

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: NDIKA, J.A., FIKIRINI, J.A. And ISSA, J.A.)

CIVIL APPEAL NO. 34 OF 2020

MSAFIRI SOBO APPELLANT
VERSUS

CRDB BANK PLC RESPONDENT
(Appeal from the Judgment and Decree of the High Court of Tanzania, Labour
Division at Sumbawanga)

(Mashauri, J.)

dated the 12th day of December, 2019

in

Labour Revision No. 7 of 2019

.....

JUDGMENT OF THE COURT

15th & 25th March, 2024

NDIKA, J.A.:

On 5th November, 2001, the respondent, CRDB Bank PLC, hired the appellant, Msafiri Sobo, as a Bank Officer Trainee under a permanent employment contract (Exhibit P1). After successfully completing a six-month probationary period and attaining the rank of Bank Officer, he advanced to the position of Manager Administration for the Sumbawanga Branch in 2012. This advancement prompted the modification of his employment arrangement from an indeterminate to a fixed-term contract. Following the termination of his initial three-year contract (Exhibit D1) in May 2015, he

proceeded to fulfil a subsequent three-year contract (Exhibit D2) that commenced on 1st May, 2015 and concluded on 30th April, 2018. Clause 11 of Exhibit D2, titled "Further Engagement," stipulates an arrangement for contract renewal:

"Either party shall indicate to the other the intention for further engagement by giving a one month's written notice three months prior to the expiration of the present term."

In accordance with the aforementioned provision, the respondent delivered a written notice to the appellant on 31st January, 2018 (Exhibit P2), stating its deliberate choice not to renew the employment contract. The following was stated in the notice's operative portion:

RE: INTENTION NOT TO RENEW YOUR EMPLOYMENT CONTRACT

The above subject matter refers.

The three years employment contract between the CRDB Bank Plc ("The employer") and yourself ("Employee") is due to expire on April 30th, 2018.

Please be hereby informed that the Management has decided not to renew your employment with the Bank on expiration of the current contract as provided under "Further Engagement" Clause of your contract.

Please be so informed.

Yours sincerely,

CRDB BANK PLC

C.S. Kimei (Dr)

MANAGING DIRECTOR.

In response to the aforementioned notice, the appellant submitted to the respondent a letter dated 22nd February, 2018 (Exhibit D4), in which he beseeched a reconsideration of the decision not to renew his contract. Essentially, the appellant indicated, initially, that he maintained a commitment and long-term interest in working for the respondent. Secondly, he stated that he was deeply troubled by the respondent's failure to provide any justifications for its "heart-breaking decision." Thirdly, he indicated that he had been employed by the respondent for more than sixteen years at multiple locations nationwide, during which time he maintained an impeccable track record and delivered satisfactory work. Fourthly, he urged the respondent to recall that it had extended him a long-term loan and other forms of credit that were to be recovered monthly from his salary. This suggests that failure to renew his employment could result in the non-repayment of the loan. He concluded by pledging to exert maximum effort in the workplace if afforded another opportunity to work for the respondent.

The respondent kept its word and did not extend the contract or respond to the appellant's 22nd February, 2018 letter. Conversely, on 18th April, 2018, the appellant was served with a letter (Exhibit D3) that essentially served as notice of the following:

RE: ENDING OF YOUR EMPLOYMENT CONTRACT

I am writing with reference to our letter with reference No. CRDB/18298/56 dated 31st January, 2018 through which we informed you on non-renewal of your employment contract.

Following the non-renewal of your employment contract, you are entitled to payment of the following terminal benefits:

Gratuity for earned salaries	TZS. 26,935,019.52
Less tax	TZS. 3,856,745.86
Less unsecured loan plus interest	TZS. 25,566,268.84
Less housing loan plus interest	TZS. 134,755,904.51
Less distance learning	TZS. 5,185,867.11
Total	TZS. -142,429,766.80

Your Parastatal Pensions Fund benefits will be paid to you after being paid to the Bank by the respective institution.

You are therefore required to explain in writing how you will settle down the above outstanding amount of TZS. 142,429,766.80 before 30th April, 2018.

