

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT DODOMA**

REVISION APPLICATION NO. 13 OF 2020

(Arising from the Award of the Commission for Mediation and Arbitration in MGOGORO
WA KAZI NO. CMA/SGD/27/2019) (Hon. Stanslaus H)(Mediator)

BETWEEN

**1. TATU ALLY MUNA
2. DORKASY GUNDA JOSEPHATAPPLICANTS
3. UYANJO JOSEPH MJENGI**

VERSUS

CHAMA CHA WALIMU TANZANIA RESPONDENT

17/12/2021 & 24/12/2021

RULING

MASAJU, J

The Applicants, Tatu Ally Muna, Dorkasy Gunda Josephat and Uyanjo Joseph Mjengi, the 1st, 2nd and 3rd Applicants respectively, had been employed by the Respondent, Chama cha Walimu Tanzania, up to when their employment severally was unscrupulously terminated allegedly for want of academic qualifications. There was a Collective Bargaining Agreement between the Applicants and the Respondent (Employer) that all labour disputes and procedures thereof shall be dealt with in accordance with the Respondent's terms of service. The aggrieved party thereof shall lodge his

complainant with the Employees Respondent's branch. When there is no compromise, the national laws shall be applied accordingly. That is to say, institution of labour disputes in labour institutions (courts) could only be possible when the amicable settlement of the dispute fails.

In the instant dispute the parties unsuccessfully spent 350 days in pursuit of amicable settlement of the dispute. So, by the time the Applicants filed their labour dispute with the trial tribunal, the Commission for Mediation and Arbitration (CMA), Singida Chambers, vide Labour Dispute No. CMA/SGD/27/2019 against the Respondent, they were already late. The trial tribunal declined the Applicant's Application for condonation allegedly for want of sufficient or good cause thereof upon relying on **Elias Mugasa & 7 others V. Singida Grumet** (HC-Labour Division) Revision No. 38 of 2018 that every law enacted by parliament must be obeyed to the letter. No matter how unreasonable or just it may be, nevertheless the judges have no option must apply the statute as it stands. Hence this Application for Revision in the Court against the said decision of the trial tribunal.

The Applicants' Chamber Summons Application has been made under section 91(1) (a) & 91 (2) (c) of the Employment and Labour Relations Act [Cap 366] and the Rule 24(1), 24(2) (a) (b) (c) (d) (e) (f), 24 (3) (a) (b) (c) (d) and Rule 28 (1) (a) (b) (c) (d) (e) of the Labour Court Rules, 2007, supported by the Affidavit sworn by Nkumuke Simon Yongolo, their learned counsel. They pray the Court to invoke its revisional jurisdiction to call for and examine the records of the proceedings before the Commission for Mediation and Arbitration for Singida in Labour dispute No. CMA/SGD/27/2019 for purpose of satisfying itself as to its legality, correctness, rationality and propriety of the decision delivered by the Mediator on the 28th day of February, 2020 concerning the Application for

condonation. That, the Court revise and set aside the decision/award and order of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/SGD/27/2019 delivered on the 28th day of February, 2020 and proceed to condone the delay by the Applicants herein to lodge the dispute to the CMA for there is good cause for that.

The Affidavit in support of the Application, *inter alia*, gives the background and the reasons for the Application and the legal issues involved in the impugned decision of the trial tribunal.

The Respondent contests the Application. There is a Counter Affidavit sworn by Elina K. Simon, their learned advocate, to that effect. The Counter Affidavit gives the reasons for contesting the Application.

When the Application was heard in the Court on the 7th day of December, 2021, Mr. Nkumuke Simon Yongolo, the learned counsel appeared for the Applicants. Whilst Ms. Elina K. Simon, the learned counsel, appeared for the Respondent. The parties argued for, and against the Application alongside their averments in the Affidavit and Counter Affidavit accordingly. They adopted the said Affidavit and Counter Affidavit respectively to form part of their submissions in support of, and against the Application in the Court.

The Applicants prayed the Court to consider the grounds for the Application and hold that they had sufficient reason or good cause for delay to file their labour dispute before the trial tribunal. They ultimately prayed the Court to grant the Application accordingly.

The Respondent prayed the Court to sustain the trial tribunal's decision, for the Applicants were late in filing their labour dispute therein

with no good cause. The Respondent therefore prayed the Court to dismiss the Application for want of merit. That is all by the parties.

The Application is bound to succeed on the following reasons thus;

There is a constitutional right to be heard so provided for in Article 13(2) (6) (a) of the Constitution of the United Republic of Tanzania, 1977 [2005 Edition] (The Constitution). In order to give effect the right to be heard and other relevant legal remedies, the procedural laws, including labour procedural laws, provide for time line and condonation of time to be heard so that a person should be heard accordingly before being condemned. That was the essence of Rules 10,11,& 29 (1) (4) (d) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 (GN No. 64 of 2007). The Employment and Labour Relations Act, [Cap 366 RE 2019] in its section 3(f) gives effect to the provisions of the constitution of the United Republic of Tanzania in the matters of employment and Labour relations.

The Constitution of the United Republic of Tanzania in Article 107 A (2) (d) provides for promotion and enhancement of dispute resolution among persons involved in the disputes. The parties have customized dispute resolution in their Collective Bargaining Agreement to that effect. The Applicants delayed to lodge their labour dispute in the trial tribunal because they were engaged in the protracted but failed negotiations for the would be amicable settlement of the dispute. Had the Applicants gone to the trial tribunal right away upon the rise of cause of action, they still could have been accused of violation of the Collective Bargaining Agreement. The said should not be used by the Respondent as a delaying technique intended to drag the Applicants to the law of limitation on institution of labour disputes thereby denying them the right to be heard contrary to the Constitution of

the United Republic and the parties own Collective Bargaining Agreement on amicable settlement of disputes.

These two reasons, were sufficient and good cause for the trial tribunal to grant the application by the Applicant for condonation of time to lodge the labour dispute herein accordingly given the fact that the law sanctions condonation.

The courts in the United Republic administer justice by interpreting the laws which are in conformity with the Constitution of the United Republic as per evidence adduced by the parties. In the course of discharge of judicial functions, the courts therefore reason objectively. They do not act mechanically otherwise there would have been no judicial independence or judicial discretion and the Judiciary couldn't have been the authority with final decision in dispensation of justice. In the United Republic the laws that violate basic rights and duties as provided for in the Constitution are subject to judicial scrutiny pursuant to Article 30(3) (5) of the Constitution of the United Republic accordingly.

Indeed, in regard to employment and labour relations, Rule 55 (2) of the Labour Court Rules, 2007 provides that in the exercise and performance of its powers and functions, or in any incidental matter, the Court may act in a manner that it considers expedient in the circumstances, to achieve the objects of the Employment and Labour Relations Act and, or the good end of justice.

That said, the meritorious Application is hereby granted accordingly. The trial tribunal's decision/award and the order in Labour Dispute No. CMS/SGD/27/2019 dated the 28th day of February, 2020 is hereby revised, quashed and set aside accordingly on the good cause shown by the

Applicants. The Applicants' delay in lodging the dispute against the Respondent is hereby condoned accordingly. The labour dispute, if any, between the parties in the trial tribunal shall be heard *inter partes* accordingly. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

24/12/2021