IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NDIKA, J.A., KITUSI, J.A. And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 61 OF 2019

PATRICK JOHN BUTABILE .....APPELLANT

VERSUS

BAKHRESA FOOD PRODUCTS LTD..... RESPONDENT

(Appeal against a refusal for extension of time within which to appeal against judgment of the High Court of Tanzania (Labour Division) at Dar es Salaam)

(Muruke, J.)

dated 31st day of October, 2018
in
Revision No. 290 of 2017
.....

JUDGMENT OF THE COURT

11th February & 28th April, 2022

RUMANYIKA, J.A.:

The appeal arises from a judgment and decree of the High Court (Muruke, J.) dated 31/10/2018, upholding a refusal of extension of time by the Commission for Mediation and Arbitration for Dar es Salaam at Dar es Salaam (the CMA) to Patrick John Butabile (the appellant). The appellant sought to challenge the termination of his employment by the respondent but he was out of time, hence his application to the CMA for condonation of the delay but all in vain.

Briefly, the appellant was employed by Bakhresa Food Products Ltd (the respondent) as driver but for some reasons not necessarily subject of this appeal, his service ended on 24/10/2013 but he did not refer his unfair termination claim to the CMA's until as late as 13/01/2017. He was four years late and contrary to rule 10(2) of The Labour Institutions (Mediation and Arbitration) Rules, 2007 (the Mediation Rules). As said earlier, he applied for a requisite condonation but the CMA refused him one. He was unhappy. He referred the decision to the High Court for revisal but was unsuccessful, hence the present four grounds' memorandum of appeal.

We wish to express our concern here, that the memorandum of appeal is so argumentative and discursive that a reader could hardly comprehend its essence. Without missing out a point however, we think the memorandum may boil down to three short points; (i) That the Judge ignored the points of illegalities raised by him (ii) That the Judge did not hear him fairly (iii) That the Judge erred in not holding that the appellant's delay was caused by the respondent.

When the appeal was called on 11/02/2022 for hearing, only Mr. Evold Mushi, learned counsel appeared assisted by Ms. Rose Mtesigwa also learned counsel for the respondent.

We think it is necessary also here to state that as the learned counsel were ready for hearing, one Mr. John Butabile also in attendance he introduced himself as the appellant's father. With leave and the court's indulgence he reported that the appellant, his son was duly served but he was on duty caught up at Geita and could not get his employer's permission. The father asked for adjournment. In the beginning, it seems Mr. Evold Mushi would not have minded of whatever the court ordered under the circumstances. However, as, pursuant to Rules 106(7) and (12) of the Tanzania Court of Appeal Rules, 2009 we had the parties' written submissions also on record, and we drew it to his attention, on a second thought Mr. Mushi agreed to the hearing proceeding under Rule 112(4) of the Rules, therefore the appellant was considered to have appeared.

In his fifteen pages' written submissions, the appellant argued that had the Judge considered the illegalities that tainted his employment contract and the fact that the reason for termination was unfair, she would not have failed to exercise her discretion and grant him extension of time. To support his argument, he cited this court's decision in the case of **Tanga Cement Co. Ltd v. Jumanne D. Masangwa & Another,** Civil Application No. 6 of 2001 (unreported). Further, he argued that the

respondent had kept him back for such a relatively long time waiting to be assigned a vehicle to drive only to learn that it was empty promises and the contract was fictitious hence the delay. He charged that the Judge exhibited bias and overreliance on legal technicalities, henceforth he was not afforded a fair hearing. Citing the case of **Julius Francis Ndyanabo v. The Attorney General** [2004] TLR 14, the appellant added that by so doing, the Judge frustrated meritorious determination of the case and she vitiated the proceedings. He cited the case of **Esanyi v. Solonki** [1968] EA 218. Additionally, he said that at first, on 13/01/2017 he lodged a similar Revision Application No. 290 of 2017 for condonation which was dully served upon the respondent through Registered Mail No. R.D.034330108 but it was dismissed for being time barred.

On his part, Mr. Mushi submitted that just as, between them the appellant and the respondent had an employment contract of a fixed term of one year running from 25/10/2012 – 24/10/2013 inclusive of the dates, for reasons known to the appellant the latter disappeared and resurfaced on 20/02/2017, which was four years later. As, for obvious reasons he found no more room for him, it appears counting from 24/10/2013 the appellant lodged an application for condonation, along with a labor cause

on 11/01/2017 but the CMA dismissed it. Then the appellant referred it to the High Court but again the latter refused him extension of time. He is unhappy, hence the appeal.

The issue is, like the CMA considered in refusing him extension of time, whether the Judge exercised his discretion properly.

Rule 10(2) of the Mediation Rules mandatorily provides for sixty days for the aggrieved employer to institute a labour dispute in the CMA. It read as follows:-

> *"Rule 10 (2)-All other disputes must be referred to the Commission within sixty days from the date when the dispute raised".*

It is undisputed that for some reasons from October, 2013 the appellant got missing at work until four years when he resurfaced on 20/02/2017. Assuming, as alleged that the appellant was terminated by the respondent, the period of his absence was undeniably that long far beyond the limitation period of sixty days from the day of termination. Knowing that he was time barred, he applied for extension of time but, like the CMA's did, the Judge also found that the delay was inordinate as the appellant had failed to assign sufficient grounds for extension of time.

