

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

LABOUR REVISION APPLICATION NO. 44 OF 2021

(Arising from the Mgogoro wa Kazi Namba CMA/GTA/32/2021 by the commission for mediation and Arbitration for Geita)

ZEPHANIAH ONYANGO ADINAAPPLICANT

VERSUS

GPH INDUSTRIES LIMITEDRESPONDENT

JUDGMENT

22nd August & 26th October, 2022

Kahyoza, J.;

Zephaniah Onyango Adina was employed by **GPH Industries** terminated Zephaniah Onyanga Adina's Service. Zephaniah filed Labour Disputed No. CMA/MZ/NYAM/420/2020 to the CMA Mwanza. The CMA Mwanza struck out the application because it had no jurisdiction to entertain the dispute.

Still aggrieved, Zephaniah filed an application for revision to this Court, which upheld the decision of the CMA – Mwanza that since the cause of action arose in Geita, the Commission with jurisdiction under rule 22(1) of the **Labour Institutions** (Mediation and Arbitration) G.N. No. 64/2007 was that of the CMA at Geita. This Court gave the decision on 24/4/2021 striking out Zephania's application for revision.

On 14/6/2021, Zephaniah applied for condonation. After hearing the parties, CMA Geita held that Zephaniah accounted for time of delay from the time he instituted the application before CMA- Mwanza up to the day this court delivered its ruling on 21/4/2021. The CMA found that Zephania did not account for the period from 21/4/2021 to 14/06/2021, when he instituted the application for condonation before CMA- Geita. Dissatisfied, Zephaniah instituted the current application for Revision.

Zephaniah's advocate submitted that the CMA erred by her failure to waive time spent by the applicant to prosecute the dispute in another court. He argued that the CMA failed to consider the issue of technical delay. He added that for actual delay the applicant explained that he had no financial means to commence the dispute.

He added the applicant's ground for instituting a labour dispute was that he was not heard before the respondent terminated him. He contended that it was a legal requirement under rule 13 of G.N No. 42/2007 – Breach of the right to be heard is violation of article 13 of the Constitution of the United Republic of Tanzania, that alone amounted to illegality which is a ground for delay. He prayed the application to be allowed as the applicant has adduced sufficient ground for delay.

GPH Industries Limited was represented by Mr. Japhet, who opposed the application submitting that the issues raised by the applicant's advocate were dealt with by the CMA. He invited the court to paragraphs four (4) and five (5) of the counter-affidavit. He contended that the CMA heard the application for condonation and found no merit. He added that the applicant did not file a notice of institution an application for revision.

In his short rejoinder, the applicant's advocate prayed this court consider the applicants delayed on account of technical delay and reasons for actual delay stated in paragraph four (4) of the affidavit.

The application is against the decision of the CMA rejecting an application for condonation. The issue is whether the applicant adduced sufficient reason for delay. The applicant submitted that in the CMA failed to consider that the applicant's delay was technical delay. It is settled that technical delay is a sufficient ground for extending time. This stance was enunciated by the Court of Appeal in **William Shija and another v. Fortunatus Masha** [1997] T.L.R. 213. The Court of Appeal stated the following -

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the

pronouncement of the ruling of the Court striking out the first appeal. In these circumstances an extension of time ought to be granted."

Like the respondent, I do not share the same views with the applicant's advocate that, the CMA did not consider technical delay. The CMA considered the applicant's technical delay as a good ground for delay. CMA excluded all period of technical delay. The CMA decided that;-

"Kwanza muda ambao alikuwa Tume ya Usuluhishi na uamuzi Kanda ya Mwanza Pamoja na Mahakama Kuu Divishen ya Kazi Mwanza alikuwa ndani ya mdua kwa kuwa alikuwa kwenye "Proper forum" za Sheria".

I am of the view that the CMA cannot be faulted for not considering technical delay as a ground for extending time. Technical delay covered the period the applicant prosecuted the labour dispute and the application for Revision before this court up to 21/4/2021 when this court delivered its ruling. The CMA properly considered this period and excluded it from computing the period of delay.