Kindly acknowledge receipt of this letter by completing the appended certification below and return it to the Director of Human Resources immediately.

The appellant interpreted the aforementioned Exhibit D3 as a letter of employment termination. Contesting the non-renewal decision, he filed an unfair termination claim with the Commission for Mediation and Arbitration at Sumbawanga ("the CMA"). The central issue was whether the contract non-renewal constituted an unfair termination on the ground that the appellant had a reasonable expectation of renewal. The CMA ruled in favour of the appellant on the ground that the respondent denied him an opportunity to objectively demonstrate his expectation of renewal after he had submitted his plea for review of the non-renewal decision. Based on that, the CMA directed the respondent to pay the appellant TZS. 198,938,102.40 being remuneration for thirty-six months as compensation and grant him a certificate of service within sixty days.

Upon revision at the respondent's instance, the High Court of Tanzania, Labour Division in Sumbawanga (Mashauri, J.) vacated the CMA's award. The court drew the following conclusions: first, that the appellant's employment contract, which was for a fixed-term, automatically terminated on 30th April 2018, in accordance with rule 4(2) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007, Government Notice No. 42 of 2007 ("Code of Good Practice Rules"). Secondly, it was noted that

although non-renewal of an employment contract may qualify as unfair termination under rule 4(4) of the Code of Good Practice Rules if it can be shown that the employee had a reasonable expectation of renewal, the appellant utterly failed to meet the burden of proving such an expectation in accordance with rule 4(5) of the Code of Good Practice Rules. In particular, the court rejected his argument, predicated on the claim that the expiring contract would be rolled over like the first and that he had a long-term loan to be repaid from his monthly employment pay after three years. The court considered his structured payback of the borrowed funds beyond his term of the expiring contract dangerous and personal.

Even though learned counsel for the appellant, Mr. Richard Madibi, initially presented five grounds of complaint, the appeal remains centred on the same issue—whether the appellant established reasonable expectation of renewal of the employment contract rendering its non-renewal an unfair termination.

Mr. Madibi's argument in support of the appeal was a reiteration of the appellant's position before the CMA and the High Court, namely that the appellant had a reasonable expectation of contract renewal. He based this submission on two grounds: first, that the appellant had been employed by

the respondent continuously for sixteen years and that the respondent had renewed his first fixed-term contract. Secondly, it can be deduced that the respondent's provision of a long-term loan and other forms of credit, which required monthly repayments from the employee's salary until June 2029, established a reasonable expectation that the employment contract would be renewed. Neglecting to do so would have meant defaulting on the loan obligations. The learned attorney urged us, by referencing rules 3(1)(c) and 4(4) of the Code of Good Practice Rules, to declare the contract's non-renewal unreasonable and unlawful.

Mr. Madibi supported his arguments with a series of the decisions of the High Court, Labour Division, none of which are required to be reproduced in this judgment. The decision of the Labour Court of the Republic of South Africa in **Dierks v. University of South Africa** (1999) 20 ID 1227 was also cited in support of the position that the contract's language alone does not adequately preclude a valid expectation of renewal. In addition to the formal legal principle and the precise provisions of the fixed-term contract, consideration must be given to the circumstances surrounding the non-renewal or refusal to renew, as well as the behaviour of the involved parties.

He was adamant that the respondent's conduct in extending the long-term and other forms of credit created a reasonable expectation of renewal.

On the contrary, learned counsel for the respondent, Mr. Tumaini Msechu, contended that the appellant woefully failed to meet his burden of proof regarding the legitimate expectation of renewal, as required by rule 4(5) of the Code of Good Conduct Rules. He argued that the combination of the initial contract renewal and the long-term loan did not provide sufficient grounds to anticipate a subsequent renewal. He further stated that the loan was not associated with the appellant's employment contract. The appellant, if anything, voluntarily obtained the loan, well aware that the agreed-upon repayment period would extend beyond the contractual term of his employment.

Furthermore, Mr. Msechu asserted that the respondent properly exercised the rights outlined in Clause 11 of the contract when it informed the appellant three months prior to the contract's expiration that it had no intention of renewing the contract via a one-month notice. He stated that while the notice did not constitute a letter of termination, it precluded any expectation of renewal.

