

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
LABOUR DIVISION

MISC. LABOUR APPLICATION NO. 46 OF 2020

*(Originating from the decision of the Commission for Mediation & Arbitration in
CMA/SHY/287/2018)*

ALLY MUSSA.....1ST APPLICANT
SCHOLASTICA PIUS.....2ND APPLICANT
MTANI LUBELA.....3RD APPLICANT
EMMANUEL NG'AYA.....4TH APPLICANT

VERSUS

EAST AFRICA SPIRIT (T) LIMITED..... RESPONDENT

RULING

18th August & 10th Sept, 2021

MKWIZU, J

Applicants were all employed by respondent who failed to pay them salaries as agreed. This happened on 1/6/2018. They enquired on their salaries where they secured a promise from the respondent that he would pay them when the *welfare* of the company improves. On 1/12/2018 applicant decided to quit the job after failure by the respondent to keep his promise and filed their dispute with the Commission for Mediation and arbitration. At the CMA, applicant filed two forms, CMA Form No. 1 for salary payments and CMA Form No 2 for condonation application because they approached the

Commission after the lapse of the required 60 days period under rule 10 (2) of GN No 64 of 2007.

The commission found for the respondent on the ground that the applicant failed to justify the delay. At page 7, last paragraph of the ruling the CMA it stated t;

"Hivyo waombaji katika maombi haya hawana sababu zozote za msingi za kuchelewa kuwasilisha rufaa hii kama ilivyojidhihirih katika hadidu rejea ya kwanza bali ni uzembe tu"

Discontented, applicants came with this revision challenging the above decision. The application is made under the provision of Rule 24 (1) (a) (b) (c) (d) and (e), 24 (2) (a) (b) (c) (d) (f), 24 (3), Rule 28 (1) of the Labour Court Rules GN. 106 of 2007 and section 94 of the Employment and Labour Relations Act No. 6 of 2004. It is supported by a joint affidavit by the applicants herein.

At the hearing, the applicants appeared in person without legal representation whereas Mr. Paul Kaunda, learned advocate appeared for the respondent. Arguing for the application, applicants generally, faulted the CMA for dismissing their application without affording them the right to be heard.

In his submissions, 1st applicant, Ally Musa stated that the decision by the CMA was given without affording them an opportunity to be heard. He said, they attended the CMA for the first time on 14/12/2018 where the matter was adjourned to 18/1/2019 for hearing but instead of hearing the CMA gave

its ruling on 18/1/2019. 2nd applicant Scholastica Pius subscribed to 1st applicants submissions and added that on 14/12/2018, they were made to explain their problem to the mediator. After that the matter was adjourned to 18/1/2019 where the ruling was delivered without them being heard either on the condonation application or main dispute they had presented at the CMA. The other two applicants also supported the submissions by their fellow 1st and 2nd applicant summarized above.

In response to the applicant. Counsel for the respondent was brief. He said, page 2 of the CMA's decisions indicate clearly that parties were heard before the delivery of the ruling on 18/2/2019. He for that reason prayed for the dismissal of the revision.

The applicant's story in rejoinder changed. At this time, applicant's submissions were detailed than before. It was the applicant's story that they appeared before the CMA three times before the delivery of the ruling on 18/1/2019. And that they informed the Commission that they were not aware of the time within which to file their dispute that is why they were late

After considering the parties submission and court records, I find the issue for determination is whether the Commission was justified to dismissing the applicant's application for condonation. Rule 10 GN No. 64/2007 provides:-

"Rule 10(1) Dispute about the fairness of an employee's termination of employment must be referred to the Commission within thirty (30) days from the date of termination within or the

date that the employer made a final decision or uphold the decision to terminate.

(2) All other disputes must be referred to the Commission within sixty (60) days from the date when the dispute arises." (Emphasis added).

It is not in dispute that applicant's complaint at the CMA falls under the provisions of rule 10 (2) above. The applicants were therefore required to file their dispute within 60 days from the date of the arising of their dispute. From their own affidavit in support of the application for condonation at the CMA, applicants said;

"7. Kwamba mleta maombi kwa niaba ya wenzake wanne (4) wamechelewa kuwasilisha madai yao katika Tume ya Usuluhishi na Uamuzi kwa muda wa miezi mitatu (3) na siku 14"

So it is without doubt that applicants were late in filing their complaint with the commission. The CMA's duty under the given situation was required to see if the applicant have sufficient reasons for the delay. The reason for the delay was that applicants were waiting for the respondent to honor his promises, that he had promised to pay them their salaries but did not do so. This is found in para 7 of the applicant's affidavit in support of the application for condonation at the CMA it was stated thus:

"...sababu ya kuchelewa kuwasilisha mgogoro Tume ya Usuluhishi na Uamuzi ni mjibu maombi kutokueleza ukweli juu

ya malipo ya mishahara na kuwaahidi waleta maombi wawe na Subira wakati hali ya kiuchumi wa kiwanda utakapokuwa mzuri, waleta maombi wakavumilia na kumwamini mjibu maombi lakini mjibu maombi ameshindwa kutekeleza ahadi anazozitoa za kuwalipa mishahara wanayomdai waleta maombi walipoona kuwa mjibu maombi hana nia njema ya kulipa ,ishahara yao, wakaamua kufungua mgogoro wa kikazi Tume ya Usuluhishi na Uamuzi (CMA) ili waweze kulipwa mishahara wanayomdai mjibu maombi”

As stated earlier, the CMA decision was grounded on the reason that applicant failed to justify the delay. The applicant’s complaint in this revision is failure by the mediator to afford them the right to be heard. They initially argued that they filed their application on 14/12/2018 and the matter was scheduled for hearing on 18/1/2019 when the CMA delivered its ruling without hearing them.

