

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MOSHI

LABOUR REVISION NO.33 OF 2021

(Originating from Labour Dispute No. CMA/KLM/SIH/M/104/2021 of the Commission for Mediation and Arbitration of Kilimanjaro at Moshi.)

FALESI BENJAMIN SANGA APPLICANT

VERSUS

TANBREED POULTRY LTD..... RESPONDENT

JUDGMENT

12/4/2022 & 31/5/2022

SIMFUKWE, J

The Applicant Falesi Benjamin Sanga filed the instant application after being aggrieved with the ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/KLM/SIH/M/104/2021 of Moshi dated 6th August, 2021. The application was filed under **Section 91 (1)(a) or (b), Section 91 (2) (a) or (b) or (c) and Section 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004, Cap 366 R.E 2019; read together with Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f), 24(3) (a) (b) (c) and (d) and Rule 28 (1) (a) (b) (c) (d) and (e) of the Labour Court Rules, GN No. 106 of 2007.**




The Applicant prayed for the following orders:

- a). *That this Honourable Court be pleased to call for and examine the record of the proceeding of Commission for Mediation and Arbitration of Moshi in CMA/KLM/SIH/M/104/2021 and satisfy itself as to correctness, legality and/or propriety of the Ruling thereto.*
- b). *This Honourable Court to order the Commission for Mediation and Arbitration (CMA) to determine the matter on merit.*
- c). *Any other order as the Honourable Court deems fit and just to grant*

The application was supported by an affidavit sworn by the Applicant himself which was contested by the counter affidavit sworn by Praygod Jimmy Uisso, learned counsel for the Respondent.

The background of the dispute is that the Applicant and the Respondent had employer-employee relationship since 1st March 2018 working in the poultry project as poultryman. On 20/7/2020 the applicant was terminated from employment. The Applicant instituted an application for condonation for late referral of a dispute to the Commission. However, the same was dismissed. Aggrieved with the ruling of the CMA, the applicant filed this application for revision.

When the matter was called for hearing the same was ordered to proceed by way of written submissions since the applicant was unrepresented, while the Respondent enjoyed the service of Praygod Jimmy Uisso, learned counsel. Both parties complied to the schedule.



The Applicant prayed to adopt his notice of application and affidavit to form part of his submission. The applicant submitted among other things that; the power to extend time is vested as a discretionary power to the court, and the decision maker can either grant or deny an application for extension of time. That, it is trite law that the discretionary powers are to be used judiciously that is to say; as a decision maker exercising such discretionary powers, should adhere to the principles of natural justice to ensure that every party is given the right to be heard and to make sure that fair trial is conducted.

The applicant also argued that on 20/7/2020 he was terminated from his employment unfairly through a letter which he received on 5/8/2020 without any justifiable reasons. The applicant stated that he worked with the respondent for more than two years without committing any misconduct. The conflict between the parties started after the Applicant requested for four days leave which was granted. While on leave, his daughter passed away. The information of death was communicated to the Respondent's Manager one Lemijius Kahamba through a phone call. That, the applicant was allowed to stay and finish all the burial procedures without specifying returning time.

The applicant submitted further that he returned at work on 22/7/2020, and received verbal complaints from the Respondent that he had absconded from work and did not return on a specific date. The applicant was then terminated and signed the termination letter on 5/8/2020.

It was also stated by the applicant that he did not file a complaint before the CMA until on 18/6/2021 as shown in the records thus, according to the law, he was late hence application for condonation.



It was the applicant's contention that his claim is on unfair termination and the reason to that termination adds weight as to why the Commission should be pleased to grant leave and hear this matter beyond the time prescribed by the law.

Submitting on the reason for the delay, the applicant argued that the believable promises that were given to him by the Respondent made him to delay in filing the dispute within the prescribed time. That, the respondent agreed to pay all his dues by requiring him to bring the death certificate of his daughter for him to be paid all his terminal benefits. Therefore, the applicant did not bother to file the complaint before the CMA. The applicant was of the view that, it is correct to say that at that time there was no dispute.

The applicant submitted further that, although he got the death certificate and supplied the same to the respondent yet, he did not pay him. He made several follow ups to the Respondent's management to get his payment but the respondent did not fulfil the promises. Hence, the applicant was out of time.

