IN THE HIGH COURT OF TANZANIA

(LABOUR DIVISION)

AT MUSOMA

LABOUR REVISION NO.15 OF 2020

(Arising from Labour Dispute CMA/MUS/62/2020)

JOHN SEBASTIANA COSMAS ..... 1ST APPLICANT

FRED AMAN MADALA ..... 2ND APPLICANT

VERSUS

CONSOLIDATED TOURIST & HOTELS

INVESTMENT LIMITED ..... RESPONDENT

RULING

11/08/ & 26 /10/2020

J.R. Kahyoza, J.

The respondent Company (the Company) employed the applicants until when the applicants retired from their employment on the 31st day of December,2018. The Company paid or determined gratuity (severance pay) based on the formula, which displeased the applicants. The applicants and other employees instituted a labour dispute through CHODAWU to the Commission for Mediation and Arbitration (the CMA) at Arusha. The dispute sought to challenge the Collective Bargaining Agreement (the CBA) between CHODAWU and the respondent. The Respondent relied on the CBA to pay the gratuity.

The CMA at Arusha struck out the dispute between CHODAWU and the respondent on the **28/6/2019.** The applicants, instead of instituting the application, referred the dispute to different offices. Finally, on the **30/3/2020** the applicants landed at the CMA at Musoma. The applicants applied for condonation to institute a labour dispute as they discovered they were out time. The CMA at Musoma dismiss the application for want good cause for delay.

Undaunted, the applicants have instituted the current application for Revision praying to this Court to quash the decision of the CMA at Musoma, which dismissed the application for condonation. Mr. Frank L. Maganga, a personal representative of the applicants' choice represented the applicants and the Company enjoyed the services of the Mr. David Kahwa, learned advocate. The parties' representative argued the application for revision by written submissions. They complied with the schedule. I will not reproduce their submission I will refer to the submission when answering the issue(s). There is only one issue whether the CMA erred to hold that the applicants did not adduce good cause for delay.

Did the CMA err to hold that the applicants failed to adduce good cause for delay?

It is settled that an application for extension of time can only be granted upon the applicant adducing good cause or sufficient reason(s) for delay. This established principle can be discerned from what was clearly stated in **Mumello v. Bank of Tanzania** [2006] E.A. 227. It was stated in that case that:

"... an application for extension of time is entirely in the discretion of court to grant or refuse and that extension of time may only be granted where it has been sufficiently established that the delay was due to sufficient cause"

The law does not define what amounts to sufficient cause or good cause. The Court of Appeal in **Tanga Cement Company LTD v. Jumanne D. Masangwa and Amos A. Mwalwanda** Civl Application No. 6/2001 (unreported) had this to say

"What amounts to sufficient cause has not been defined. From the decided case a number of factors has to be taken into account, including ***whether or not the application has been brought promptly; the absence of any or valid explanation for the delay****; lack of diligence on the part of the applicant."*

The applicants' grounds for condonation before the CMA were; **one**, that the applicants delayed to institute the dispute on account of another matter CHODAWU instituted on behalf of retired employees including the applicants; **two**, that they stand an overwhelming chance of success in the main case. The issue is whether those grounds were good cause for delay.

One of the duties of a person applying for extension of time is to account for each day of the delay by providing ***valid explanation for the delay***. In **Hassan Bushiri v. Latifa lukio Mashayo**, CAT Civil Application No. 3 of 2007 (unreported), where the Court imposed a duty on litigants who seek to extend time in taking actions to account for each and every day of delay. It stated that-

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

I passionately went through the affidavit and submission to this Court and the CMA and found the applicants properly accounted for time they were prosecuting dispute against their employer through CHODAWU. Although, the applicants did not annex the pleadings in that matter, I learned from the arguments that CHODAWU was contesting the Collective Bargaining Agreement between CHODAWU and the respondent. The outcome of that dispute had a bearing impact to the applicants' claim. Thus, the time the applicants delayed waiting for outcome of the dispute between CHODAWU and the respondent is excusable. That delay amounted to technical delay. The case of **William Shija and another v. Fortunatus Masha** [1997] TLR 213 discussed the issue of technical delay and held to the following effect-

*"**A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted**. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."*

The mediator pointed out that the CMA at Arusha struck out the matter between CHODAWU and the respondent on the **20/6/2019.** I find therefore, that the applicants did account the period of delay from the time they retired on the 31st day of December,2018 up to **20/6/2019.**

After the CMA at Arusha struck out the matter between CHODAWU and the respondent, the path was clear for the applicants to institute an application for condonation. The applicants had the duty to institute the application immediately and adduced a technical delay as the only ground for delay. Unfortunately, they dragged their feet until **30/3/2020** when they instituted the application before CMA at Musoma.