The issue is whether the applicant adduced sufficient reason for actual delay. It is on record that the applicant instituted an application for condonation on 14/06/2021. The applicant took 43 days before instituting an application for delay. It is settled law as stated by the CMA, that delay even a single day must be accounted for. See the case **Hassan Bushiri**

v. Latifa Iukio Mashayo, CAT Civil Application No. 3 of 2007 (unreported), where the Court imposed a duty on litigants who seek to extend time in taking actions to account for each day of delay. It stated that-

"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

The issue is whether the applicant did account for all period of delay. The reasons advanced before the CMA and before this Court is that the applicant had no financial means or mussels to institute the application for condonation. The CMA considered the ground for delay on account of lack of financial means and held that;-

"Sababu iliyotolewa na mleta maombi ya kuwa alikuwa akitafuta pesa haina mashiko mble ya Tume".

Indeed, lack financial means is not a sufficient reason for delay. This is an established position of the law see of the Court of Appeal of Tanzania in the **Chairman Youth Society Vs John Ndazananye** Civ. Rev. No.3/1998 (CAT unreported) stated that:

*"The law has even gone further to told that **ignorance of law**, old age or poverty are not good grounds for allowing an application for leave to appeal out of time".*

The CMA cannot be faulted for holding that lack of financial means is not good ground of delay. As shown above, I share the same views with the CMA, that lack of financial means is not a good ground of delay. It is also obvious that the applicant was not prevented by poverty to apply for condonation. If the applicant had resources to institute the labour dispute before the CMA- Mwanza and pursue an application for revision before this court, he cannot put it as a ground that he lacked financial means to apply for condonation. Application for condonation before the CMA is one of the easiest applications to make. Person applies by filling Form CMA/F.2 before the CMA. There is no requirement for filing a chamber Summons supported by an affidavit. The applicant must have delayed for any other reason which he did not disclose.

Lastly, the applicant's advocate sought to introduce another ground to support the application that, is the illegality of procedure of terminating the applicant. He submitted that the respondent terminated the applicant without affording him the right to be heard. I wish to state that illegality is ground of delay only where the impugned decision is tainted with illegality. The rationale behind is to allow an appeal or revision put of time to rectify the illegality. In this present case, there is no decision of any tribunal or court which is tainted with illegality. The issue whether the applicant termination

was procedurally fair or otherwise is an issue the CMA is enjoined to determine once a dispute is properly before her. It cannot be ground to extend time. Not only that, but also it is not established that the applicant was illegally terminated. It is an allegation which must be proved by evidence. It is an argument based on law and facts.

In addition, it is settled that illegality to amount to sufficient reason for delay its must be proved that the alleged illegality really exists, it must raise a point of law of sufficient importance and the same must be apparent on the face of record not one that would be discovered by long argument or process. See the decision in **Ngolo Godwin Losero v Julius Mwarabu** Civil Application No. 10/2015 CAT at Arusha (unreported), where the Court of Appeal reiterated its decision in **Lyamuya Construction Company Ltd Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application 2/2010 that-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, **it cannot in my view, be said that in Valambia's case, the court meant to draw a general principle that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one.** The Court there emphasized that such point of law must be that of sufficient importance and I, would add that it must be apparent on the face*

of the record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process. The Court in the case Certainly, it will take a long-drawn process to decipher from the impugned decision the alleged misdirection or non-directions on the points of law."

I am unable to find that time ought to be extended an account of illegality.

In the end, I find the application for revision without merit, I uphold the decision of the CMA, that the applicant did not adduce sufficient reason(s) for delay and proceed to dismiss the application.

It is ordered accordingly.

Dated this 26th day of October, 2022.



A handwritten signature in black ink, appearing to be "J.R. Kahyoza", written over a horizontal line.

J.R. Kahyoza
Judge

Court: Judgment delivered in the virtual presence of Mr. Japhet for the respondent and in the absence of the applicant's advocate, who was duly notified. B/C Jackline present.

A handwritten signature in black ink, appearing to be "J.R. Kahyoza", written over a horizontal line.

J.R. Kahyoza
JUDGE
26/10/2022