The applicant continued to submit that he communicated verbally with the respondent's management several times without any positive feedback. However, on 5/10/2020 the Applicant made follow up at the Respondent's office and the Respondent promised him to pay all his entitlements. The applicant waited for the payment as promised for a month. That, on 5/11/2020 the Applicant went again to the Respondent's office but he was not given positive answer. On 19/04/2021 he decided to go to the District Commissioner complaining about the matter; the respondent was summoned but he denied the Applicant's claims.



The applicant cited the case of **Karibuel J. Mola vs Tanzania Zambia Railway Authority, Labour Revision No. 780 of 2019**, which held that:

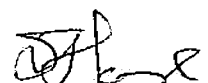
"I have careful (sic) examined the Record and I am of the view that, counting on each day of delay should not be imposed as a mathematical calculation. All what is required is for the Applicant to prove before the court that, he was prevented by a serious event or act to initiate the matter at the required time."

The applicant thus stated that the respondent's act of promising to pay him his entitlements prevented him to file his dispute on time since he relied on those promises in order to protect the Employer-employee relationship with good intention believing that the matter could be solved amicably. However, that did not bring any positive result to the Applicant. Thus, the applicant urged this court to extend time for him to file his dispute out of time.

The applicant also referred the court to the case of **Mobrama Gold Corporation vs Minister of Energy & Minerals and 2 Others [1998] TLR 425**, which held that: -

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case, as the Respondents delay does not constitute a case of procedural abuse or contemptuous default and because the Applicant will not suffer any prejudice, an extension should be granted."

[emphasis is supplied]



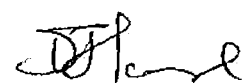
It was the opinion of the applicant that if the application will not be granted for him to file his dispute and to be heard on merit then, he will not get his rights pursuant to the law, since this matter will not be heard on merit as it is based on unfair termination.

The applicant insisted that the right to be heard is not only a principle of natural justice but also enshrined under **Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977**, and has been discussed by the court in several cases.

It was the applicant's argument that if the application for extension of time will not be granted then it will lock his right to be heard hence breach of his Constitutional right and principles of natural justice. He cited the cases of **Rukwa Auto Parts and Transport Ltd Vs. Jestina George Mwakyoma, Civil Appeal No. 45 of 2000** and **Sadiki Athuman vs the Republic [1986] TLR 235** to cement on the right to be heard.

The applicant commented that this court being the body responsible for dispensation of justice, it should do away with legal technicalities intended to impede dispensation of justice. He cemented his argument by quoting **Article 107A (2) (e) of the Constitution** (supra)

The applicant underlined that this court being court of equity should not be tied by the technicalities but should ensure that equality, fairness, and justice are adhered to. It was the applicant's prayer that this court should grant this application so that the claims of the applicant can be dealt with by the commission on merit. The applicant was of the view that if this application is not granted, it will be to the peril of the applicant as his rights will not be determined. He added that, granting this application will



be advantageous to both parties, since they will get an opportunity to be heard on merit.

In reply, the respondent's advocate adopted his counter affidavit to form part of his submission.

The learned advocate for the respondent submitted that the reasons for the delay to file the case on time before the CMA was due to unfulfilled promises from the Respondent's Management. He referred at page 2, 2nd paragraph of the written submission of the applicant. In the alternative, Mr. Uisso argued that the law is very clear; that the person who applies for extension of time (condonation) within which to file his case/dispute not only has to show good grounds and reasons, but also has to explain categorically day by day of his degree of lateness. The learned advocate condemned the applicant for failure to adhere to that principle which made his application to be dismissed. That, during the hearing before the CMA, the applicant did not adduce any single evidence to show any communication with the Respondent to prove his delay to file his case in accordance with the laws.

The learned advocate referred to the case of **Messi Rogers Kimei Vs. Motel Sea View, Revision case No. 14 of 2013, (unreported)** which at page 3, 3rd and 4th paragraph it was stated that:

"Second, a party cannot justify delay by merely alleging possibility of amicable settlement without showing any basis that such a possibility existed. Without facts indicating basis for entertaining belief in such possibility the time of limitation remains to be that provided by law, namely, when the employer made a final decision to terminate. In the result of



Page 7 of 13

what I have stated above, I find this application unmerited, dismiss it and confirm the impugned CMA decision."

