

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(KIGOMA DISTRICT REGISTRY)**

**AT KIGOMA
(LABOUR DIVISION)**

LABOUR REVISION APPLICATION NO. 9 OF 2020

(Arising from CMA/KIG/DISP/159/2020 before Doris A. Wandiba)

AMRI S/O SHABANI.....APPLICANT

VERSUS

KIBIRIZI LANDING SITE COMPANY LTD..... RESPONDENT

J U D G M E N T

06/10/2020 & 02/11/2020

I.C. MUGETA, J

The applicant claims to have been unlawfully dismissed by the Respondent from his employment. Indeed, his employment was terminated effective from 17/07/2019. In terms of rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, G.N. 65/2007, the dispute was to be referred to the Commission for Mediation and Arbitration within 30 days from the date of termination. To the Contrary the dispute was referred to the Commission on 21/01/2020 together with an application for condonation. The application for condonation was rejected for want of a good cause for the delay. This rejection is the subject of this application.

The major reason for the delay, according to the affidavit, is that the applicant referred the dispute to CHODAWU where it was attended up to 18/12/2019. This fact is undisputed by the respondent who in paragraphs

15/11/20

7 and 8 of the counter affidavit avers as to what transpired at CHODAWU. That CHODAWU deliberated on the dispute and ordered the respondent to pay the applicant his unpaid benefits. The respondent issued a cheque which the applicant rejected for being insufficient amount.

In his decision the mediator found no sufficient cause established to allow the condonation after considering inconsistencies on event dates in the affidavit of the applicant and his submissions before the commission. In the affidavit in this application the applicant challenges this decision in that the mediator failed to appreciate the diligence and efforts he made to pursue his rights. I have considered this argument it is my view that whatever the meaning which can be assigned to the phrase "*diligence and efforts*", the applicant engaged a wrong forum. However, it was upon CHODAWU to advise him on the right forum but they retained him up to 18/12/2019. The applicant did not account on how he spent the time from 18/12/2019 to 21/1/2020 when he referred the dispute to the Commission. It is my view that from the date of termination to 18/12/2019, the delay is accounted for in that the dispute was, even though wrongly, before CHODAWU. The unaccounted period is from 18/12/2019 onwards. I have considered the nature of the dispute and the steps the applicant took to pursue his rights and the fact that to allow condonation is in the sole discretion of mediator, it is my view that the mediator ought to have allowed the condonation. I am satisfied that multiple factors including CHODAWU failure to guide the appellant well contributed to the delay. Inconsistencies in event dates which is the basis of the mediator's decision does not negate the fact that the applicant tried and still desires to have the dispute resolved through the

established dispute settlement machinery. On that account, I allow the condonation. Let the dispute referred to CMA be resolved on merits. No order as to costs.




I.C. Mugeta

Judge

02/11/2020

Court: Judgment delivered in the presence of the applicant and in the absence of the Respondent.

Sgd: I.C. Mugeta

Judge

02/11/2020