The Company's advocate submitted that the law required the applicants to adduce sufficient and justifiable reasons for delay and that such a requirement is an important thing to be complied with and the applicants had no choice. He cited a number of cases including the case of **Tanzania Fish Processors Limited v. Christopher Luhangula,** Civil Appeal No. 161/ 1994, where the Court of Appeal held that-

> *".... Limitation is material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to court as when he chooses."*

The advocate cited another case of **Hassan Bushiri v. Latifa lukio Mashayo**, CAT Civil Application No. 3 of 2007 (CAT unreported, where among other things the Court of Apeal held that-

> *"The fact still remains however, that no sufficient cause has been shown for the delay and it really does not matter that the application was filed about a month and tree days after the judgment was delivered. Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

Given the above position of the law, the applicants had a duty to account for all period of delay. The applicants accounted for the period of

delay from the time they retired on the 31st day of December,2018 up to **20/6/2019,** when the CMA at Arusha struck out the matter between CHODAWU and the respondent. Like the CMA, I did not find grounds for delay from **20/6/2019,** to **30/3/2020** when the applicants instituted the application for condonation before the CMA at Musoma.

The CMA at Musoma decided, thus, "**Na hata kama waleta maombi waliwakilishwa na CHODAWU mgogoro huo uliondolewa tarehe 20/6/2019 na wao wamefungua shauri mbele ya Tume-Musoma tarehe 30/3/2020 kutoka siku ambayo shauri limeondolewa mpaka siku ya kuwasilishwa mgogoro kuna takribani siku 270. Swali la kujiuliza je waleta maombi kwa kipindi chote hicho walikuwa wapi.**" I totally agree with the CMA.

In the upshot, I find that he applicants have not accounted for each day of the delay for period from **20/6/2019** when the CMA (Arusha) struck out the matter between CHODAWU and the respondent to **30/3/2020** when they instituted the application for condonation before the CMA at Musoma.

I concur with the CMA that the applicants were not vigilant in pursing their right. **The law serves the vigilant, not those who sleep**. This maxim was derived from the Latin maxim "***vigilantibus non dormientibus jura subverniut***". The maxim is in four walls with the decision in **Luswaki Village Counciland Paresui Ole Shuaka Vs Shibesh Abebe,** Civ application No 23/1997 (Unreported) where the Court underscored a need for parties to be diligent and vigilant by stating that-

> *"...those who seeks the aid of the law by instituting proceedings in court of law must file such proceedings within the period prescribed by law...Those who seeks the protection of the law in the court of justice must demonstrate diligence"*

The applicants had therefore, did not give any reason let alone sufficient reason why they delayed to file an application for a period of 270 i.e. from **20/6/2019** to **30/3/2020.** The period of time, the applicants did not account for, is from the date of striking out of the matter between CHODAWU and the respondent **to** the date of instituting the application for condonation before the CMA at Musoma. The applicants gave no valid explanation. They delayed due to lack of diligence. See ***Tanga Cement and Another*** Civil Application no 6 of 2001 clearly held that:

> "*What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly****; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant."***

I uphold the CMA decision that the applicants adduced no good cause for delay. Consequently, I dismiss all grounds of revision on account that the CMA failed to consider that the applicants adduced good cause.

Is the fact or the contention that the applicants stand an overwhelming chance of success in the main case a good cause for delay?

The applicants submitted that the mediator failed to consider the fact "*the applicants have the overwhelming chance of success in the main case as the respondent failed to follow their agreement (CBA) for the reasons*

best known to her." The applicants cited the case of **Leonard Deus Mgeta v. G4 Security Services**, Lab. Div. MZA, Rev. No. 46/ of 2013, where Rweyemamu, J. held that-

> *"It is true that chances of success of the intended suit is one among the factors to be considered before granting a prayer for extension of time of time."*

The Company's advocate submitted that the applicants have no chance to succeed as the Company paid them more than their entitlements.

I desist from considering who stands to win in the main case. The law is settled in an application for extension of time the court is not bound determine if the intended appeal has a chance of succeeding or not. This is the position of the Court of Appeal in ***Shanti Vs Hindocha & Others [1973] E.A 207,*** where the erstwhile Court of Appeal for East Africa stated that:-

> *"The position of an application for extension of time is entirely different from that of an application for leave to appeal. He is concerned* ***with showing sufficient reasons why he should be given more time and the most persuasive reason that he can show.... Is that the delay has not been caused or contributed to by dilatory conduct on his part.*** *But there may be other reasons and these are matters of degree.* ***He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case****...."*.

The decision of my sister Rweyemamu, J. in **Leonard Deus Mgeta v. G4 Security Services** (supra) does not bind me. I follow the decision

of the Court of Appeal, to the extent that, the fact that the applicants have overwhelming chance of success in the main case or not is not a good ground to support the application for delay. The CMA was therefore right to not consider that ground.

Eventually, I uphold the decision of the mediator that **the applicants failed to adduce good cause for delay** to institute the dispute on time. Consequently, I dismiss the application for revision for want of merit.

It is ordered accordingly.

J.R. Kahyoza
JUDGE
26/10/2020

Court: Ruling delivered in the absence of the parties duly informed of the date of Ruling. **Ms. Catherine** B/C present.

THE HIGH COURT OF TANZANIA
MUSOMA

J.R. Kahyoza
JUDGE
26/10/2020