I have keenly revisited the CMA’s records. It is true that the applicant’s application was filed on 14/12/2018. On this date, applicants chose 1st applicant as their representative on the matter, they prepared all necessary forms and filled them with the CMA and went ahead to serving the application including the supporting affidavit to the respondent. Respondent’s counter affidavit was filed at the CMA on 19/12/2018 and a reply thereto was filed by the applicant’s representative Ally Musa on 21/12/2018. There is also on the record a copy of a notice of hearing issued

by the CMA on 21/12/2018 for hearing on 9/1/2019. This is after the parties have filed their pleadings.

The record also shows that on 9/1/2019 all parties were in attendance. On what transpired on that date, the original record reads:

"In the Commission for Med & Arb
at Shy

B4 Nnembuka K, (med)

Parties: 9/01/2018

- 1. ALLY ABDALAH MUSSA*
- 2. MTANI THOMAS LUBELLA*
- 3. EMMANUEL L NG'WAYA*
- 4. ROBERT GONZAGA*
- 5. SCHOLASTICA PIUS*
- 6. Janeth Simbakira- for the respondent*

MR. ALLY

*Kwa niaba ya wenzangu tunadai mishahara ya miezi 6.
Tumekuja ili kupata mishahara yetu*

Signature

9/01/2019

M/S Janeth

*Utaratibu walikuwa wanaujua walikuwa wanalipwa kwa
siku but accumulated hawana sababu ya kuchelewa.*

Signature

09/01/2019

Mr. Ally

*Ni kweli anachosema, mshahara ni kwa mwezi sh
200,000/= sababu za kuchelewa ni matumaini ya kulipwa
mambo yakikaa sawa lakini hakutekeleza*

Signature

09/01/2019

Ruling

Itakuwa siku ya tarehe 18/01/2019 saa 8. Mchana

Sign: Nnembuka

9/01/2019"

The applicant's complaint is indefensible. The record above proves that applicant was heard. The ruling given on 18/1/2019 was essentially given after the mediator had given both parties right to be heard.

Apart from the applicant's complaint which I have determined above, there is another complaint in the affidavit that CMA erred in law and fact to require the applicant to account for the delay. In fact, the details in the affidavit in support of the application are confusing. While applicants in para 4 faults the mediator for concluding that the delay was not substantiated alleging that they had adduced genuine reason, in para 7 of their affidavit applicants admit that their reason for the delay was too general to require proof from them.

It should be noted here that, at the CMA, applicants had tabled an application for condonation. For the CMA to allow such application applicants were

required 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. Rule 11 (3) of the GN No. 64/2007 provides categorically that:

"An application for condonation shall set out grounds for seeking condonation and shall include the referring party's submissions on the following:

- a) The degree of lateness;*
- b) The reasons for lateness;*
- c) Its prospects of succeeding with the dispute and obtaining the reliefs sought against other party;*
- d) Any prejudice to the other party; and*
- e) Any other relevant factor."*

And Rule 31 of Labour Institutions (Mediation and Arbitration) Guidelines, GN. 64 of 2007 that;

"The Commission may condone any failure to comply with the time frame in these rules on good cause."

The duty to adduce sufficient reasons for the delay lays upon the applicant and not respondent. Applicants in this matter were required not only to provide sufficient reasons for the delay but also to account for each day of the delay. This wasn't done in this matter. Applicants failed totally to explain

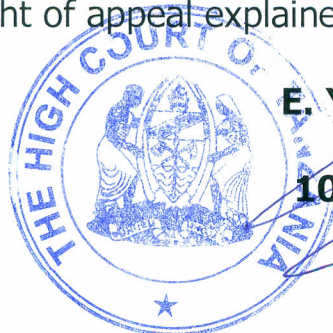
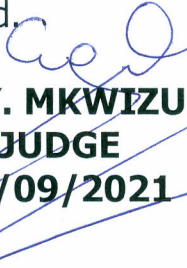
for the delay. I thus find no reason to fault the Mediator 's findings. As a result, the application is dismissed in it's entirely for want of merits. The CMA Award is hereby upheld. Each party to bear own costs.

Order accordingly.

DATED at **SHINYANGA** this **10th** day of **September, 2021.**


E. Y. MKWIZU
JUDGE
10/09/2021

COURT: Right of appeal explained.



E. Y. MKWIZU
JUDGE
10/09/2021