

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**REVISION NO.16 OF 2019**

(C/F CMA Application No. MOS/CMA/M/230/2011)

**GENEROSE C. NDYEIKIZA ..... APPLICANT**

**VERSUS**

**NATIONAL MICROFINANCE BANK PLC ..... RESPONDENT**

*Date of Last Order: 11/12/2019*

*Date of Ruling: 05//03/2020*

**RULING**

**MKAPA. J:**

This is a Ruling in respect of an application filed by the applicant Generose Ndyekiza. The applicant is seeking revision of the decision of the Commission for Mediation and Arbitration (CMA) at Moshi in Application No. MOS/CMA/M/230/2011 dated 4<sup>th</sup> April 2012. The application is made under Rule 24 (1), 24 (2) (a), (b), (c) (d) (e) (f), 24(3) (a) (b) (c) (d), 28 (1) (a), (b) (c) and (e) of the Labour Court Rules G.N No.106 of 2007 (Labour Court Rules) and section 91 (1) (a), 91(2) (b) and 94 (1) (b) (i) of the Employment and Labour Relations Act No.6 of 2004 (the ELRA). It is supported by an affidavit sworn by the applicant. On the other

hand the respondent opposed the application by filing a counter affidavit sworn by Ms. Lilian Komwihangiro.

A brief history of the matter is that the applicant was employed by the respondent and stationed at Rombo branch, Kilimanjaro Region until when she was terminated for misconduct on 18/8/2011. Dissatisfied with the termination, on 14/9/2011 she referred her dispute to the Commission for Mediation and Arbitration (CMA) at Arusha, alleging that she was unfairly terminated. The CMA at Arusha struck out the application for lack of jurisdiction. Thereafter the applicant lodged her dispute at Moshi (CMA) on 30/9/2011 alleging that she was unfairly terminated. As she was late, she first filed an application for condonation. CMA dismissed the application for failure to advance sufficient reasons for the delay in referring the dispute to CMA (Moshi) as required by the law. The applicant preferred this revision seeking the following orders:-

1. That, this Honourable Court be pleased to revise the proceedings and award by the Arbitrator in Employment dispute No. MOS/CMA/M/230/2011.
2. That, this Honourable Court be pleased to set aside the proceedings and award in the above cited employment dispute and grant the applicant a prayer for extension of time.
3. Any other orders that this Honourable Court deems fit and just to grant.

At the hearing of application the applicant appeared in person unrepresented while the respondent was represented by Ms. Lilian Komwihangiro principal officer of the respondent. Parties consented to argue the revision by filing written submissions.

Arguing her application the applicant submitted that the CMA decision denied her the right to be heard on merit considering the fact that she worked for the respondent for long time. The applicant averred further that, the delay was caused by filing her dispute by mistake at CMA in Arusha instead of CMA at Moshi believing that she was terminated by NMB - Arusha branch while she was stationed at NMB - Rombo, Kilimanjaro. She further argued that, she was terminated unfairly as the CMA's decision was based on legal technicalities without giving her opportunity to be heard. To support her argument, she cited the case of **Mobrama Gold Corporation V Minister of Energy & Minerals and 2 Others** (1998) TLR 425. Finally, she prayed that the CMA Award be revised and this court order the CMA to extend time so that the dispute can be determined on merit. Resisting the application Ms. Komwihangiro for the respondent submitted that, the reasons advanced by the applicant to the effect that she was ignorant of the law on the issue of jurisdiction by referring her dispute at CMA - Arusha instead of CMA - Moshi where the cause of action arose is not a defence. She contended further that, the applicant was terminated from the employment by NMB (Rombo branch)

Kilimanjaro Region hence she ought to have been aware of the rules and procedures on the appropriate jurisdiction to file her dispute. It was Ms Komwihangiro's contention that the applicant intentionally, knowingly and without justifiable cause referred her dispute to CMA - Arusha instead of CMA - Moshi. Furthering her argument she maintained that the applicant failed to show sufficient reasons for the delay to warrant the CMA to grant her condonation prayers. Supporting her argument she cited the cases of **Godwin Ndewasi Karoli Ishengoma V Tanzania Audit Corporation (1995) TLR 200** and **Ratman V Cumarasamy and Another (1964) 1 All E.R. 933** where the court emphasized the fact that, *rules of the Court must be obeyed in order to justify a court in extending time.*

