

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LABOUR REVISION NO. 56 OF 2018

(Arising from the decision/ruling by Wambaii V. Mediator given at the Commission for Mediation & Arbitration of Shinyanga on 26th June, 2018 in labour Dispute No. CMA/SHY/135/2018).

JUMA MASUNGA MAYENGA.....APPLICANT

VERSUS

KEMBO MATULANYA MPAGULWA.....RESPONDENT

JUDGMENT

Date of the last Order: -17/1/2020

Date of the Ruling: -27/3/2020

E.Y.MKWIZU, J.

In this application, the applicant one **Juma Masunga Mayenga** seeks an order for revision of the award of the *Commission for Mediation and Arbitration* (CMA) dated 26th June, 2018 where his application for condonation was dismissed for failure by the applicant to show good cause for the delay. The applicant believes that the decision was in error in so far as the Mediator's decision was based on the finding that the applicant was late in filing his claim for a period of two years and two months while he was late only for 22 days.

The background information to this matter is as follows, The applicant alleged unfair termination of his employment by the respondents' and therefrom he filed a Labour dispute to the CMA claiming for terminal benefits. However, the applicant was late in filing his complaint to the CMA, he consequently filed along with CMA Form No.1, Form No.2 which is essentially application for condonation of the late referral of the dispute to the CMA .

The main issue before the CMA was whether there are cogent reasons adduced in support of the application for condonation. CMA decided that the Applicant failed to give explanation justifying the delay. At page 19 of the decision, Mediator reasoned as follows:

"... this is certainly demonstrative of inaction and unqualified lack of diligence on the part of the Applicant in taking essential steps towards pursuing the intended complaint. There being no material basis upon which to ignore such inordinate delay as permitted by Rule 11(1) (2) of GN No 64/2007 and taking into account the catena of authorities I have cited herein above, I am

compelled in the circumstances to find,as I hereby do, that good cause as required by Rule 31 of GN No 64/2007 has not been shown by the Applicant to justify an order for the grant of condonation sought."

He then dismissed the application hence this revision.

At the hearing of this application, the applicant was in person, unrepresented while the respondent enjoyed the services of Mr. Gervas Geneya advocate.

The gist of the applicant's submission was that "the Mediator was wrong in dismissing his claims on the ground that he was late for more than two years while he filed his complaint within time. He said, he was misled by the person who drafted the document to this court, who indicated that he was late in lodging his claim for 22 days. In other words, applicant was disowning his affidavit in support of the application in which he averred that the complaint at the CMA was late for 22 days and not two years as decided by the Mediator.

In reply, apart from adopting his notice of opposition and the counter

affidavit to be part of his submission, the respondent's advocate submitted that the CMA refused to grant the applicant condonation for his failure to justify the delay. He stressed that the applicant's reason for the delay was the promise to pay by the respondent. This, said Mr. Gervas, was not a sufficient reason as articulated in the case of **Messi Roggers Kimei V. Motel Sea View**, Revision No.14 of 2013 cited in the decision by the CMA to the effect that promise to pay cannot justify delay.

I have considered the parties submission in light of the facts on record and the law. It is a settled law that a person who seeks condonation must give plausible explanation for the delay ,short of that the application is bound to fail. In the matter that was placed before the CMA, the applicant delayed in filing the application for a period of two years and two months. In his decision, Mediator calculated this time form 31st August,2016 when the dispute arose to 25th May,2018 when the applicant filed the application before the CMA. In justifying the delay, applicant is recorded to have said that the delay was due to unfulfilled promise by the respondent.

It was the applicant's averment in his affidavit in support of the application for revision that the delay was not of two years and two

months but was only 22 days. The court of appeal has said again and again that in an application for extension of time applicant must account for each day of the delay. Even if it is to be taken that the delay was of twenty-two days, the principle remains that each day must be accounted for. Going by the records of this matter, no justification whatsoever given by the applicant in the account of the alleged short delay of 22 days.

On the facts before him, the mediator rightly found that the applicant failed to give convincing reasons warranting the grant of the application for condonation by the applicant. In view of that, I find no grounds justifying revision of the Mediator's award. The same is hereby confirmed and this application dismissed.

It is accordingly so ordered.

DATED at SHINYANGA this 27th day of March, 2020


E.Y. MKWIZU
JUDGE
27/03/2020

Right of appeal explained.



E.Y. MKWIZU
JUDGE
27/03/2020