

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT ARUSHA

LABOUR REVISION NO. 87/2018

(Originated from Labour Dispute No. CMA/ARS/MED/330/2018)

MAGRETH MOLLEL APPLICANT

VERSUS

ASILIA LODGES AND CAMPS LTDRESPONDENT

JUDGMENT

17/2/2021 & 21/4/2021

ROBERT, J:-

This application sought to revise the ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/MED/30/2018 delivered on 18/07/2018 in favour of the Respondent. The CMA dismissed the Applicant's application for condonation for lack of reasonable grounds for the delay. Aggrieved, the Applicant filed this application seeking to revise the decision of the CMA. The application is made under Rule 24(4)(a) and (b) of the Labour Court

Rules, GN No. 106 of 2007 and supported by an affidavit sworn by Frank L. Maganga, the Applicant's Personal Representative.

The Applicant was employed by the Respondent on 1/5/2012 as Field Operations Assistant. On 15/3/2018 she was terminated on grounds of misconduct. She later decided to challenge her termination at the CMA. Since she was late to refer her dispute to the CMA within the prescribed time, she applied to the CMA to condone her delay on grounds that she had fallen sick after her termination. The CMA dismissed her application for lack of reasonable grounds for the delay. Aggrieved, she filed this application seeking to revise the CMA award.

When the matter came up for hearing on 3/6/2020, the Applicant was represented by Mr. Frank Maganga, Personal Representative whereas the Respondent was under the services of Mr. Reginald Laswai, learned counsel.

Submitting in support of the application, Mr. Maganga faulted the Mediator's refusal to accept the Applicant's sickness as a good cause for the delay. He made reference to the case of **Eddie Hamza vs African Barick Goldmine Ltd Revision No. 240/2012**, Labour Division, where the Court held that:

He further faulted the mediator for failure to properly consider the Applicant's medical sheet and for holding that the dispensary where the Applicant went for treatment is not competent to issue a medical report. He stated that, the Applicant went for treatment at the dispensary (health centre) which is well known to the employer and which was used by the Applicant when she was at work. He argued that according to section 32(4) of the Employment and Labour Relations Act, No. 6/2004, the medical certificate means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer.

Submitting further, he faulted the Mediator for dismissing the application for condonation based on one ground only and not considering the other grounds. He referred the Court to the case of **Hashim Mohamed Kimbunga vs Impala Hotel, Labour Revision No. 6/2018** where this Court made reference to the case of **Catherine John vs Leopard Tour Ltd, Revision No. 85 of 2015** which considered the Arbitrator's failure to consider other factors for granting the application as a failure to exercise his discretion properly. He maintained that the other factors which needed to be considered in granting the application were, the Applicant's chances of success due to the fact that the Respondent

had no fair and valid reason to terminate the employment of the Applicant and the procedures were not followed before termination.

He implored the Court to grant the application for the interest of justice.

In reply, Mr. Laswai submitted that, this application is untenable, misconceived and devoid of merit as the Applicant failed to adduce sufficient reasons to allow the CMA to use its discretionary powers to grant the prayers sought.

He submitted that, the Applicant was late for 54 days and the only reason for the delay was that she was admitted at Zaci Dispensary and she tendered the medical sheet (Annexure A) as proof. However, he objected the Applicant's sickness on the grounds that annexure "A" does not indicate how long the Applicant was sick and it doesn't indicate if she was given sick leave. Further to this, he maintained that, at the CMA the Applicant had admitted to have gone to the Respondent's office on 22nd and 28th days of March, 2018 for clearance which implies that she was able and had sufficient time to file her claim at the CMA.

Regarding the dispensary which issued the medical report, he argued that, the dispensary is not a competent institution to issue an ED or bed

rest. He maintained that, it is not true that the said Zac dispensary is known to the employer as alleged by the Applicant and there is no evidence to establish that the employer approved the said dispensary or that his employees were treated at that dispensary.

Regarding the cases cited by the Applicant namely, **Catherine John vs Leopard Tours Ltd**, Rev. No. 85 of 2015, **Hashim Mohamed Kimbunga vs Impala Hotel**, Labour Revision No. 68 of 2018, **Eddie Hamza vs Africa Barick Goldmine Ltd**, labour revision No. 240 of 2012 and **Emmanuel Maira vs Bunda District Counsel (CA) Civil Appeal No. 56 of 2010**, he maintained that the said cases are distinguishable to the case at hand.

