IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

LABOUR REVISION NO. 8 OF 2018

(Original Labour Dispute No. CMA/TAN/34/2018 of the Commission for Mediation and Arbitration at Tanga)

RUKIA ATHUMANI SALIM..... APPLICANT

VERSUS

PEE PEE (T) LTD..... .....RESPONDENTS

RULING

MRUMA,J.

The applicant filed the present revision challenging the CMA's decision in Labour Dispute No. CMA/TAN/34/2018 in which the prayer for condonation was rejected for lack of merit. The application before the CMA was for a claim of unfair termination of employment contract. The application was brought under sections 91 (1)(a) of the Employment and Labour Relations Act, No 6 of 2004 and Rules 24 (1), Rule 24 (2) (a), (b), (c), (d), (e), (f) and 24 (3),(a) (b), (c), (d) ; 28 (1) (b), (c), (d) (e) of Labour Court Rules, 2007 GN. No. 106 of 2007 and *'any other enabling provisions of the law'.*

A brief background to this application is that the Applicant referred a complaint before the CMA for Tanga against the Respondent for unfair

termination. By the time she preferred that matter to the Commission, time was not on her side. So together with the complaint, she presented an application for condonation. The reasons advanced by her that led to delay were that she was sick. She did not attach any document in support of the said sickness.

The CMA dismissed the application on the reason that the applicant did not have good cause for the delay, hence the present revision containing one major ground that

> *'This Honourable court may be pleased to call, examine and revise the ruling and proceedings of the Labour Dispute No. CMA/TAN/34/2018 (WARDA.S.H-MEDIATOR) issued on 08/05/2018 to be satisfied as to its correctness'*

The application was supported by an affidavit sworn by the Applicant, RUKIA ATHUMANI SALIM herself.

The Respondent opposed the application by filling a counter affidavit sworn by Martha Kazwala- Human Resources Manager of the Respondent Company. When the application was called for hearing, the applicant appeared through Mr. Yona Lucas her Personal Representative while the Respondent had the services of Mr. Christopher Kiemi, now deceased.

(May his soul rest in peace)! On, 01/10/2020, the matter was scheduled to proceed by way of written submission and so it did.

In support of application, Mr. Yona Lucas, adopted the affidavit of Rukia Athumani Salimu as part of his submission. In addition, he submitted that the mediator erred in law and facts by determining the matter before her contrary to law as she did not assist the Applicant to comply with the law and also wrongly calculated the extent of delay to 47 days so as to justify her findings that the applicant had no good cause for the delay.

He further faulted the mediator for failure to assist the Applicant to attach the documents in support of her averment that she was sick. He submitted that according to Rule 11 (6) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64/2007, the mediator was supposed to assist the applicant since she had no legal assistance. He therefore prayed that the application be allowed and the CMA decision be revised.

The Respondent in opposition, started by adopting the affidavit of Martha Kazwala- Human Resources Manager and in particular paragraphs 4,7,11 and 12 (a) (b) and (c). She averred that there is no dispute that according to the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64/2007, the matter before the CMA was filed out of the prescribed

period of 30 days from the date of termination. The applicant's employment was terminated on 06th February, 2018, the complaint to the CMA was presented for filling on 21st March 2018. That is 43 days after the dispute arose. She submitted that the number of days mentioned by the mediator as 47 in the stead of 43, could not have prejudiced the Applicant since the time had already passed anyway.

Regarding the contention that the applicant was sick, she submitted that sickness was no substantiated in the CMA therefore, the mediator was right in not believing that version of defence. To support her stance, the Respondent cited the cases of SEFU ADAM vs MAWENI LIMESTONE, Revision no 10 of 2013. It was her further submission that each day of delay was not accounted for therefore the application for revision should not be granted.

The determination of this application will not detain me or anyone else. To appreciate the determination of this application and the verdict to be arrived at shortly, let me, perhaps, state the settled law on applications for extension of time. In an application for extension of time, it is incumbent upon an applicant to prove to the satisfaction of the Court/tribunal that the delay to take action on which an application is pegged was for good cause.

Good cause is a relative term and is dependent upon the prevailing circumstances of each case. There are no hard and fast rules to what can constitute good cause, (***See Osward Masatu Mwizarubi v. Tanzania Fish Processing Ltd, Civil Application No. 13 of 2010***). What amount to good cause includes whether the application has been brought promptly, absence of any invalid explanation for delay and diligence on the part of the applicant. (***See Tanga Cement Company Limited v. Jumanne D. Masangwa and Amos A. Mwalwanda, Civil Application No. 6 of 2001 (unreported). Black's Law Dictionary (9th Edition)*** defines good cause as legally sufficient reason.

It is an established principle in law that sufficient reason is a pre-condition for the CMA to grant extension of time. The law under Rule 31 of Labour Institutions (Mediation and Arbitration) Guidelines, GN. 64 of 2007 provide that; "The Commission may condone any failure to comply with the time frame in these rules **on good cause**."

In Rule 11 (3) of the same Rules, the law provides that: " An application for condonation shall set out grounds for seeking condonation and shall include the referring party's submissions on the following: a) The degree of lateness; b) The reasons for lateness; c) Its prospects o f succeeding with the dispute and obtaining the reliefs sought against other

party; d) Any prejudice to the other party; and e) Any other relevant factor."

I had an advantage of going through the CMA's record. The condonation prayer was rejected on the reason that the reasons for the delay given was not substantiated.

According to CMA F.1 which is a form filled by the applicant when referring the dispute to the CMA, the applicant was terminated on 06th February 2018. That is the date when the dispute arose. Rule 10 of the Labour Institutions (Mediation and Arbitration) Guidelines, GN. 64 of 2007 provides that

> *Dispute 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.*

The complaint to the CMA was presented for filing on 21st March 2018. That is 43 days after the dispute arose, on 06th February 2018. It is without doubt that when the application was referred to the CMA, 30 days as per requirements of law, had already lapsed. The number of days of

delay in my view, be it 47 or 43 or 10 is irrelevant. Whatever delay must be accounted for.

The Applicant in the CMA stated only one reason for her lateness. At page 1 of the typed proceedings, the following is seen; -

HEARING OF CONDONATION

MLALAMIKAJI

Nilikuwa naumwa ndio maana nimechelewa mpaka nilipopata nafuu ndio nikaleta kesi

Ni hayo tu

That means the only reason for delay that was placed before the mediator was that the applicant was sick. There was no any sort of documentary proof to back that statement up.

The applicant has added that the applicant had delayed since she was seeking legal assistance. This argument so long as it was not stated at the CMA, I will not waste any time discussing it as it is purely an afterthought.

Regarding the issue of whether the law requires the mediator to assist the applicant to comply with the law, I beg to differ. The tribunal ought to be unbiased and that is what it did. It would be unusual for the

court to assist one party and leave the other. So, this argument too is unfounded.

There is also an allegation by the applicant that the tribunal was supposed to order written submission instead of oral submission. With utmost respect to Mr. Lucas, the court offers only what is prayed for. In the proceedings there is nowhere that suggests that the applicant prayed for oral submission and the same was rejected. Prudence of the court should not be confused with legal requirement. At times, prudence dictates that oral submission is better comparing to written one so as to hear the matter from parties' own versions than the lawyers'.

All said, this application lacks merit and it is dismissed

As this is labour matter, no order as to costs.

A. R. Mruma

Judge

30/11/2021