

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LABOUR REVISION NO. 53 OF 2019

(Arising from Labour Disputes No. CMA/ARS/ARB/67/2013)

HELLEN LUCAS (MRS MEMIR) MOLLEL.....APPLICANT

VERSUS

K.K.K. T DAYOSISI YA KASKAZINI KATI..... RESPONDENT

JUDGMENT

15/9/2021 & 27/10/2021

ROBERT, J:-

The Applicant, **Hellen Lucas (Mrs. Memir) Mollel**, moved this Court to revise and set aside the decision of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/ARS/ARB/67/2013. The application is supported by a sworn affidavit of the Applicant.

Briefly stated, the Applicant was employed by the Respondent as Midwife from 6th April, 1976 and she worked in that capacity until her retirement on 1st January, 2011. Upon retirement, she was not given her retirement benefits according to the Constitution and Guidelines of the Respondent and relevant Laws of Tanzania. After a long unproductive

follow up on her benefits, she resorted to refer her complaint to the CMA. Since she was late to file her complaint within the time prescribed by the law, she filed an application for condonation which was determined in favour of the Respondent herein. Being dissatisfied with the said award, she registered the present application in order for the court to revise the CMA award.

At the hearing of this application Messrs **Sylvester Kahunduka** and **Gospel Sanava**, learned counsel appeared for the Applicant and Respondent respectively. The hearing proceeded orally.

Submitting in support of the application, Mr. Kahunduka referred the court to the two grounds raised in the Applicant's affidavit in support of this application.

- 1. That, the Honourable Arbitrator erred (sic) in fact and in law by relying only on one factor in reaching his decision on application for condonation.*
- 2. That, the Honourable Arbitrator was misdirected himself in deciding the matter which was not properly brought as it had a defective affidavit.*

Highlighting on the first ground, Mr. Kahunduka submitted that, in deciding the application for condonation, Hon. Arbitrator based his decision on one factor only namely, the reason for the delay, while Rule 10 (3) of the GN No. 64 of 2007 provides a number of factors to be

considered. He referred the court to the case of **Catherine John vs leopard Tours Ltd**, Labour Revision No. 85 of 2015 (unreported) cited in a case of **Daniel Mramba vs Hodi (Hotel Management) Company Ltd – Mount Meru Hotel**, revision no. 59 of 2019 (unreported) where the court held that the Arbitrator failed to exercise his discretion by taking into consideration only a reason for lateness in reaching into a decision. Thus, he implored the court to find that the arbitrator erred by not considering other factors.

Coming to the second ground, Mr. kahunduka informed the court that, Rule 29 of GN No. 64 of 2007 requires an application for condonation to be supported with a Notice of Application and an Affidavit. He maintained that, at the CMA Hon. Arbitrator raised an issue that the application for condonation was defective as the jurat for attestation did not indicate who identified the deponent to the commissioner for oath. Further to that the jurat did not indicate where the attestation took place and the contact and title of the commissioner for oath. In spite of the mentioned defects the Arbitrator proceeded to decide the application instead of striking it out for being defective. He submitted that the arbitrator having found that the application was supported by a defective affidavit he should have struck it out instead of

entertain an incompetent application. He moved this court to find the application before the CMA incompetent, nullify the proceedings of CMA and allow the Applicant to file her dispute at CMA out of the prescribed time.

Opposing the application, in respect of the second ground, Counsel for the Respondent submitted simply that, the CMA decision did not indicate that the application was dismissed based on the defective affidavit. It was dismissed based on the grounds submitted by the Applicant.

On the first ground, Mr. Mollel submitted that, Rule 31 (1) of **Labour Institutions (Mediation and Arbitration Guidelines)** G.N. No. 67/2007 allows the arbitrator to extend time where there is a good ground for doing so. He maintained that, in the present application the Arbitrator took into consideration Form no. 7 and the affidavit supporting the Applicant's application where the Applicant adduced only one reason for delay to file her dispute at the CMA which the CMA took into consideration in determining the Application.

On the basis of the reasons stated in his response he prayed for this matter to be dismissed for lack of merit.

In rejoinder submissions, Mr. Kahunduka reiterated his argument that the Applicant's application at the CMA was incompetent and it ought to have been struck out.

From the rival arguments of both parties and the records of this matter, the central issue for determination is whether or not the CMA was justified in deciding and dismissing the application for condonation on merit.

Upon perusal of the impugned award, it is apparent at page 6, third paragraph that, the CMA dismissed the application for condonation due to lack of good cause as well as the defects noted in the affidavit supporting the application. The relevant paragraph reads that:

"Kutokana na kwamba Tume imejiridhisha mleta maombi hakuwa na sababu za msingi za kuchelewa kwake kuwasilisha madai yake hapa Tume, vilevile kufuatia mapungufu ambayo yameonekana katika kiapo cha mleta maombi kitu ambacho kwa ujumla wake umeharibu maombi yote ya mleta maombi.

"Ni kwa misingi hiyo basi Tume inaalazimika kuyatupilia mbali maombi ya muda wa ziada yaliyowalisilishwa na mleta maombi (application for condonation)..."


As rightly argued by the learned counsel for the Applicant, the Hon. Arbitrator's having made a finding that the affidavit was in support of the application was defective, he was supposed to strike out the

application for being incompetent before the CMA, without determining the application on merit. In the circumstances, I find and hold that, the CMA decision having resulted from an incompetent application is bad in law.

Consequently, I hereby quash and set aside the proceedings and decision of the CMA dated 26/9/2014. The Applicant is allowed, if she so wishes, to file another application for condonation at the CMA to be determined by another competent Arbitrator.

It is so ordered.




K.N. ROBERT
JUDGE
27/10/2021