In its conclusion at page 46 of the records, the CMA held as hereunder quoted:-

> *"... ni jambo la kushangaza mfanyakazi anapewa mkataba halafu hautumikii ule mkataba mpaka unafika mwisho wake baada ya mwaka mmoja, baada ya hapo anakaa tena miaka (4) minne ndipo anakuja Tume kuomba apewe nafasi ya kusikilizwa, ni kweli Rule 31 ya GN 64 ya mwaka 2007, inaipa Tume uwezo wa kuruhusu migogoro inayokuja Tume nje ya muda kusikilizwa lakini ni pale tu ambapo kuna sababu za msingi za kuchelewa huko, katika shauri hili mleta maombi ameshindwa kuishawishi Tume ...."*

The above text in Swahili means that the Arbitrator found that it was not imaginable for the appellant who never reported at work until his one year fixed term employment contract had lapsed, yet, without good cause he did not institute a labour dispute until four years later.

Upholding the CMA's decision, but having listed the criteria set forth under Rule 11 (3) (a) of the GN for granting extension of time, more importantly on the degree of lateness and the reasons for the lateness, the learned judge was satisfied that the delay was inordinate and concluded as quoted hereunder:-

"... The applicant failed to account for each day of delay without sufficient reason for delay for CMA to grant the extension of time from when the contract ended in 2013 to 2017 when he filed the application for condonation...."

The central issue is whether the refusal of condonation by the CMA as upheld the High Court was proper.

At least the parties are at one that contrary to Rule 10 (2) of the GN which sets sixty days limit, it took the appellant more than four years to lodge his claim after the date of termination of the employment contract.

For the court to grant or refuse extension, of course depending on its judiciously exercised discretion, the bottomline is sufficient cause as we said also in the case of **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (unreported). We are aware, that as to what constitutes "a sufficient cause" there is no clear and short cut answer. A number of times, for instance in the case of **Osward Masatu Mwizarubi v. Tanzania Fishing Processing Ltd**, Civil Application No. 13 of 2010 (unreported), we defined it as follows:-

"What constitutes good cause cannot be laid down by any hard and fast rules. The term "good cause" is a relative one and is dependent upon the party

seeking extension of time to provide the relevant material in order to move the court to exercise its discretion".

See also the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010.

In order to fault the Judge it was incumbent upon the appellant in this case to give account of each day of the four years delay which he did not. The appellant may have a good case for the alleged unfair termination, but in the circumstances of this case, he ought to have accounted for each day of the four years of delay, which he did not. See **Bariki Israel v. R.,** Criminal Application No. 4 of 2011 which we referred in the case of **Sebastian Ndaula v. Grace Rwamafa,** Civil Application No. 4 of 2014 (both unreported). We said:-

"The position of this Court has consistently been to the effect that ***in an application for extension of time, the applicant has to account for every day to the delay"*** (Emphasis added).

It is very unfortunate in the present case that the appellant did not show how, and what was the respondent's contribution to the delay of more than four years. We find it quite unusual because no prudent,

reasonable and diligent person would have endured four years' consecutive empty promises of the employer. It follows therefore, that on account of the time bar the CMA and the High Court having not gone to the merit part of the dispute, a claim of unfair termination should have not been raised. Ground (ii) of the appeal is dismissed.

As for the appellant's complaint that he was not to blame because he spent the time on the court corridors therefore a technical delay, like Mr. Mushi argued, in our view rightly so, again the appellant's allegations were not proved on the basis of each day of the delay.

It is our considered view that however slight the delay might be, unless, at least on the balance of probabilities the appellant justified it, his blanket plea of technical delay to us counts for nothing leave alone the alleged, but undisclosed 'illegalities'. It is very clear to us that the appellant did not meet the threshold required by the law. Just as we are impressed to hold that in refusing the extension of time, the High Court judge exercised her discretion judiciously. Ground (i) is dismissed. So is ground (iii) of the appeal.

The outcome of the appeal is that we uphold the decision of the High Court and dismiss the appeal. As the appeal arises from a labour dispute, we order no costs. It is so ordered.

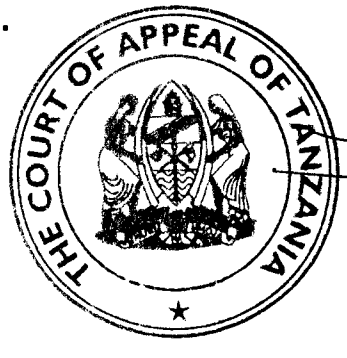
DATED at **DAR ES SALAAM** this 22nd day of April, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 28th day of April, 2022 in the presence of appellant in person, Mr. Godfrey Ngassa and Ms. Rose Mtesigwa, both learned counsel for the Respondent, is hereby certified as a true copy of original.



E. G. MRANGU
DEPUTY REGISTRAR
COURT OF APPEAL