

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DODOMA

LABOUR REVISION NO. 20 OF 2019

(ORIGINAL RF/CMA/DOM/63/2019)

NYANZA ROAD WORKS LIMITED..... APPLICANT

VERSUS

MUSA FESTO MWACHA.....1ST RESPONDENT
SHAABAN LUSANJJA.....2ND RESPONDENT
ALLY MSAFIRI.....3RD RESPONDENT
JACKSON JOSEPH.....4TH RESPONDENT
YOHANA STEVE.....5TH RESPONDENT
KILIMA BUNDALA.....6TH RESPONDENT
ELIAS SAID.....7TH RESPONDENT
JOEL WILFRED.....8TH RESPONDENT
SULTAN SAIS.....9TH RESPONDENT
ISSA RAMADHANI.....10TH RESPONDENT
ABDALLAH HALIFA.....11TH RESPONDENT
DANIEL KASMILI.....12TH RESPONDENT
SOFIA PETER.....13TH RESPONDENT
HAJI SALUM.....14TH RESPONDENT
WILSON MZINGA.....15TH RESPONDENT
MARTHA KASHINJE.....16TH RESPONDENT
KHASIM HUSSEIN.....17TH RESPONDENT
KABILI SHEMU.....18TH RESPONDENT

JUDGEMENT

31ST MARCH 2021

L. MANSOOR, J

The Applicant in this application for Revision, Nyanza Road Works Limited filed a Notice of Application for Revision

under Section 91 (1) (a) and (b) and Section 94 (1) (b) of the Employment and Labor Relations Act, 2004, Rule 24 (1), Rule 24 (2) (a-f), Rule 24 (1), (a), (b), (c), (d), of the Labor Court Rules, 2007 (GN No. 106 of 2007). The Applicant prays for Revision of the proceedings and Award of the Commission for Mediation and Arbitration "CMA" No. CMA/DOM/63/2019. The Applicant also filed the Chamber summons, which is supported by the affidavit of Bakari Mugini Mabele the Principal Officer of the Applicant; the reasons for Revisions is that there were irregularities in the application for condonation of the delay filed and granted to the respondents.

The application was opposed by the respondents, they filed the Notice of opposition and the affidavit, in which they pray for dismissal of the application as it is meritless. The application was argued by written submissions.

Briefly the facts of the case are that the respondents herein were employed by the applicant in 2018 for a fixed term contract of three months for construction of roads in Dodoma City. On 30th March 2019, the respondents were retrenched, and they were paid all their benefits. The

respondents were unsatisfied and claimed to have been unfairly terminated, they filed a claim at the CMA. The respondents filed Form No. CMAF.1 and CMAF.2 asking for condonation of delay as 60 days had already passed from the date they were terminated. The application for condonation of delay was heard ex parte since the applicant herein did not file any response or counter affidavit. The delay was of 448 days from 30/04/2019. The CMA condoned the delay as per Rule 31 of GN No. 64 of 2007, that CMA may condone the delay on good cause. The CMA in condoning the delay got the guidance from the case of **Rose Phares vs Dodoma Municipal Council, Revision No. 7 of 2014**, and the case of **Elias Msonde vs Republic, Criminal Appeal No. 93 of 2005**, that the applicant was able to show that they were prevented by sufficient cause or reasonable cause and the delay was not contributed or caused by dilatory or lack of diligence on their part. That the delay was not due to their negligence, but they were waiting for the applicant to honor his promises, that he had promised to pay them their arrears but did not do so, and so 60 days passed. They were granted time to file their claims on 16th June 2019.

The CMA proceeded to determine the claim, and on 01.11.2019 it gave the respondents an Award. The issues determined by CMA was whether the respondents herein were to be paid salary arrears, leave payments, pension, and notice. Regarding the salaries, the applicant said the respondent's daily salary was Tshs 7,500 and they were paid, while the respondents alleged that their daily salaries were Tshs 12,500 but they were paid 7,500 or 6,500, thus they demanded the differences. The applicant's defense witness was Bakari Mugini Mabele who confirmed to CMA that all the respondents were the employees of the Applicant's company. They all had three months fixed term renewable contracts, they were employed in 2014 and got retrenched on 31/04/2019. They were all paid Tshs 7,500 daily as their salaries agreed in a contract. They were retrenched as there was no work, in other words the work they were employed for had finished.

The Commissioner took into consideration the Labor Institutions Wage Order GN No. 196 of 2013, which gave scale

for workers working in construction sector to be paid daily salary or wages of not less than Tshs 12,500 per day, and again GN 196 of 2013, had set a scale for civil engineers (mfundi kwa sekta ya ujennzi) to be paid daily wages of not less than Tshs 25,000 but the respondents were being paid Tshs 15,000 per day. The respondents were all underpaid.

