

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LABOUR REVISION NO. 95 OF 2020

(Original CMA/ARS/ARS/271/20)

ERNEST LOITANYWAKI LUKUMAY APPLICANT

VERSUS

SAKURA GIRLS SECONDARY SCHOOL RESPONDENT

JUDGMENT OF THE COURT

10/10/2021 & 13/12/2021

GWAE, J

The applicant was aggrieved by the ruling of the Commission for Mediation and Arbitration for Arusha at Arusha (CMA) dismissing the applicant's application for condonation. The basis for CMA's ruling dated 4th September 2020 was that the applicant did not substantiate that he was served with the notice of termination and terminal benefits later than on the date indicated in the letter as well as absence of prospects of success and demonstration of any other relevant factor.

Following the CMA's decision, the applicant has brought this application under section 91 (1) (a) and (b) 91 (2) (a) section 94 (1) (b) of the Employment and Labour Relations, Act No. 6 of 2004 (ELRA) and Rule 24 (1), (2) (a) (b) (d)

(e) (f), 24 (3) (a) (b) (c) (d) and (e) of Labour Court Rules, 2007 praying for an order of the court revising and setting aside the ruling of the CMA and any other relief this court deems fit and just to grant.

Carefully examining the CMA's record, parties' affidavits as well as the competing written submissions filed by the parties' representatives, it goes without saying that, the respondent issued a notice of termination on the 24th February 2020 informing the applicant that his employment would come to an end on the 31st March 2020 and the applicant filed his application for condonation on the 11th June 2020. That means the applicant's delay was of 41 days if he was to wait for the date of termination, excluding 30 days within which he could make a referral of his dispute or 45 if he was to take necessary action from the date on which he was issued with termination letter.

As the applicant had neither proved when he was served with the notice of termination nor did he substantiate when he was served with the termination letter. Had the applicant been able to demonstrate when he was served with the termination letter if he really made follow ups of being served with the same, the decision of the CMA would be subject to being revised by the court. It follows therefore the applicant had failed to account for delay of each day since 1st May 2020 to 11th June 2020. I would like to have my finding been subscribed in the following judicial decisions; in **Ramadhani J. Kihwani vs. TAZARA** Civil

Application No. 401/2018 (Unreported-CAT), **Mtungire vs. The Board of Trustees of Tanganyika National Parks t/a Tanzania National Parks**, Civil Appeal No. 66 of 2011 (unreported) and **Bashir Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported-CAT) where it was correctly held that even the single day has to be accounted for otherwise there will be no pint of having rules prescribing periods within which certain steps have to be taken. It is this legal position; I find no reason to disturb the holding of the mediator in this aspect.

Apart from the applicant's failure to adduce sufficient reason as required by the law or account for the days of his delays, I have also bothered to look or assess if there is any apparent and important legal issue as far as the applicant's termination is concern and found none. I am saying simply because reason for termination is plainly provided in the notice of termination, being the applicant's age (65 years old) and above all the contract of employment between the parties was specific type of contract. Had the prospects of success of the applicant's intended dispute and any other relevant factors should the dispute be condoned being observed by the court, I would adhere to the principles propounded by this court in the case **Catherine John vs. Leopold Tours**, Revision No. 85 of 2015 (unreported), cited by the applicant's representatives.

The contention by the applicant's representative that the mediator did not consider other factors as envisaged under Rule 11 (3) of GN. No. 64 of 2007 is unfounded since it is depicted at page 5 of the ruling that other factors were accordingly considered. More so, the assertion that the application for condonation was eligible of being granted on the ground that, the same went unopposed is not backed by the record since the respondent's filed his counter affidavit on the 29th July 2020 nevertheless his written submission was precisely expunged as the same was filed out of the time without leave.

Similarly, it is my considered view, even if the application for condonation is not contested yet that alone does not guarantee grant of extension since the applicant was still under duty to give sufficient cause for his delay

Basing on the foregoing reasons, this application is thus dismissed with no order as to costs. The decision of the CMA is consequently affirmed.

Order accordingly


M.R. GWAE
JUDGE
13/11/2021

Court: Right of appeal to the Court of Appeal fully explained




M.R. GWAE
JUDGE
13/11/2021