in the referral form submitted to the CMA and should, therefore, not be considered.

Mr. Lekey, in main urged this court to take into account the case laws he cited which included, **National Investment Company Ltd v. Kathleen Armastrong**, Misc. Application No. 318A of 2013, **Jomo Kenyatta Traders Ltd and 5 others v. National Bank of Commerce Ltd**, Civil Appeal No. 48 of 2016, **Oryx Oil Co. Ltd v. Community Petrolium Ltd**, Misc. Land Revision No. 02 of 2019, **Mechmar Corporation (Malaysia) Berhard v. VIP Engineering and Marketing Ltd**, Civil Application No. 9 of 2011 and **Mahamudu Salum v. District Executive Director**, Masasi, Labour Revision No. 10 of 2015.

I have taken into account this application, the trial CMA and the submissions by the parties. According to the record of the Commission for Mediation and Arbitration and the Award in CMA/MTWR/34/2018 in particular, the parties' entered into a fixed, determinable period of time

term of contract. It was a 24 months fixed term of contract. So, in the absence of any lawful reason, the fixed term of contracts terminate automatically at the end of the agreed period. In other words, such contract is a once-off agreement with a limited duration which automatically terminates upon the occurrence of clearly specified date. The first issue calling for determination, is when the employment services commenced and came to an end.

The answer is found nowhere but in the contract of employment entered into by the parties and which was produced in evidence as exhibit AP 1. According to Clause 2 on the: terms of employment,

> **"The employee shall commence her services on 18th January, 2016 and shall continue for 24 months. The contract shall automatically be terminated at the end of the completion of 24 months. Which shall be 17th January, 2018....."**

It cannot be gainsaid that the start date is the date on which the employment starts according to the employment contract. In my humble but considered view, the start date is not necessarily the first day on which the employee reports for work. In the matter under consideration, the start date is the date the parties agreed in their contract of employment which is 18th January, 2016. There is no

dispute that the contract was for a fixed term of 24 months and, according to the contract (exhibit AP 1), the contract came to an end on 17th January, 2018. I am fortified in this by the provisions of Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 GN No. 42 of 2007 (made under section 99 (1) of ELRA, 6/2004) published on 16th February, 2007 (hereinafter called the Rules) which stipulates that:-:

"Where the contract is a fixed term of contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise".

The same contract provided under clause 22 that

"the Agreement constitutes the entire and complete agreement between the Employer and the Employee, and no promises or understandings have been made other than that as set forth in the Agreement. This Agreement shall be subject to modification only in writing signed by both parties".

As the evidence reveals, there was no modification in writing signed by the parties which means that the agreement was intact from the time it was entered into by the parties till when it terminated automatically on the agreed date of 17th January, 2018. The argument by the respondent that

the contract became operative on 7th April, 2016 when the Biodata were filled in and the applicant officially started working is not borne out by the evidence on record. Likewise, the respondent's argument that the contract came to an end on 6th April, 2018 is not only contrary to the contract the parties entered into and which binds on them but also is against the clear provisions of Rule 4 (2) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 cited above.

In view of the clear evidence and the applicable law, the respondent misinterpreted the contract when it believed that the services commenced on 7th April, 2016 and came to an end on 6th April, 2018. However, that is far from saying that the respondent breached the contract of employment as the applicant wished the court to believe. There was a mere misapprehension on when the applicant's services commenced and came to an end which, by any stretch of imagination, did not amount to either unfair termination or breach of contract; only that the contract terminated automatically at the end of the agreed period.

There is no dispute that there was a failure to renew the fixed term of contract on the same or similar terms. The next issue for consideration is whether there was a reasonable expectation of renewal of the contract. It is provided under section 36 (a) (iii) of the Act as follows:-

36.For purposes of this Sub-Part-

(a) 'termination of employment' ' includes-

(i) .....(not relevant);

(ii).....(not relevant);

(iii) a failure to renew a fixed term contract on the sameor similar terms if there was a reasonable expectationof renewal.

Like wise, Rule 3 (1) (c) of the Rules, it is provided that:-;

3 (1) for purposes of these Rules, the termination of employment shall include:-

a) ..(not relevant)

b) ....(not relevant)

c) Failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal of contract;

d) ....(not relevant),

e) .....(not relevant)

As the evidence reveals, the employment contract between the parties was silent on what would be the consequences of the failure to renew the fixed contract which automatically came to an end upon the end of the agreed period. The applicant did not point out any term to that effect.

