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LEGAL NEWS

26 June 2024



Right to Reasoned Termination of Employment Contracts, Including Fixed Term Contracts Emphasized

The Court of Appeal of Tanzania (the Court), in Civil Appeal No. 267 of 2020, between **Jordan University College and Mark Ambrose** declared that the right to be given reasons for termination of an employment contract applies to all types of employment contract, including fixed term contracts. This happened where the Appellant (Jordan University College) terminated the services of Mark Ambrose through a termination letter which just informed the Respondent of the termination without stating the reasons for so doing.

Background of the Case

The Respondent, Mark Ambrose, was employed by the Appellant as a loan officer on fixed term contracts. He had three contracts: a one-year contract starting 1 September, 2012 up to 31 August, 2013; a two year contract effective from 1 September, 2013 up to 31 August, 2015; and a three year contract which was effective from 1 September, 2015 and was meant to end on 31 August, 2018. The tenure of the third contract never came to an end as it was prematurely terminated on 28 July, 2016. This angered the Respondent who decided to lodge a labour dispute at the Commission for Mediation and Arbitration (the CMA) at Morogoro which attempted mediation without success. Following a failure in the mediation, the dispute was placed before the arbitrator for arbitration. After framing issues for the dispute, among other things, the arbitrator while relying on rule 13(10) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 held that the termination was unfair for want of reasons. The arbitrator further added that, despite the fact that clause 10 of the employment contract between the Appellant and Respondent allowed termination of the contract, such termination was to be conditioned on fair reasons which were never stated in the termination letter. The CMA proceeded to order the Appellant to pay the Respondent, among others, 25 months' salary for the unexpired term. The Appellant was dissatisfied with the award issued by the CMA and filed a revision with the High Court Labour Division which confirmed the CMA's award, hence the appeal to the Court.

Arguments Raised by Parties

At the Court, the issue raised was that the High Court erred in law in upholding the award of 25 months' salary which was not prayed for in the CMA Form No. 1. In the alternative to ground one, another issue was that the High Court erred in law in approving a relief which was not pleaded, proved and prayed before the CMA. The Appellant on his side was of the view that, the High Court erred in law in supporting the order of payment of 25 months' salary while, according to her, termination was

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ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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fair as it complied with clause 10 of the employment contract and that, the order of 25 months' salary was unfair for the same was not prayed for in the CMA Form. No. 1. The Respondent on his side argued that, even if there is a fixed term contract, when it comes to termination, there must be valid reasons, failure of which makes the termination unfair. Responding to the submission that both the CMA and the High Court erred in awarding 25 months' salary which was not prayed, the Respondent relied on two decisions of the High Court, namely ***Generics & Specialities Ltd vs. Kalenga Katele, Revision No. 833 of 2019 (unreported)*** and ***CocaCola Kwanza Ltd vs. Erastus Vicent Mtui, Revision No. 220 of 2022 [2022] TZHC 1078***, which laid the principle that, the court can grant remedies even if they were not pleaded, for parties are bound by their pleadings not reliefs. The Respondent invited the Court to take inspiration from these decisions and hold that it was correct to award 25 months' salary despite the fact that it was not in the CMA Form No. 1. The Respondent concluded that termination without reasons was a serious error justifying the making of orders issued by the CMA which were also upheld by the High Court.

Determination of Issues and Decision of the Court

The Court observed that it is apparent on record that no reasons were given for the termination. The Court added that, despite the fact that this was a fixed term contract which has a termination clause providing for the procedure of termination, clause 10 (termination clause) was not supposed to be read in isolation of the law, for the parties cannot contract and chose to operate outside the law. Clause 10 was supposed to be read together with rule 13(10) of the Code of Good Practice which provides for the requirement of giving reasons for termination.

The Court added that rule 13(10) applies to all forms of employment contracts, including fixed term contracts and that, there must be reasons for termination in any termination of employment. In other words, in whatever situation, the employee must be given reasons as to why his job is coming to an end. It follows that, apart from giving one month salary in lieu of notice as provided for under clause 10 of the employment agreement, still the Appellant was supposed to say why the Appellant was terminating the Respondent. This is a legal requirement under rule 13(10) of the Code of Good Practice and has a purpose which is to operate against arbitrary termination and secure jobs. Failure to give reasons for termination makes the termination unfair with legal consequences. One of the legal consequences in fixed term contracts, as correctly observed by the CMA, the High Court and submitted by counsel for the Respondent, is payment of salaries for the remaining part of the employment agreement.

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