

IN THE HIGH COURT OF TANZANIA

[LABOUR DIVISION]

AT MTWARA

APPLICATION FOR LABOUR REVISION NO. 8 OF 2020

(Arising from the CMA Labour Dispute No. CMA/LIND/MED/10/2020)

YETU MICROFINANCE BANK PLC.....APPLICANT

VERSUS

BONITHA BURCHARD

NDYAMUKAMA.....RESPONDENT

RULING

15 June & 3 August, 2021

DYANSOBERA, J.:

This is an application to call for the original CMA records and examine the proceedings of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/LIND/MED/10/ 2020 dated the 13th day of August, 2020 by Hon. Hilary N. J. (Arbitrator) with a view of satisfying itself on the legality, propriety, rationality and correctness of the findings of the CMA and the entire Award and then revise, quash and set aside the impugned Award and proceedings and thereafter determine the dispute on its merits in the manner to considers appropriate.

The background facts of the matter is that the respondent Bonitha Burchard Ndyamukama is a former employee of the applicant one Yetu Microfinance Bank PLC with effect from 16th June, 2015 as a Credit Officer.

On 4th January, 2018 he was transferred to Kilwa in the capacity of Agency in Charge. On 24th day of October, 2018 he was terminated from service. Being late in lodging a labour dispute before the CMA, the respondent filed a condonation application. His excuse for the delay as can be gathered at page 1 of the impugned Award was:

Kwamba maombi yake yamechelewa mbele ya Tume kwa sababu alipata taarifa (notisi) ya kuachishwa kazi ambayo iliandikwa kwa barua ya tarehe 24/10/2018 na kuipokea Mwezi Machi, 2020. Na baada ya kuipokea alianza kufuatilia kuuliza hapa na pale ili kujua nini afanye kwa kuwa ameachishwa kazi isivyo halali.

The applicant resisted that application on the grounds that the respondent had not adduced sufficient reasons to warrant the Commission grant the condonation. Despite the applicant's resisting the application for condonation, the CMA granted the application. Relying on the provisions of rule 11 (3) (a) (b) (c) (d) and (e) of theGN No. 64 of 2007, the Hon. Mediator observed:-

"tume imetafakari kwa kina mwenendo mzima wa mawasiliano baina ya mleta maombi na mjibu maombi mara baada ya mleta maombi kuachishwa kazi tarehe 30.11.2018 kwa barua ya tarehe 24.10.2018 na kugundua kuwa kitendo cha mjibu maombi kushindwa kuthibitisha mbele ya Tume ni lini mjibu maombi alipokea barua hiyo, kimepelekea kuleta mkanganyiko wa aina yake kuhusu tarehe mahususi ambayo mgogoro ulizuka

Tume imeona sababu za kuchelewa ni za msingi na kwa kuzingatia misingi haki ili ionekane kutendeka, ni vyema mgogoro wa msingi uweze kusikilizwa kujua nini hatima yake mbele ya macho ya sheria"

The applicant was aggrieved by that Award hence the present application for revision.

On the 8th day of April, 2021 when this application came up for hearing Mr. Deus Singa, learned Advocate, stood for the applicant, much as the respondent was represented by Mr. Salum Majaliwa, the TUICO Secretary.

Arguing in support of the application, Mr. Singa submitted that the decision by the CMA granting condonation was given without the respondent having shown sufficient cause. He argued that condonation is a legal issue and cannot therefore be granted automatically; there has to be some conditions which must be fulfilled before condonation is granted. It was his further argument that filing matters before the Commission, there is time limitation short of which reasonable cause has to be shown for the delay. Reference was made to Rule 10 (1) of the GN No. 64 of 2007. Mr. Singa complains that the respondent filed the complaint about one year and six months after being served with a letter of termination, that is on 24.10.2018 and the condonation application was filed on 6.5.2020 which is more than fifteen months from the day of termination. This contravened the law which stipulates thirty days, Counsel for the applicant argued.

With regard to the respondent's claim that he was served with the termination letter in March, 2020, it was argued on part of the applicant that the respondent was silent from whom he was served and where and at the same time the respondent was working with FAWOPA which signifies that she was no longer working with the applicant and was not receiving salary. Counsel for the applicant emphasised that the ground for

condonation of the delay was not a good cause as it was not beyond her control.

