

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

LABOUR DIVISION)

AT ARUSHA

APPLICATION FOR REVISION NO. 94 OF 2020

(Original Dispute No. CMA/ARS/ARS/272/20)

MARTHA JACKSON NNKOAPPLICANT

Versus

SAKURA GIRLS SECONDARY SCHOOL..... RESPONDENT

RULING

21st October, 2021 & 2nd December 2021.

MZUNA, J.:

In this application, Martha Jackson Mnko is seeking for revision of the Commission for Mediation and Arbitration (CMA) ruling which denied her the application for condonation for late referral of her employment dispute.

The background story is that the applicant was employed as a cook by the respondent Sakura Girls Secondary School. Her employment contract was terminated on 31st March, 2020. She alleged that there was breach of contract and therefore claimed for salary arrears of Tshs 6,104,615/-

whereas the respondent said her employment contract came to an end and that there was a notice of non-renewal of the employment contract.

The CMA in dismissing her application for condonation found that the notice of termination was issued on 24th February 2020 while her application for condonation was filed on 11th June 2020 almost after a lapse of 55 days. It found that she failed to account for each day of the delay. Still minded, she has now approached this court so as to revise that ruling.

Hearing of the application proceeded by way of written submissions. The applicant was ably represented by Mr. Herode Bilyamtwe, Personal Representative whereas the respondent was represented by Mr. Fredrick Musiba, Advocate from Fremax Attorneys.

The main issue is whether there is good cause for the delay?

Reading from paragraph no. 7 and 9 of the applicant's affidavit and the submissions by Mr. Herode Bilyamtwe, the applicant says it was wrong to hold that she failed to account for every day of the delay while mechanism of labour law states the degree of lateness not to account for every day of delay. That the ruling was based on speculative grounds contrary to the law and evidence before it. The case of **Catherine John v. Leopard Tours**

Ltd, Revision No. 85 of 2015, High court Labour Division at Arusha (unreported) was cited to support the argument. Mr. Bilyamtwe urged the court to stick to the degree of lateness instead of failure to account for each day of the delay which does not apply in labour cases. He touched as well on the defects of the counter affidavit. He urged this court to allow this application for the interest of justice and safeguard constitutional principles of natural justice.

On the respondent's part, starting with the counter affidavit, she says she failed to show any reasonable ground to extend time to file her case before the CMA and therefore the CMA ruling is logically sound and valid. That there was a delay for 55 days which was not accounted for. The learned counsel invited this court to stick to the law especially Rule 11 (3) of the Labour Institution (Mediation and Arbitration) GN 64 of 2007 (herein after **GN 64 of 2007**) which provides five principles. On account of the above reasons, he urged this court to dismiss the application. There was no rejoinder submission.

Reading from the rival submissions from both parties, the question remains on good cause which prevented the applicant from filing her revision

within 30 days as provided for under Rule 10 (1) (2) of **G.N No. 64 of 2007** whether it was shown?

I am told it is not a requirement under labour laws to account for each day of the delay. To this I tend to agree with Mr. Musiba, the learned counsel who brought to the attention of this court the case of **Ezekiel Kiango v. Lake Oil Co. Ltd**, Revision No. 369 of 2019, High court Labour Division at Dar es salaam (unreported). In that case, Aboud, J cited the Court of Appeal case of **John Mosses and Three Others vs. The Republic**, Criminal Appeal No. 145 of 2006 when quoting the position of that court in the case of **Elias Msonde vs. The Republic**, Criminal Appeal No. 93 of 2005 where it was stated that:-

*"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, **all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part**". (Underscoring mine).*

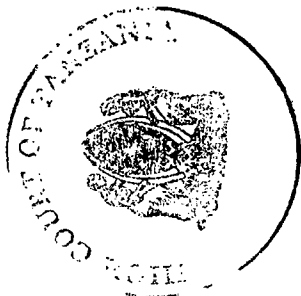
Based on the above holding of the Court of Appeal, the applicant cannot say she has no duty to give explanation on her delay for the 55 days. The logic is simple and it is not far to seek in view of what was held in the


case of **Tanzania Fish Processors Ltd. vs. Christopher Luhangula**, Civil Appeal No 161/1994, CAT at Mwanza (unreported) also cited in the case of **Ezekiel Kiango v. Lake Oil Co. Ltd** (supra) that:-

"Limitation is there to ensure that a party does not come to court as and when he chooses".

The argument that she failed to lodge her application within time simply because:- **"nilikuwa nafuatilia barua yangu ya kusitisha ajira pamoja na mafao yangu ambayo hado sasa sijapata"** which literally means the applicant was late due to her follow up of her letter which terminated her and her terminal benefits which are also stated in CMA F2, with due respect, cannot constitute good cause for the delay. There was negligence on her part otherwise no reasonable grounds have been adduced for the delay. If I can consider the degree of lateness, 55 days' delay points that she was not serious in pursuit of her claim for unfair termination. The alleged defects on the counter affidavit were not raised as preliminary points.

The ruling of the CMA cannot be faulted. The application lacks merit and I proceed to dismiss it with no order for costs.




M. G. MZUNA,
JUDGE.
2/12/2021.