She finally prayed this Court to uphold CMA's decision and dismiss the application. Having gone through the CMA's records, affidavit and written submissions by either party the only issue for determination is whether ignorance of law constitutes sufficient cause for granting extension of time. The answer is readily in the negative. The general rule is to the effect that, an application for extension of time places a duty on the applicant to satisfy the court on some key factors as pronounced in the case of **Lyamuya Construction Company Ltd. V. Board of Registered Trustees of Young Women's Christian Association of**

**Tanzania Civil Application No. 2 (Unreported)** which provide agreed guidelines that;

1. The applicant must account for all the period of delay.
2. The delay should not be inordinate.
3. The applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take, and
4. If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.

Guided by the above principle it is not disputed that, for an application for extension of time to be considered by the court, applicant has to show good cause. The case of ***Tanga Cement Company Ltd vs Jumanne Masangwe & another, Civil Application No. 6 of 2001*** is informative on the fact, where the court held that;

*".....sufficient reason is a pre-condition for the Court to grant extension of time; And what constitute sufficient reason a number of factors have to be taken into account including whether or not the application has been brought promptly, valid explanation for the delay, applicant must show diligence and not apathy, negligence or sloppiness in the prosecution of the action he intends to take".*

The applicant has submitted that the delay was occasioned by her ignorance of the law in particular the procedure on where to file her dispute as a result of which she had to file the dispute at CMA, Arusha instead of CMA at Moshi.

The law is settled to the effect that, ignorance of the law is no excuse. Authorities to that effect are abundant. Among them is the case of **Ngau Godwin Losero V. Julius Mwarabu Civil Application No. 10 2015 (unreported)**, the Court of Appeal had this to say:-

*"As has been held times out of number, ignorance of law has never featured as good cause for extension of time" (see for instance unreported ARS Criminal Application No. 4 of 2011 Bakari Israel V. Republic and MZA Criminal Application No 3 of 2011, Charles Salugi V. the Republic)*

To say the least, a diligent and prudent party who is not properly seized of applicable procedure will always ask to be appraised of it for otherwise he/she will have nothing to offer as an excuse for sloppiness.

The records have revealed (at page 2 of the Commission's typed Ruling) that, sometime in 2009 while the applicant was still an employee with the same NMB Rombo Branch, Kilimanjaro Region was terminated and she referred her dispute No. MOS/CMA/M/45/2009 to CMA at Moshi, and the same arbitrator

presided over the matter before the Commission. To this end I am unable to agree with the applicant on the argument that the delay was occasioned by ignorance of the procedure but rather the delay was contributed by her own negligence as it has been established that in the year 2009 while employed with the NMB Rombo the applicant did file a labour dispute at CMA Moshi and not at Arusha.

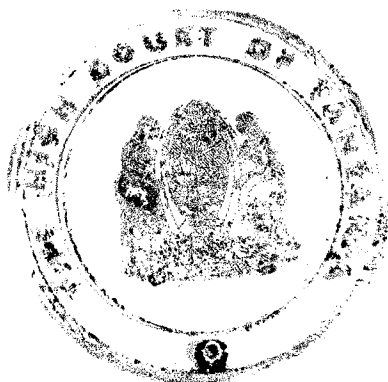
In the circumstance, I am of the settled view that, the applicant chose to file the dispute to the CMA of her choice and at her own time.

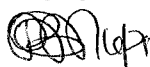
In order to avoid abuse of Court procedures, in **Salome Mussa Lyamba V K.K Security (T) Ltd Labour Division, 2012 LCCD 198** the court held that;-

*"...no valid reason in granting this application as it would amount to an abuse of the court procedures, that limitation is there to ensure that a party does not come to court as and when he chooses".*

For the reasons discussed, I am satisfied that no sufficient reasons have been established for the delay. Consequently, this application has no merit, and accordingly I dismiss it in its entirety.

Dated and Delivered at Moshi this 05<sup>th</sup> day of March, 2020.



  
**S.B. MKAPA**  
**JUDGE**  
**05/03/2020**