Mr. Msechu concluded his arguments by requesting that we affirm the High Court's determination that the appellant's contract legitimately and automatically terminated on 30th April, 2018 at the conclusion of the agreed-upon period, in accordance with rule 4(2) of the Code of Good Practice Rules.

Inasmuch as the appellant was employed under a fixed-term contract at the relevant time, section 36 (a) (iii) of the Employment and Labour Relations Act, Cap. 366 ("the ELRA") is relevant to this dispute. It defines "termination of employment" as it relates to fixed-term contracts. The provision is as follows:

"36. For purposes of this Sub-Part-

(a) "termination of employment" includes-

(i) [Not applicable]

(ii) [Not applicable]

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

(iv) [Not applicable]

(v) [Not applicable]"[Emphasis added]

Section 36 (a) (iii) of the ELRA above must be read along with rules 3(1)(c) and 4 of the Code of Good Practice Rules, 2007. For clarity, we extract the said provisions thus:

"3.-(1) For the purposes of these Rules, the termination of employment includes:

(a) [Not applicable]

(b) [Not applicable]

(c) failure to renew a fixed term contract on the same or similar terms **if there was a reasonable expectation of renewal of the contract.**

(d) [Not applicable]

(e) [Not applicable]

4.-(1) [Not applicable]

(2) Where a contract is a fixed term contract, **the contract shall terminate automatically when the agreed period expires, unless the contract provided 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 warrant it.

(4) Subject to sub-rule (3), **the failure to renew a fixed term contract** in circumstances where the employee reasonably expects a renewal of the contract **may be considered to be 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, [and] employer's undertakings to renew.***

(6) [Not applicable]

(7) [Not applicable].”[Emphasis added]

The preceding portion of the text in rule 3(1)(c) and rule 4(4) has been intentionally bolded to emphasise their restatement of the essence of section 36 (a) (iii) of the ELRA, which states that employment may be terminated for failure to renew a fixed-term contract on the same or similar terms when a reasonable expectation of renewal existed.

Furthermore, to emphasise two aspects, we have added emphasis to rules 4(2) and (5). First, a fixed-term contract terminates automatically upon the expiration of the agreed-upon period, as per rule 4(2), unless the said contract provides otherwise. Except for situations in which a fixed-term contract is automatically renewed pursuant to rule 4(3), automatic contract renewal is not permissible. For an automatic renewal to occur without the parties' express consent would subvert the very purpose for which they

entered into the fixed-term contract, thereby transforming it into an employment contract with an indefinite duration. Secondly, rule 4(5) above places the burden of establishing the existence of a reasonable expectation of contract renewal on the employee, which must be demonstrated objectively. Two potential justifications for such an expectation are provided: prior contract renewals and the employer's commitment or undertaking to renew. Considering this, we believe it to be a basic legal principle that a fixed-term contract does not entail any anticipation of renewal, unless the employee provides evidence to support the existence of such an expectation.

Certainty aside, the term "*reasonable expectation of renewal*" is not defined in the ELRA. Therefore, in the case of **Asanterabi Mkonyi v. TANESCO**, Civil Appeal No. 53 of 2019 [2022] TZCA 96 [7 March 2022; TanzLII], this Court approved of **Dierks** (*supra*), which restated a number of the factors that had been examined in numerous cases to ascertain whether section 186 (b) of the Republic of South Africa's Labour Relations Act, No. 66 of 1995 has been applied to establish a reasonable expectation of renewal. The Labour Court of the Republic of South Africa observed, in Para. 133 of the judgment, that:

"[133] A number of criteria have been identified as considerations which have influenced the findings of past judgments of the Industrial and Labour Appeal Courts. These include an approach involving the evaluation of all the surrounding circumstances, the significance or otherwise of the contractual stipulation, agreements, undertakings by the employer, or practice or custom in regard to renewal or re-employment, the availability of the post, the purpose of or reason for concluding the fixed-term contract, inconsistent conduct, failure to give reasonable notice, and nature of the employer's business."

