

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

**LABOUR REVISION APPLICATION NO. 97 OF 2019**

*(Original CMA/ARS/MED/365/2019)*

**BEATRICE DINDI ODHIAMBO ..... APPLICANT**

**Versus**

**RANGER SAFARI LIMITED ..... RESPONDENT**

**JUDGMENT OF THE COURT**

**10/5/2021 & 21/06/2021**

~~**M. R. GWAE, J**~~

This application is brought under the section 91 (1) (a) and (b) 91 (2) (a) section 94 (1) (b) of the Employment and Labour Relations, Act No. 6 of 2004 Rule 24 (1), (2) (a) (b) (d) (e) (f), 24 (3) (a) (b) (c) (d) and (e) of Labour Court Rules, 2007 in which the applicant seek an order of the court revising and setting aside the ruling of the Commission for Mediation and Arbitration for Arusha at Arusha (CMA) dated 10<sup>th</sup> October 2019 dismissing the applicant's application for condonation and any other reliefs that may be deemed fit to grant.

In her application form, the applicant advanced her reasons for lateness being; an institution of criminal case against her in the subordinate court, travelling in search of documents necessary for defence in the criminal charge

leveled against her, search for fund for representation. As indicated in the application form dated 2<sup>nd</sup> July 2019, the applicant was late for 29 days and that the applicant was suspended without pay whilst she was facing the criminal charge in the court of law through Criminal Case No. 159 of 2019 and whereas a letter of suspension was issued on the 5<sup>th</sup> day of April 2019.

In its conclusion, the Commission found the applicant's application for condonation to have lacked merit. It was consequently dismissed on the ground that, though sympathy was apprehended, but there was absence of reasonable grounds for delay. Aggrieved by the ruling of the Commission, the applicant preferred to this application for revision.

When this application was called on for hearing, Mr. E. Sood and Ms. Neema Mtayangulwa appeared for the applicant and respondent respectively. Arguing for the application, Mr. Sood sought an adoption of the applicant's affidavit and thereafter continued arguing that, the Commission was wrongly presupposed that, the applicant is guilty before being found to that effect by the court of the law. Hence, in violation with principle of presumption of innocent adding that, at the moment the applicant had already been discharged by the subordinate.

He further submitted that; the CMA erred in law for its failure to consider substantive justice as per Rule 27 of GN 42/2007 which requires an employer to

pay full remuneration to an employee who is suspended. He embraced his argument by citing Rule 29 of GN. 42/2007). Mr. Sodd went arguing that the period for computation limitation of time in our dispute is **60** days and not **30** days as the case in the unfair termination Rule 10/2007. According to Mr. Sood, Commission was wrong to hold that, the period for suspension follows under disputes for unfair suspension

Regarding the issue whether the applicant gave sufficient reason to justify the Commission to grant the relief sought. The learned advocate for the applicant admittedly argued that the applicant had failed to account for 14 days simply because of official constraint as she had to look for an advocate and the fact that she was facing criminal charge.

In her response, Ms. Neema also sought an adoption of her counter affidavit and she orally added that, the Commission was justified in dismissing the applicant's application for condonation as she failed to account each day of delay, 8 days. She went on arguing that, the reason for an economic hardship or financial constraint is not good cause to enable the Court or Commission to exercise its discretion to extend time. Miss Neema finally submitted that; the ground of suspension was not basis for the CMA decision as the same goes to the merit.

In his rejoinder, the applicant's counsel stated that the Commission ought to have considered the prospects of the indented labour dispute pursuant to Rule to 11(3) © of GN 64/2007.

Having examined the parties' affidavits and oral submissions, I am of the considered view as rightly submitted by the learned counsel for the applicant in that the issue of suspension of an employee does not follow under unfair termination since suspension alone does not constitute termination of an employment. Hence, its period of limitation is sixty (60) days from the date of suspension without pay. The applicant's application challenging suspension without pay as plainly depicted in the application form must follow in other disputes and not unfair termination.

In our instant dispute, the applicant is deemed to have received the suspension letter on the date when it was issued since she did not indicate a date on which she received the same that is 5<sup>th</sup> April 2019 while she duly filed her application for condonation on 4<sup>th</sup> July 2019 though she prepared the same on 2<sup>nd</sup> July 2019. Hence, sixty days started to accrue since 5<sup>th</sup> April 2019 and time started running against her since 6<sup>th</sup> June 2019. Therefore, the decree of lateness is more than 20 days.

I have also wholly subscribed the arguments by the respondent's counsel that, the applicant had failed to account for her delay of each and every day of

delay as required by the law (See **Ramadhani J. Kihwani vs. TAZARA** Civil Application No. 401/2018 (Unreported-CAT), **Mtungire vs. The Board of Trustees of Tanganyika National Parks t/a Tanzania National Parks**, Civil Appeal No. 66 of 2011 (unreported) and **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported-CAT)). I am also of the view existence of criminal case per se against the applicant is not an excuse for the applicant from being obliged to account for each day of delay.

Nonetheless the applicant had attached a bus ticket accounting for days of delay from 01/06/2019 to 12/6/2019 but she had nevertheless failed to account for other days taking into account that poverty or financial constraint or looking for an advocate, in my view, does amount to a sufficient cause as the words "sufficient cause" should not be narrowly interpreted. My finding is guided by the decision of the Court of Appeal in **Ohamed Amoor Khalid and Mahamoud Ayub Ibrahim v Ahmed Issa Khalfani** (1994) TLR 136.

I have however failed to uphold the decision of the Commission on the issue of prospects of success as provided under Rule 11 (3) (c) and (d) of GN 64 of 2007 where the Commission is required to look at the prospects of succeeding with the dispute and relief sought as well as degree of prejudice to other party. I am of the thought that, the issue as to prospects and degree of prejudice ought to have been considered by the Commission. I am saying so after I have taken

into account of provisions of the law particularly GN. 42 of 2007 read together with those in GN. 42 of 2007 regarding status of an employee whose employment has been suspended pending trial of a criminal case. I have further taken into account of the fact that; the applicant has just been discharged in the criminal proceeding and her uncertain status of her employment as well as her other employment rights if the CMA's decision dismissing the applicant's application for condonation is sustained. In view of the questionable suspension without pay and the discharge order entered in favour of the applicant. I am therefore of the view that, the said points are of sufficient importance and ~~interest of justice in this particular dispute calls for granting of condonation~~ rather than refusing (**TanESCO vs Mufungo Leonard Majura and 15 Others**, Civil Application No 94 of 2016, (Unreported-CAT)).

Given the above reasons, this application for revision is hereby granted, the decision of the CMA is revised and set aside. The applicant is given **fourteen (14)** days within which to file a labour dispute in the Commission on the alleged suspension without pay and or any other labour dispute depending on the nature of her current employment status.

Order accordingly



  
**M.R. GWAE**  
**JUDGE**  
**21/06/2021**