He explained that, in the cases of **Catherine John** (supra) and **Hashim Mohamed** (supra) the Applicants had more factors to be considered for the delay while in the case at hand the Applicant had only two factors and the CMA dealt with all of them and found them devoid of merit and dismissed the application. He argued further that, in the case **Eddie Hamza** (supra) the Hon. Judge accepted health problem as a genuine cause for the delay because the Applicant tendered a document from the recognised practitioner which the Applicant herein failed to do. Lastly, in the case of **Emmanuel Maira** (supra) he maintained that, the

Applicant failed to grasp the meaning of technical delay and actual delay. Health problem is not one of the technical delays. Technical delays involve technical legal issues which are not available in the present case.

He contended further that, the Applicant failed to account for each day of delay and he did not meet the standard established in the case of **Alliance Insurance Corporation vs Arusha Art Limited**, Civil Appl. No. 512/2 of 2016 (Unreported). He also cited the case of **John Cornel (T) Ltd vs Grevo**, Civil case of 1998, where Kalegeya, J (as he then was) held that; -

"...however unfortunately it may be for the plaintiff, the law of limitation of action knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web....."

In the light of the aforementioned reasons, he prayed for this application to be dismissed.

In brief a rejoinder, the Applicant's counsel argued that, the medical sheet (annexure A) did indicate the follow up date to be 15/6/2018 which means she was sick throughout this time. He also denied the allegation that the Applicant went to the Respondent's office at the time of her sickness and maintained that, even if she did, it is not an issue since the

Applicant was only warned not to engage herself in any trouble matters which could confuse her in order to minimize the severity of her medical condition. He insisted that, a dispensary is a competent institution to issue an ED in accordance to section 32(4) of the Employment and Labour Relations Act, 2004. He also reiterated his argument that the Application has great chances of success because her termination was based on false allegations.

In the light of the said reasons, he prayed for this application to be granted.

From the rival submissions of both parties and the records of this application, the question for determination is whether the Applicant had adduced sufficient cause to justify the grant of condonation by the CMA.

According to Rule 10(1) of the **Labour Institution (Mediation and Arbitration) Rules, 2007**, disputes on fairness of employee's termination are required to be referred to the CMA within thirty days from the date of termination. In the present case, the Applicant filed a labour dispute at CMA allegedly after 54 days of delay. According to her, the reason for the delay is health problem which occurred soon after the alleged termination.

The CMA is empowered to condone any failure to comply with the time frame under Rule 31 of GN No. 64/2007 where there is a good cause for the delay. Further to this, according to Rule 11 (3) of the same Rules, an application for condonation is required to set out the grounds for seeking condonation and submissions on the degree of lateness, the reason for lateness, its prospects of succeeding with the dispute and obtaining the reliefs sought against other party, any prejudice to the other party, and any other relevant factors.

Having considered the Applicant's reasons for the delay, this Court is in agreement with the findings made by the CMA. It is obvious that, counting from the date of the alleged termination which is 15/3/2018 to 5/6/2018 when the Applicant referred the matter to the CMA, the period of delay is more than 54 days stated by the CMA. This is relatively inordinate, accordingly, the Applicant's reasons for the delay should have been braced with a compelling proof not mere excuses. The document from Zaci dispensary (annexure A) used by the Applicant to establish that she was suffering from high blood pressure indicates that the Applicant went to the said dispensary on 16/3/2018 and she was booked for the follow up check up on 15/6/2018 which is approximately three months later. However, the Applicant referred the matter to CMA on 5/6/2018

prior to the date scheduled for the subsequent check-up. It is not clear when the Applicant regained enough health to manage filing of her dispute at the CMA. There is nothing in the document from Zaci dispensary to suggest a grim sickness as to forbid the Applicant from filing her dispute within the prescribed time. Accordingly, I find that the Applicant lacked a good cause for delay.

In the case of **Tanzania Fish Processors Ltd vs Christopher Luhangula**, Civil Appeal No. 16 of 1994 CAT (unreported) at Mwanza, the Court of Appeal of Tanzania held that; -

"The question of limitation of time is fundamental issue involving jurisdiction... It goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to court as and when he chooses."

Again, in the case of **Dr. Ally Shabbay vs Tanga Bohora Jamaat** (1997) TLR 305 at page 306, it was held that; -

"Those who come to courts of law must not show unnecessary delay in doing so, they must show great diligence."

In the end, I find no need to fault the Mediator's decision that the Applicant had no good cause for the delay. As a consequence, I dismiss this application for want of merits.

It is ordered.

