

IN THE HIGH COURT OF TANZANIA

[LABOUR DIVISION]

AT MTWARA

APPLICATION FOR LABOUR REVISION NO.10 OF 2019

(Arising from Labour Dispute No. CMA/MTW/LD/07/ 2019 of the Commission for Mediation and Arbitration of Mtwara delivered on 24th May, 2019)

SHABAN ABILAH OKALA.....APPLICANT

VERSUS

MOHAMED IDD MKURO TRANSPORT.....RESPONDENT

RULING

22 Sept. & 16 Nov. 2020

DYANSOBERA, J.:

The applicant Shaban Abilah Okala is, by way of notice of application and chamber summons supported by an affidavit, moving this court for the grant of the following reliefs:-

1. Revising, quashing and setting aside the ruling delivered by the Commission for Mediation and Arbitration dated 24th May, 2019 by KWEKA A.J., Arbitrator in Labour Dispute No. CMA/MTW/LD/07/19

2. The determination of the dispute in the manner it considers fit to determine.
3. Any other orders as this Honourable court may deem fit and just to grant.

This application has been preferred under Rule 24, (1), (2), (3) and Rule 28 (1), (c), (d) and (e) of the Labour Court Rules, GN No. 106 of 2007 and section 91 (1), (a), (b), (2) (b), (4), (a) and (b) of the Employment and Labour Relations Act, No. 6 of 2004.

From the affidavit evidence and the applicant's written submission, it is common cause that the applicant, on 18th day of January, 2019 lodged his complaint No. CMA/MTW/LD/07/19 in the Commission for Mediation and Arbitration against the respondent, his erst-while employer through CMA F. 1 disputing unfair termination which arose on 8th day of July, 2018. The applicant's complaint was out of time, so he filed CMA F. 2 for condonation of the delay. The CMA dismissed the application for condonation of the delay on the ground that the applicant failed to show good cause as to why he delayed in filing the complaint in time.

Dissatisfied with the dismissal of his application, the applicant has come to this court on revision.

On 4th August, 2020 when this application came up for hearing, the applicant prayed the matter to be disposed by way of written submissions. Mr. Ruta Bilakwata, learned advocate for the respondent had no objection. Consequently, a time frame was set which the parties duly complied with.

Submitting in support of the application, the applicant said that he was employed by the respondent and assigned the task of supervisor and buyer of crops whereby he was collecting, transporting and storing them and thereafter find a market. He said the contract was oral which started on 18th May, 2008 and came to an end in July, 2018. He argued that he was terminated from the employment without being paid any terminal benefits. The applicant embarked on explaining what employment means and what amounts to termination and its fairness or otherwise. He then elaborated on what terminal benefits the employee is entitled to.

With regard to the reasons for the delay in filing the complaint in time, the respondent stated at page 6 of his submission in chief as follows:

"in this matter, the applicant after terminated from employment faced the respondent immediately to solve the matter amicably and the applicant demanded a little amount of money Five Million Tanzania Shillings (Tshs. 5, 000, 000/=) for all years worked on him. the respondent had shown the motive to pay the same

without any disturbance, but unfortunately later the respondent changed the motion by refusing so. The applicant approached the respondent's friend one Mr. Rashid Mpenye and told each and everything. On their private time they met and talking the matter and the respondent had shown or agreed to pay the same amount. Later on, the respondent intentionally delayed to execute his promise for the intention to waste time that rendered the claim to be out of time".

In the written submission filed by the respondent in opposition, it was contended that the applicant has failed to advance not only strong but any reason to warrant extension of time rather; he discussed the merits of the case. On the principles for extension of time, Mr. Ruta Bilakwata, counsel for the respondent, relied on the cases of **Twaha Kahenga v. Gema Security Service Ltd**, Misc. Labour Application No. 187 of 2013 and **CRDB Bank v. Allen Butembero**, Misc. Application No. 74 of 2013 it. It was prayed on part of the respondent that this application should be dismissed.

In his rejoinder, the applicant maintained that he had advanced true and genuine reasons for condonation of the later referral of a dispute to the CMA and mentioned such reasons to be promptness, valid explanation for the delay and lack of negligence. Reliance was placed on the case of

Salome Mussa Lyamba v. K.K. Security (T) Ltd, Rev. No. 278 of 2016, High Court Lab. Div. at p. 33. According to him, the set norms be they substantive or procedural are meant to promote justice and to buttress this stance he cited the case of Grory Moshi v. Immesina (T) Ltd, Misc. Lab. Application No. 41 of 2014.

In conclusion, the applicant urged the court to grant the application, allow or grant the reliefs prayed and order the respondent to pay him his terminal benefits.

It is not disputed that the Commission for Mediation and Arbitration is a creature of a statute which is established under section 12 of the Labour Institutions, Act No.7 of 2004 and its functions are stipulated under section 14 of the same Act. As far as this case is concerned, the Commission has jurisdiction to entertain the dispute between the applicant and the respondent if some conditions are fulfilled by the applicant himself. For instance, rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007 requires that that referral of termination disputes must be within thirty days from the date of

termination or the date that the employer made a final decision to terminate or uphold the decision to terminate. It provides thus:

“Disputes about the fairness of an employee’s termination of employment must be referred to the commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate”.

In the case under consideration, it was not disputed that the referral of the applicant’s dispute was made to the CMA after 197 days. The main reason advanced by the applicant for the delay was that the respondent had promised to pay him Tshs. 5,000,000/=. The CMA was satisfied that the ground was insufficient to condone the delay.

With respect I agree. Apart from the fact that there was inordinate delay of 197 days, the ground adduced by the applicant was not a good and sufficient ground to explain away the delay. The decision of the Arbitrator cannot be faulted. In the case of **Buta Khan Buta v. Managing Director, Kenya Kazi Security (T) Service**, Labour Revision No. 242 of 2010, this court stated that limitation of time is not a procedural issue but a statutory requirement which goes to the root of the court’s jurisdiction. It should be pointed out that limitation of time is a crucial aspect in the

dispensation of justice. In **Tanzania Fish Processors Ltd v. Christopher Luhanga**, Civil Appeal No. 11 of 1994, the Court of Appeal observed:

“Limitation is material point in the speedy administration of justice. Limitation is therefore to ensure that a party does not come to court as and when he wishes”.

With those observations, I find no grounds to differ with the Arbitrator’s reasoning and conclusion or any material irregularities to warrant revision. This application has no merit and is, accordingly dismissed with no order as to costs.

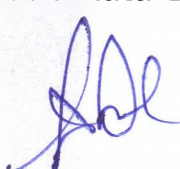
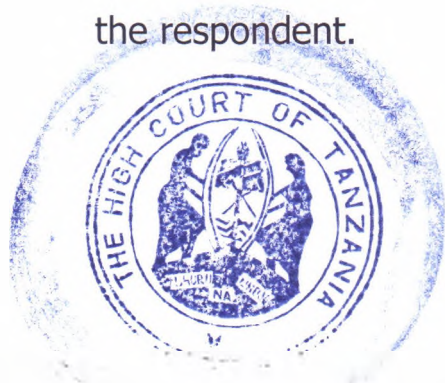


W.P. Dyansobera

Judge

19.11.2020

This ruling has been delivered by me this 19th day of November, 2020 in the presence of the applicant and Mr. Ruta Bilakwata, learned Counsel for the respondent.



W.P. Dyansobera

Judge

19.11.2020