

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOSHI DISTRICT REGISTRY)**

AT MOSHI

LABOUR REVISION NO. 10 OF 2021

(Arising from the decision of the Commission for Mediation and Arbitration of Moshi in Labour
Application No CMA/KLM/MED/232/2020)

MASHAKA LUNYOMBE.....1ST APPLICANT

JOSHUA MAIMU.....2ND APPLICANT

VERSUS

NAKI SECURITY COMPANY LTD.....RESPONDENT

RULING

30/08/2021 & 09/11/2021

MWENEMPAZI, J:

The applicants herein have filed an application before this court under the provisions of section 91(1)(a)(b), 91(2)(a)(b)(c), 94(1)(b)(i) of the Employment and Labour Relations Act, No.6 of 2004 and Rule 24(1), 24(2) (a)(b)(c)(d)(e) of the Labour Court Rules, 2007 No.106 of 2007. In the application the applicants have prayed for an order of this court call for and examine the record of the proceeding of Commission for Mediation and Arbitration of Moshi in Application No. CMA/KLM/MOS/MED/232/2020 and satisfy itself as to the correctness, legality and or propriety of the award thereto. The applicants have also prayed for an order of this court to the Commission for Mediation and Arbitration (CMA) to hear the matter on merit.



The application is accompanied by an affidavit jointly affirmed by the applicants. The respondent disputed the application and filed a notice of opposition to the effect that the application be dismissed as there is no ground to revise and quash the award of CMA. Together with the notice of opposition the respondent also filed a counter affidavit to that effect.

On the date set for hearing of the application the applicants were all present in person and unrepresented while the respondent was represented by Mr. Wilhad Kitaly, learned advocate. By consent of both parties, leave was granted for hearing to proceed by way of written submission.

Submitting in support of the application the applicants briefly narrated the background of the matter giving rise to the present application. They submitted that they were employed by the respondent as security officers and that they did their job well and the employer paid their salaries. The dispute between them and the respondent emerged when they started claiming to be paid for extra hours of work. Initially the respondent promised to pay them but then did not fulfil the promise; failure of which made the applicants file a dispute at the (CMA). After instituting their complaint before the (CMA) they lost their jobs because their contracts were not renewed. That after hearing both parties the CMA decided the matter in favour of the respondent. That the applicants were discontented with the decision of the arbitrator which decided that the applicants did not show a good cause for their matter to be heard out of time.

It was the applicants' submission that in determining the dispute the honorable mediator gravely misdirected herself by ignoring the evidence

adduced by the applicants and leaning on the unsubstantiated case of the respondent.

In his response to the submissions by the applicants, the respondent's counsel also narrated the background of the matter and stated that the applicants filed their dispute together with an application for condonation. That in their application the applicants alleged that their dispute occurred in the period between 6th February 2018 and 1st July 2019. The learned counsel submitted further that based on records the applicants claim was only for unpaid overtime. It was Mr. Kitaly's submission that according to Rule 10(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 the time limit for filing a dispute based on other claims apart from employee's unfair termination is 60 days from the date when the dispute arose. He stated further that a dispute lodged after the said period cannot be entertained by the CMA unless the applicant adduces good cause for delay in the application for condonation and such application is allowed.

Submitting further the learned counsel stated that the Honourable Arbitrator was right in dismissing the applicant's application for condonation because the respondent did not adduce good cause for delay as required under Rule 31 of the ***Labour Institutions (Mediation and Arbitration) Rules, GN. No.64 of 2007.***

Mr. Kitaly also submitted that the applicants failed to advance sufficient reasons to warrant extension of time instead they labour much of time in discussing the merit of the case. He also argued that the allegation by the applicants that the employer promised to pay them was baseless and



unfounded since there is no evidence to prove there was such promise or any communication between the applicants and the respondent. He contended that in law that was not a genuine and sufficient cause for the application for condonation to be granted. Referring to a number of cases including the case of **Barnabas M. Mpangala vs. TANESCO Misc. Labour Application No. 448 of 2019** (unreported) and the case of **Juma Masunga Mayennga vs. Kembo Matulanya Mpagulwa, Labour Revision No. 56 of 2018** (unreported) the learned counsel submitted that promise to pay by the employer cannot justify delay.

While concluding his submission the learned counsel submitted that limitation of time is a crucial aspect in the dispensation of justice and that it is not a procedural issue rather a statutory requirement which goes to the root of the court's jurisdiction. He also added that time is material point in speedy administration of justice and therefore limitation is there to ensure that party do not go to court as when chooses.

In the end Mr. Kitaly prayed for the application to be dismissed for lacking merit. He contended that the applicants failed to adduce genuine reasons for lateness of more than 1098 days.

I have examined the records from the (CMA) and also read the submissions from both parties for and against the application. The issue for determination is whether this application for revision has merits. The grounds and reasons for the present application were set forth in the applicants' joint affidavit. Under paragraph 6 of the affidavit the applicants alleged that in determining the dispute the mediator ignored their evidence and inclined toward the

unsubstantiated case of the respondent. Also, in the statement of legal issues the applicants stated that the trial Commission erred in law and fact for failure to evaluate and give consideration to the evidence, grounds and reasons presented by the applicants.

The applicants' complaints of unpaid overtime before the CMA were instituted out of time required by the law which is 60 days and for that reason their application was accompanied with CMA F.2 which is an application for condonation. In the application form for condonation the applicants provided that the reasons why the dispute was referred late was due to endless promises by the respondent to solve the matter and late hours, shifts and harsh regulations by the respondent. I noted from the records at page 4 of the typed proceedings that during hearing of the application at the CMA, the applicants did not explain as to why they delayed in filing their complaints rather they focused in explaining their main grievance which was nonpayment of extra hours of work.

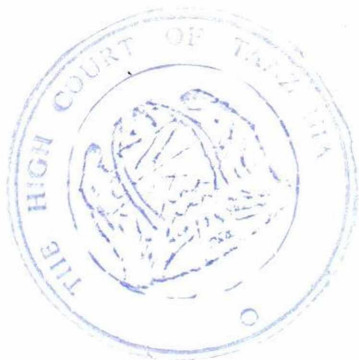
When determining the application as seen on pages 5 and 6 of the ruling, the CMA was of the view that the applicants failed to give evidence of reasons as to why they could not institute the application timely. Based on what is on record, I completely agree with the CMA decision in not awarding the application. Therefore, the allegation by the applicants that the CMA did not consider or rather failed to evaluate the evidence, grounds and reasons advanced is unfounded because there was no such reasons or grounds to be considered. The law is very clear as provided for under Rule 11(3) of the Labour Institutions (Mediation and Arbitration) Rules, 2007.

*An application for condonation **shall set out grounds for seeking condonation and shall include the referring party's submission on the following:** -*

- a) The degree of lateness*
- b) The reason for the lateness*
- c) Its prospects of succeeding with the dispute and obtaining the relief sought against other party*
- d) Any prejudice to the other party and*
- e) Any other relevant factors"*

Based on the above provision of the law regarding condonation, and considering evidence on record I agree with the CMA finding that the applicants' reasons for delay were not justifiable and therefore this application lacks merit and it is hereby dismissed.

DATED and DELIVERED at Moshi this 9th day of November, 2021.




T. MWENEMPAZI
JUDGE
09/11/2021