

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
LABOUR APPLICATION NO. 90 OF 2021
(Originating from CMA/ARS/MED/435/2019)

BOSCO RICHARD PHILIP0.....APPLICANT

VERSUS

ASILIA LODGES AND CAMPS LTD.....RESPONDENT

JUDGMENT

06/09/2021 & 18/10 /2021

GWAE, J

Applicant, **Bosco Richard Philipo** filed this application for revision in this court by way of chamber summons supported by a sworn affidavit of one **Juliana A. Mushi**, the learned advocate representing him. In the Commission for Mediation and Arbitration (CMA), the applicant filed an application for condonation on 17th July 2019 whereas as the dispute between the parties arouse on the 27th May 2019.

The Commission through its ruling dated 3rd October 2019 dismissed the applicant's application for want of sufficient cause especially lack of necessary documents to substantiate his assertion his delay or dilatoriness was associated

with his sickness. The decision of the CMA aggrieved the applicant, thus this application for the following reliefs;

1. This Court be pleased to call for the record and exercise its revisional power in the CMA/ARS/MED/435/2019 to ascertain its correctness, legality and propriety
2. An order that the applicant was prevented to refer the dispute within the prescribed time on the sufficient reason.
3. Any other relief (s) this court may deem fit and just to grant

The application was strongly disputed by the respondent through a counter affidavit sworn by her advocate one **Devota Malimi** who stated that, the applicant did not submit truly certified copy of medical report to the Commission.

Despite the respondent's awareness of the existence of this application, he defaulted the appearances in various court's sessions as a result the application was heard ex-parte. However, Ms. Juliana, the learned counsel for the applicant merely prayed for adoption of their affidavit.

I should now embark into whether the learned mediator was justified in holding that the applicant had not demonstrated good cause to warrant the Commission to condone the dispute. Examining the records, I have observed that the applicant's termination was due to his alleged absenteeism at the workplace. It is also clear vide the respondent's letter dated 11th July 2019 titled "Notice of

Revocation letter dated 12th day of June 2019” where it is plainly clear that the respondent was duly notified of the applicant’s illness (“please be informed that the management have gone through all your emails and documentation related to your ill-health”) as well as in the letter dated 27th June 2019 written by Dr. Rugambwa of MOI. Due to the copies of the documents attached to the application for the sought condonation in the Commission and taking into account that *annextures in applications are documents which may be relied upon to form basis of a decision*, I am not therefore convinced if the applicant did not give good cause for his delay. I would like to subscribe my decision in the case of **Oilcom Tanzania vs. Christopher Letson Mgalla**, Land Case No. 29 of 2015 where my learned brother **Dr. Utamwa, J** held that;

“In my thinking however, in construing pleadings, court should also consider annextures attached to them (if any) so as to properly understand the actual disputes between the parties for the purpose of resolving it effectively. The view is based on the fact that, annextures form part of pleadings since they assist in elaborating the material facts pleaded in the pleadings. The broader meaning of pleadings for the purpose of promoting the right of fair trial to parties therefore, should be that, annextures are part and parcel of pleadings”

Worse still in our case, the application for condonation was supported and opposed by the affidavits, thus annextures thereto ought to have been considered

and relied unless the contrary is established rather than saying that the same are not truly certified copies of the medical reports as wrongly stated by the learned counsel for the respondent.

Furthermore, I am of the considered view that, sickness or ill -health as evidenced in the respondent's documents is sufficient ground for extension of time provided that the same is proved to the required standard. It is therefore, cardinal principle, that illness constitutes a sufficient cause to account for decree of lateness in either allowing a party to file an appeal out of time or for extension of time to file a labour dispute out of the prescribed period (after lapse of 30 days for dispute relating to unfair termination and 60 days for other labour disputes) or extension of time within which to file an application out of the time (See judicial precedents in **Kijiji Cha Ujamaa Manolo v. Hote** (1990–1994) 1 EA 240 and **Range Chacha v. Elifas Nyirabu** [1967] HCD 115). Therefore, in this case, the Commission is found to have misdirected itself by not examining the documents so attached to the applicant's application.

In the event, I unhesitatingly find that, the applicant had demonstrated good cause capable to justify the Commission to exercise its discretionary power bestowed to it to condone the dispute. Accordingly, this application is granted. The applicant is given fourteen days **(14)** days within which to file his dispute in the Commission which shall be duly admitted **unlike the usual and unacceptable**

practice of admitting labour disputes which require condonation before extension of time by the Commission.

It is so ordered.




M. R. GWAE
JUDGE
18/10/2021