On the second dimension, Mr. Singa argued that the filing of the condonation application was not made promptly and no valid explanation for the delay was given. Reliance was placed on the cases of **Muyenjwa B.M. Msafiri v. Tanzania Electrical Supply Co. Ltd**, Lab. Rev. No.278 of 2013, **Kombo Ally Singano v. Barcklays Bank Tanzania Ltd**, Misc. Labour Application No. 13 of 2019 and the case of **Avit Kwareh v. Serengeti Breweries Ltd**, Revision No. 176 of 2017.

In reaction, the respondent through Mr. Salum Majaliwa submitted that the respondent gave sufficient reasons for condonation and that justice demands the dispute to be heard and determined whereby the respondent had three complaints: one was on withholding her certificate, two claims on emoluments and three, compensation. Mr. Majaliwa maintained that the condonation was proper and the dispute should be heard.

Mr.Deus Singa's reply was that the law has to be complied with and with respect to withholding the certificate, he said that the issue was discussed in detail and the certificate was withheld because there was a loan which was yet to be repaid and further that there was no letter requesting such certificates.

I think the law is clear. Rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Guidelines, GN No. 64 of 2007 enacts that:

"Dispute about fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date

of termination or the employer made a decision to terminate or uphold the decision to terminate”

The Commission has, however, been conferred the power to condone the delay under rule 31 of the Rules which provides that:

“The Commission may condone any failure to comply with the time frame in these Rules on good cause”

Practically, rules of limitation are not meant to destroy the substantive rights of the parties but their existence is to ensure that parties do not resort to dilatory tactics but should seek their remedy promptly. The main objective of fixing a life span of a legal remedy is to put an end to litigation. In that respect, law is made to protect only diligent and vigilant people but not the indolent. It cannot be gainsaid that the Commission under that rule, has discretion to grant or not to grant the condonation. I entertain, however, no doubt that such discretion of the prescribed period of limitation should not be so much liberal so that it does not encourage negligence on the part of the applicant to defeat the very purpose of the law because, the law does not bestow unlimited and unbridled discretionary powers. For that matter, every discretionary power has to be exercised reasonably and within a well-established framework of principles. Equally, the respondent, as rightly argued by Mr. Singa, had to account for each day of the delay although explaining every single of delay entails the court to follow a pragmatic and rational approach in explaining every single day's delay. It should be borne in mind that what counts is not the length of the delay but sufficiency of a satisfactory explanation. The issue is whether the respondent in her condonation application gave sufficient satisfactory explanation for the delay.

The grant of condonation is an indulgence. The applicant has to advance good reasons why he or she should receive such indulgence. In other words, the applicant must show that he or she acted expeditiously when he or she discovered his or her delay and must advance an acceptable explanation for such a delay.

Merely to say that *'baada ya kupokea [barua ya tarehe 24.10.2018] nilianza kufuatilia kuuliza hapa na pale ili kujua nini nifanye kwa kuwa niliachishwa kazi isivyo halali'* is, in my view, an insufficient explanation. It was scant, lacking in particularity and evincing lackadaisical approach to compliance with the law.

In this matter, the respondent failed to provide a full, detailed and accurate explanation for the delay.

Besides, the Hon. Mediator was clear that the respondent's delay of was inordinate according to his observation in the Award at p. 5 that:

"Uchambuzi wangu kupitia fomu maalum ya kuchelewa CMAF. 2 ambayo mleta maombi ameijaza na kuiwasilisha mbele ya Tume tarehe 6/5/2020 unaonyesha mgogoro ulizuka tarehe 30.11.2018. Katika mazingira haya Tume imejiridhisha kuwa mleta maombi amechelewa katika Tume kwa muda wa miezi kumi na saba na siku sita; ni zaidi ya miezi 15 kama alivyojieleza katika CMAF. 2. Tume imejiridhisha kupitia kielelezo W.2 ambacho ni barua ya notisi ya kuachishwa kazi, mleta maombi ajira yake ilikoma kwa mujibu maombi tarehe 30.11.2018 na siyo tarehe 24.10.2018 kama mjibu maombi alivyodai"

It is my finding that the respondent in this matter did not act expeditiously when she discovered her delay and failed to advance an acceptable explanation for such a delay.

I align myself with the applicant in his argument that the decision by the Mediator granting condonation was made without sufficient cause being given.

For the reasons stated, I allow the application, revise and set aside the decision of the Award of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/LIND/MED/10/ 2020 dated the 13th day of August, 2020.

No order as to costs is made.



W.P. Dyansobera

Judge

3.8.2021

This ruling is delivered under my hand and the seal of this Court on this 3rd day of August, 2021 in the presence of the respondent but in the absence of the applicant.

Rights of appeal explained.



W.P. Dyansobera

Judge