Our concurrence was expressed in **Ibrahim s/o Mgunga and Three Others v. African Muslim Agency**, Civil Appeal No. 476 of 2020 [2022] TZCA 345 [13 June 2022; TanzLII], wherein we referenced the ruling of the Supreme Court of Zimbabwe in **Médecins Sans Frontiers (MSF) Belgium v. 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. In so holding, the Zimbabwean apex court affirmed the viewpoint expressed by Prof. Lovemore Madhuku, a

Zimbabwean author, in Labour Law in Zimbabwe (Weaver Press, 2015, p. 101). Prof. Madhuku states,

*"The test for legitimate expectation is objective: would a reasonable person expect re-engagement? This requires an assessment of all the circumstances of the case. **To be legitimate, the expectation must arise from impressions created by the employer.**"*[Emphasis added]

In consideration of the aforementioned stance, we shall now ascertain whether the appellant established that he had a reasonable expectation of the contract being renewed.

It is undoubted that the appellant fulfilled a subsequent three-year contract (Exhibit D2) from 1st May, 2015 to 30th April, 2018, following the completion of his initial three-year contract (Exhibit D1) in May 2015. It is also indisputable that the language of Exhibit D2 does not provide any assurance regarding the extension of the contract. As previously alluded to, Clause 11 of Exhibit D2 stipulated a renewal arrangement whereby either party could inform the other of the intention to re-engage with a one-month notice, three months prior to the expiration of the current term. The respondent duly served the appellant with written notice (Exhibit P2) on 31st January, 2018, in accordance with Clause 11, stating its intention not to

renew the employment contract. We concur with Mr. Msechu that this notice foreclosed any expectation of renewal and was not, in fact, a letter of termination. It is incontestable that the respondent possessed the contractual authority to exercise discretion in determining whether to extend the contract.

We have considered the appellant's assertion that he had anticipated a renewal due to his lengthy tenure with the respondent and the extension of his prior contract. His initial service under the indeterminate contract from 2001 until 2012, when his employment was converted to a fixed-term engagement, is inconsequential, in our view. He acquiesced to the managerial position, embraced the transition, and was aware of the expiration date.

Regarding the prior contract renewal, Mr. Msechu has convinced us that it is illogical for any rational individual to anticipate a subsequent renewal predicated on a solitary renewal. In **Ibrahim s/o Mgunga** (*supra*), 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. It is of considerable importance, in that case, that the employer duly notified the employees of the impending expiration of their employment

contracts and required them to return any employer's property that was in their possession.

Additionally, we agree with Mr. Msechu's argument that the existence of the long-term loan did not serve as a foundation for the anticipation of renewal. We concur with the High Court's conclusion that the structured repayment of the borrowed funds beyond the appellant's term of the expiring contract was perilous and personal. His employment contract was not linked to the staff loan arrangement. His access to the loan was voluntary. It is not apparent how the fact that his potential non-renewal of employment could lead to non-repayment of the loan should compel the respondent to maintain him in his employment, at least, until June 2029, at which point the loan would presumably be fully repaid.

Furthermore, it is noteworthy to mention that the respondent was owed by the appellant the largest portion of the money standing at TZS. 134,755,904.51, which was advanced as a housing loan. As Mr. Msechu correctly pointed out, this constituted a secured loan, and its recovery should present minimal challenges in the event that the appellant is unable to repay it. The aforementioned amount significantly exceeds TZS. 25,566,268.84

extended as an unsecured loan and TZS. 5,185,867.11 in distance learning fees.

As a result, we uphold the High Court's decision that the appellant's employment with the respondent duly terminated following effluxion of the contractual period. Thus, the appeal is ultimately dismissed because it lacks merit. In labour cases, costs are typically not awarded; therefore, we do not issue an order to that effect.

DATED at DAR ES SALAAM this 22nd day of March, 2024.

G. A. M. NDIKA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. A. ISSA
JUSTICE OF APPEAL

The Judgment delivered this 25th day of March, 2024 in the presence of Mr. Richard Madibi assisted by Ms. Joyce Shayo, learned counsels for the Appellant and Mr. Jovinson Kagirwa, learned counsel for the Respondent, is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL