

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

LABOUR REVISION NO. 8 OF 2019

BETWEEN

GABINIUS SINGANO.....APPLICANT

Versus

ST. TIMOTH PRE&PRIMARY SCHOOL.....RESPONDENT

RULING

Last Order: 14th May, 2020.

Date of Ruling: 24th June, 2020

MWENEMPAZI, J.

The applicant Gabinius Singano applied to the Commission for Mediation and Arbitration (CMA) of Kilimanjaro at Moshi for condonation for late referral of a dispute. CMA gave a ruling dismissing the application for the reason that no good cause was shown to account for the delay. Aggrieved by the decision the applicant preferred this revision under section 91 (1) (b) and 91 (2) (b) & (c), and 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 (the ELRA) and Rule 24 (1), (2) (a) (b) (c) (d) (e) (f) and (3) (a) (b) (c) (d) and Rule 28 (1) (c) (d) and (e) of the Labour Court Rules, GN No. 106 of 2007. In this application the applicant has prayed for this court to examine the record, proceedings and decision

of the Commission for Mediation and Arbitration in the ruling delivered on 1/3/2019 by Hon. G.P. Migire the Mediator and also to revise the ruling. The application is supported by an affidavit sworn by the applicant. In the affidavit and specifically in paragraph 11 items (i) – (iv) the applicant has stated the grounds for revision as reproduced here below: -

- i. That the honorable Mediator erred in law and in fact when he acted biasness and improperly when he overruled the objection of my advocate who raised preliminary objection on point of law that Respondent filed his counter affidavit out of time and no leave was sought for extension of time to file counter affidavit as per the law.
- ii. That honorable mediator erred in law and in fact for issuing a ruling which was improperly procured.
- iii. That the honorable mediator erred in law and in fact by issuing a ruling which is irrational.
- iv. That the Honourable Mediator erred in law and in fact when he failed to evaluate the evidence on record properly that the respondent filed reply and counter affidavit out of time without seeking leave of the commission contrary to law occasioning a miscarriage of justice.

By consent of parties, the court ordered for the matter to be disposed by way of written submission. Applicant's submissions were prepared and filed by Mr. Thadei Minja, learned advocate while the respondent's submissions were prepared by Mr. Manase Mwaunguru, labour prosecutor. The submissions were timely filed. I have carefully gone through the records of

proceedings as well as the parties' submissions. I will however, not repeat word for word but shall definitely consider them in determining this application.

Submitting in support of the application the learned counsel for the applicant stated that the respondent contravened the law by filing his notice of opposition and counter affidavit out of the required time and without seeking leave of the Commission for Mediation Arbitration to do so. The counsel argued further that the mediator was biased by overruling the objection raised by the applicant and continued to hear the application for condonation the same day and delivered the award the same day. In his view, that was contrary to the principle of natural justice because the applicant was prepared to argue the preliminary objection only.

Responding to the submission Mr. Manase submitted that the Commission for Mediation Arbitration delivered its ruling justly. He argued that the applicant had no good cause to account for delay of more than a year. He submitted further that the reasons adduced by the applicant were not good enough to convince the Commission for Mediation Arbitration to grant his application.

Responding to the issue of applicant's objection with respect to the respondent's two days delay in filing counter affidavit, Mr. Manase admitted to that fact but explained further that the Commission for Mediation Arbitration accepted the same after they had explained the reason for delay.

After going through parties' submission for and against this revision the issue for determination is whether the application has merit. In considering the merit or demerit of this application I have examined the grounds adduced by the applicant in support of the application and noted that they are centered on one point that the honorable mediator was biased in determining the application before him by overruling the preliminary objection raised by the applicant and continued to hear the submission of preliminary objection raised by the respondent.

Looking at the records of the Commission it is evident that the respondent when responding to the application gave a notice of a preliminary objection that he would raise on hearing of the application. When the matter was set for hearing before the Honorable mediator, he informed the parties that since there was a preliminary objection by the respondent the same should be heard first before the main application. This is seen at page 1 of the typed proceedings. The applicant prayed to be granted time to prepare his submissions and the honorable mediator granted him time and hearing was adjourned as seen at page 2 of the typed proceedings. To this point the procedure was correct. On the date of hearing the applicant was given audience to present his submission regarding the objection raised by the respondent on the contrary instead of addressing the preliminary objection when submitting the applicant raised an objection that the respondent had filed a notice of opposition and counter affidavit out of time prescribed by law. The honorable mediator overruled his objection for the reason that the


applicant did not address the preliminary objection raised by the respondent instead he raised another objection.

My observation at this point is that the mediator did not ignore the applicant's objection but his concern was on how the same was raised. The law is silent on the manner which preliminary objection should be raised however practice has shown that one should give notice for preliminary objection and the essence of the notice is to allow the other party prepares his defence. It was therefore not proper for the applicant to raise an objection at the time when he was supposed to respond to the preliminary objection that had been raised by the respondent. Just as he was given time to prepare and respond to the objection raised by the respondent, he should have first addressed the already raised objection and then raise his objection.

With the above observation and considering the fact that the applicant did not raise the issue of biasness of the mediator during mediation, in my view bringing the issue at this point on revision is an afterthought.

I thus consider this application lacking merit for the stated reasons above and it is accordingly dismissed. It is so ordered.




T. MWENEMPAZI
JUDGE
9th JULY, 2020