

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

AT MOSHI

REVISION APPLICATION NO. 27 OF 2020

(Originating from Labour Dispute No. CMA/KLM/MOS/M/97/2020)

LILIAN OBAR MAGECHE APPLICANT

VERSUS

R & D CORPORATION LTD RESPONDENT

JUDGMENT

MUTUNGI .J.

The applicant prays that, this Court revises the Award of the Commission for Mediation and Arbitration of Moshi (the Commission) in Dispute No. CMA/KLM/MOS/M/97/2020 dated 20th July, 2020 (Hillary N.J-Mediator)

The background of the dispute in brief is to the effect that, the applicant worked as the respondent's waitress in his lodge on a one year fixed term contract commencing from 1st January to 31st December, 2019. It is alleged that, on 9th September, 2019 the applicant decided to resign and

requested the respondent to introduce her to the pension fund so that she can be paid her dues. However, the applicant claimed that she kept on working for the respondent until when she was unfairly terminated on 14th March, 2020 but was not paid salaries for the month of February and March. She therefore claimed from the respondent two months salaries which the respondent denied hence she decided to bring her dispute before the Commission. Unfortunately she was out of time as thus she prayed for condonation. The Commission dismissed her complaint on the ground that she did not give sufficient reasons for her lateness. Aggrieved with the decision, the applicant filed this revision on the following grounds: -

1. That, the ruling was improperly procured.
2. That, the ruling was unlawful and irrational.

The application is brought under sections 91 (1) (a), (2) (b) and 94 (1) (b) (i) of the **Employment and Labour Relations Act** No. 6 of 2004 (the ELRA) read together with Rule 24 (1), (2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d) and 28 (1) (c) (d) (e) of the **Labour Court Rules**, GN. No. 106 of 2007 (Labour Court Rules). The application is further supported by the applicant's

sworn affidavit which the respondent disputed and filed a counter affidavit thereto.

During the hearing Ms. Zuhura Twalibu represented the applicant whereas Mr. Joshua Minja represented the respondent. Ms. Twalibu submitted that, the applicant is challenging the Award on the following grounds: -

- (1) That, the Mediator erred in law and in fact for holding in favour of the respondent who did not give the applicant a right to be heard.
- (2) That the ruling of the Mediator improperly and erroneously ruled in favour of the respondent.
- (3) The Hon. Mediator improperly procured the Award, in a dispute referred to the CMA by form CMA, 1 and CMA 2 but the Mediator only referred to CMA 2.

She argued that the applicant was not given her right to be heard on unfair termination. The learned counsel expounded that the commission simply dealt with the claim for arrears of salaries but left out the second prayer for unfair termination. She prayed that, this Court should revise the ruling, set it aside and order that the dispute of unfair termination be heard and procured in accordance to the labour laws.

In reply, Mr. Shayo started his submission by praying the Counter-Affidavit be adopted as part of the respondent's submission. He argued that, the Award was mainly centered on the application for extension of time for late referral for outstanding salaries which the applicant claimed she had not been given. He added, it is a well-known principle that it is the discretion of the court to grant the extension of time, however, such discretion must be exercised according to the rules of reason and justice.

The learned counsel was on in all fours with the cited case of **Lyamuya Construction Ltd V. The Board of Registered Trustees of Young Women of Tanzania**, cited in the ruling of the commission in which four guidelines were laid down when the court is dealing with such an application. He expounded that the guidelines are to account for the whole period of delay, the delay should not be inordinate and the applicant must show diligence and not apathy or sloppiness in the prosecution of the actions he intends to take and lastly there should be existence of point of law e.g. illegality of the decision sought to be challenged.

It was Mr. Shayo's further submission that, the Mediator guided by these guidelines and for the failure of the applicant to show good cause for her late referral for salaries, the Mediator dismissed the said application. In that regard the core issue was mainly centered only on the extension of time and not otherwise in which the applicant herein failed to demonstrate good cause that led her to bring her claims out of time.

That apart, the learned counsel called upon the court to find the applicant's corresponding affidavit has raised a lot of new evidence which was not raised during the application at the Commission. One of the new issue raised is the fact that, the applicant continued to work for the respondent after the resignation letter. Mr. Shayo argued that, this court has no jurisdiction to entertain facts which were not raised at the Commission. He prayed the application be dismissed since the Commission's Award was properly procured hence this application is wasting the precious time of this Court.

After going through the Commission's record and parties' submissions for and against the application, the issue for determination is;

“Whether the Commission’s ruling was properly procured”.

The obvious fact is that, the application filed at the Commission was for extension of time so that the applicant could be allowed to file her claims for two months salaries. The applicant's testimony, did not show a single reason as to why she did not file her complaint on time. Instead she narrated how she was allegedly unfairly terminated without proper reasons as well as proper procedures. The only reason which was lightly touched is the fact that, there was no good communication between the parties as she was suspended from work on 30th January, 2020 to pave way for investigation and there was no time frame on such suspension. Nonetheless, no proof of the alleged investigation was substantiated at the Commission.

The Commission's record shows that, the applicant resigned on 9th September, 2019 and prayed to be introduced to the Pension Fund's office which the respondent complied. It is not clear what transpired in-between until 30th January, 2020. However, form Exhibit C, clearly shows the applicant was still working with the respondent until 30th January, 2020. Be as it

may, giving the benefit of a doubt to the applicant who at the Commission her story varied, she claimed that her dispute with the respondent started on 1st March, 2020, the question remains why didn't she file her compliant until 5th May, 2020? Similarly, as briefly noted earlier, she alleges that the said suspension process started in January, 2020 on allegations of poor performance which emanated from a client's email dated 4th January, 2020. Again, the question will be what was she waiting for to claim for her rights until 5th May 2020? These unanswered questions as rightly observed by the Mediator indicate that, the applicant is not certain of her claims. The fact that there were ongoing timeless investigation against her or poor communication with the respondent was not substantiated.

In the case of **Makamba Kigome & Another V Ubungo Farm Implements Limited & Another, Civil Case No. 109 of 2005, HCT at Dar es Salaam (Unreported)** Kalegeya, J (as he then was) held that: -

"An intending litigant however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him

beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as a defence when it comes to limitation of time."

I subscribe fully to this proposition, which also reflects the correct view of the law. The mere assertion by the applicant that she was waiting for the ongoing investigation from January to May 2020 after the alleged suspension cannot serve as a ground or excuse for not taking her dispute to the Commission within the prescribed time.

In the circumstances, I find the ruling was rationally procured and I do not see any reason to fault the same. This application fails for want of merit with no order as to cost considering it is a labour matter.

It is so ordered.



B. R. MUTUNGI
JUDGE
26/11/2020

Judgment read this day of 26/11/2020 in presence of Miss Zuhura Twalib for the applicant and Miss Pauline Julius the Respondent's Manager.


B. R. MUTUNGI

JUDGE

26/11/2020

RIGHT TO APPEAL EXPLAINED.


B. R. MUTUNGI

JUDGE

26/11/2020