As clearly stipulated under Rule 4 (2) of the Rules, where the contract is a fixed term contract, the contract shall terminate automatically when the agreed period expires, unless the contract provided otherwise. It is true that under sub-rule (3) of rule 4 of the Rules, a fixed term of contract may be renewed by default if an employee continues to work after the expiry of the fixed term contract. However, the renewal by default is subject to some factors which are stipulated by the law. For instance, under the same same sub-rule (3) of rule 4 of the Rules, the renewal by default of the fixed term of contract is subject not only sto sub-rule (2) of rule 4 but also to where the circumstances warrants it. Besides, although under sub-rule (4) of rule 4 of the Rules, the failure to renew a fixed term of contract in circumstances where the employee reasonably expects a renewal of the contract may be considered to be unfair termination, sub-rule (5) of rule 4 of the Rule, in clear and uncertain terms, stipulates that:

(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 fo the expectation such as previous renewals, employer's undertakings to renew.

The above provisions, in my view, require that for an employee to successfully claim that there was a reasonable expectation of renewal of a

fixed term contract, he/she has to prove first, that he or she in fact expected that the contract would be renewed; and second that, after taking into account all relevant factors, the expectation was reasonable. In the absence of proof of these circumstances, the failure to renew a fixed-term contract, irrespective of its duration, is not an unfair termination.

In the present application for revisional proceedings, the applicant has failed to demonstrate that she was expecting that the contract would be renewed as no evidence was led in proof of this fact. Even if, for the sake of argument, the applicant had proved that she was expecting that the contract would be renewed, still there proof that the expectation was reasonable was wanting.

In resume, it is my finding that the Honourable Arbitrator considered, evaluated and analysed both the oral testimonies and documentary exhibits as presented and argued before the Commission for Mediation and Arbitration. Similarly, the Arbitrator was justified in holding that there was no breach of contract as the contract automatically terminated at the end of the agreed period. Since there was neither a breach nor an unfair termination of the contract of employment, the applicant's claims of general damages lacked evidential and legal backing. I thus find that the Award was neither illegal nor ambiguous.

The above finding, notwithstanding, I have no doubt that the applicant is entitled to some other legal terminal benefits in accordance with the provisions of section 44 (1) of the Employment and Labour Relations Act and the Employment Contract, Clause 26.1, in particular, which stipulates that *"the Employee shall be entitled to any other benefits as stipulated by the Act even if not stated in this Agreement or as agreed between the parties".*

For the reasons stated, I grant the application for revision and revise the Award by making the following orders:

In accordance with the provisions of section 44 (1) of the Employment and Labour Relations Act read together with Clause 21.6: of the Contract of employment the respondent is ordered to pay the applicant the following terminal benefits:-

a. The remuneration for work done before the termination after the end of the agreed period that is from 17th January to 6th April, 2018
b. An Annual leave in accordance with the Award at paragraph 1 of p. 14

c. Severance allowance in accordance with the Award under paragraph 2 at p.14, section 44 (1) (c) read together with section 42 (1) of the Act and Clause 19 of the Contract

d. Thirty days pay in lieu of notice as provided for under section 44 (1) (b) and section 41 (5) of the Act

e. Transportation to the place of recruitment, that is Dar es Salaam in accordance with sub-section (2) read together with section 44 (1) (f) and section 43 (1) (c) of the Act and Clause 3 of the Contract.

f. Daily subsistence allowance during the period between the date of termination (6.4.2018) and the date of transporting the applicant and her family to the place of recruitment (Dar es Salaam).

g. A prescribed certificate of service under section 44 (2) of the Act.

The Arbitrator's Award is revised and varied to that extent.

Order accordingly.

W.P.Dyansobera

JUDGE

11.6.2020

Dated and delivered at Mtwara this 11th day of June, 2020 in the presence of Michael Deogratias Mgombozi, personal representative of the applicant and in the presence of Mr. Deogratias Kapufi, learned advocate holding brief for Mr. Stephen L. Lekey, learned counsel for the respondents.

W.P.Dyansobera

JUDGE