CMA also ruled that the employer who is the applicant herein had violated section 44 (1) of the Employment and Labor Relations Act as he did not pay the employees any annual leave and did not give them notice of termination of their contracts. CMA ordered all the respondents to be paid the differences of their salaries, leave pay, and payment of money in lieu of notice. The total amount awarded to the respondents were Tshs 62, 431, 500/=.

The applicant was aggrieved, he filed the application for Revision, and the application was determined by the written submissions. I have read the submissions and considered the respective arguments therein, and this Court finds as follows.

The applicant complains of the irregularities in the application for condonation of delay entertained by the CMA. The applicant submits that the application for condonation of delay was to be submitted in CMA by way of Notice of Application and affidavit as required under section 86 (1) and (2) of the Employment and Labor Relations Act No 6 of 2004, and Rule 11, Rule 29, and Rule 31 of the Labor Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007. Rule 11 (2) and Rule 29 (1) (a), (2), (3) (a-e), Rule 4 (a-c) of the Labor Institutions (Mediation and Arbitration) Rules requires an application for condonation of delay to be done by Notice of Application supported by an affidavit and must be served to the other party of the dispute. The applicant states that the application for condonation of delay was not in the required format, and it was never served to the applicant as required by Rule 6 and Rule 7 of GN No. 64 of 2007. What was submitted to CMA for condonation of delay was only a Form No. 2, and this was a violation of the Rules. The applicant also states the irregularities in serving the application to it, and this amounted to denying him a chance to be heard. I shall see

the records to see whether the application for condonation of delay was improperly admitted by the CMA, and if it was properly admitted was it served to the applicant in accordance with the law.

The respondents argues that the Ruling for condonation for delay was entertained and delivered exparte and the remedy available under the law was to apply before CMA to set it aside, and this is as per Rule 29 (1) of GN No. 64 of 2007. I agree with the submissions of the Applicant's counsel that the law cited i.e., Rule 29 (1) of GN No. 64 of 2007 does not restrict the applicant to challenge the Ruling which was delivered ex-parte only by way of an application to set it aside, the applicant can challenge the exparte Ruling by way of Revision. As said in the case of **MIC Tanzania Limited vs Kijitonyama Lutheran Church Choir**, the exparte Ruling or Judgement could be set aside by the CMA, and the applicant also had an option to file the Revision as per Section 94 (1) (b) (i) of the Employment and Labor Relations Act. Under Section 91 (1) of the Act, a party to the Arbitration Award who alleges defects in any arbitration proceedings by the CMA may

apply to the Labor Court for a decision to set aside the arbitration award. The order for condonation of delay is an arbitration award delivered in an arbitration proceeding by the CMA, and the remedy under Section 91 (1) of the Act is to apply for Revision to set aside the Award. The Award or decision for condonation of delay falls under the complaints in section 88 (1) (b) (ii), of the Act as it involves the contravention of the Act and other Labor Laws. Indeed, the applicants violated not only section 86 (1) and (2) of the Labor Relations Act and Rule 11 (2) and Rule 29 (1) of the Labor Institutions (Mediation and Arbitration) Rules, GN No. No. 64 of 2007, in that they did not file at the CMA the Notice of Application and a supporting affidavit, but again, they violated Rule 6 of GN No. 64 of 2007 in that they did not prove before the Commission that the application or documents were served in accordance to Rule 7 of the Labor Institutions (Mediation and Arbitration) Rules, 2007, and whether the Commission had notified the Applicant as to the date, time and place of hearing of the application. On record of the CMA, the only service to the applicant is dated 11th July 2019 and 30th July 2019, and this was for the hearing of the main

complaint. There was no proof that the applicant was served with the application of condonation of delay whose ruling was delivered on 16th June 2019. According to the Ruling of CMA the application for condonation of delay was filed on 6th May 2019 by filing Form No. CMAF.1 and CMAF.2, and the affidavit of Musa Festo. There was no notice of application, there was no chamber summons in which the affidavit of Mussa Festo Mwacha supported it, and there was no proof that the applicant was indeed served. I have seen on records of CMA the summons dated 7th May 2019, but there is no stamp of the Applicant to prove that the summons was served and received by the Applicant. These are defects and hence violations of the Act and the labor Rules and Regulations, and as per section 91 (2) (b) of the Act, the order of condonation of delay was improperly procured, and therefore this Court set aside the Ruling of CMA dated 16th June 2019. Thus, the order for condonation of delay dated 16th June 2019 is hereby set aside for it was improperly procured, and that follows therefore, the main claim, which was entertained outside the prescribed period, without the condonation was improperly procured and therefore that Award is also set aside. The

Parties herein may wish to refile the application for condonation.

In the result, the application of Revision being meritorious, it is hereby allowed. The Award passed by the Arbitrator in CMA/DOM/63/2019 dated 16th June 2019 and 01st November 2019 are hereby set aside.

**DATED AND DELIVERED AT DODOMA THIS 31ST DAY OF
MARCH 2021**




LATIFA MANSOOR
JUDGE
31ST MARCH 2021