Mr. Uisso also supported his arguments by citing the case of **Philipo Katembo Gwandumi vs. Tanzania Forest Services Agent and Permanent Secretary, Ministry of Natural Resources and Tourism, Revision Case No. 891 of 2019**, at page 9 it was held that:

*"It is also a tenet principle of law that, in application for extension of time a party should account for each day of delay. This is the position in numerous decisions including the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (unreported)** the Court of Appeal held that; I quote" delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*

The learned advocate also referred at page ten (10) of the above cited case, where the Hon. Judge stated that:

"On the basis of the above discussion, I have no hesitation to hold that the Applicant had no sufficient cause for delay and has failed to account for each day of delay. I find no need to fault the Arbitrator decision, I thus up hold the same."

Mr. Uisso also referred to page 2 of the applicant's written submission where the applicant said that he went to the District Commissioner to complain about the matter and that the respondent was summoned to appear but he denied the applicant's claim. The learned advocate joined

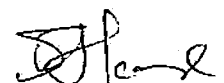
hands with the Hon. Arbitrator that the act of the Applicant to go to the District Commissioner to complain on his employment issues against the Respondent cannot be good ground to grant condonation since it was not the proper forum in accordance with the labour laws. He added that the **Employment and Labour Relations Act** (supra) has clearly shown ways to follow in referring the dispute before the CMA.

It was Mr. Uisso's argument that the Mediator correctly dismissed the applicant's application for condonation because the Applicant did not adduce good reasons for the delay of more than 300 days. That, on balance of probabilities the Applicant did not give out good reasons for the delay.

Furthermore, the learned advocate for respondent contended that limitation is material point in speeding the administration of justice and it is there to ensure that party does not come to Court as and when he chooses. Thus, the Applicant was bound to abide with **Rule 10 (1) of Mediation and Arbitration Rules G.N 64 of 2007** which provides:

"Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate."

Basing on the above observations, the applicant was of considered opinion that this application is legitimately bound to be dismissed because it contains no credible reasons to persuade this Court to allow his Revision. That, dismissing this revision will not only ensure justice for all but it



guarantees adherence to the law (Rules and Procedures) since they are the guardians of the law of the Land.

I have considered the rival submissions of both parties and the CMA record as well as parties' affidavits. The issue for determination is ***whether there were sufficient reasons for the CMA to grant application for condonation.***

Before considering the merits or otherwise of this Application, I wish to start with the provisions of the laws as far as condonation for the delay is concerned.

Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007 provides that: -

"The commission may condone any failure to comply with the time frame in these rules on good cause."

Also, **Rule 10(1)(2)** of the same Rules provides that: -

"Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.

2. All other disputes must be referred to the Commission within sixty days from the date when the dispute arises."

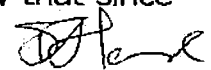
It is trite law that to grant or not to grant condonation is the discretion of the CMA/court. However, such discretion must be exercised judiciously. The applicant must establish good reasons for the CMA to extend time. In the case of **Airtel Tanzania Limited vs Misterlight Electrical Installation Co. Limited & Another (Civil Appl. No.37/01 of 2020** at page 8 the Court of Appeal had this to say concerning extension of

Kutokana na ufafanuzi huo na kwa msingi wa maelezo ya pande zote kama nilivyoainisha hapo awali, nakubaliana na utetezi wa mjibu maombi, na kwa mantiki hiyo, Tume inayakataa maombi ya usikilizwaji wa Shauri nje ya muda kwa kadri yalivyowasilishwa na mleta maombi kwani katika mizania ya uwiano (on balance of probability) hajaweza kuthibitisha maelezo yake na ameshindwa kutoa sababu za msingi, zenye maana na zenye kufaa...”

With due respect, guided by the above cited authorities, I differ with the findings of the Mediator. As per paragraph 7 of the applicant's affidavit before the CMA, the applicant was terminated from employment unheard. From the time when he was informed that he was terminated, the applicant has been struggling to make things clear. He made follow up of the death certificate to prove his innocence and obtained the same on 23/2/2021 as per paragraph 4(iv) and Paragraph 9 of the Applicant's affidavit before the CMA respectively. On 4/3/2021 he wrote a letter to his employer claiming to be terminated unfairly as per Annexure 6 at paragraph 10 of his affidavit where he annexed the said death certificate of his daughter. On 19/4/2021 he presented his claim to the District Commissioner's office to seek assistance to resolve the matter.

Looking at the series of events, it goes without saying that the applicant did not act negligently as he made follow up from the time when he was terminated. Having lost his daughter and treated with his employer inconsiderately, his option of making follow up of the death certificate was the best. This shows that the applicant eagerly wished the dispute to be determined to its finality amicably. The respondent did not dispute the fact that the daughter of the applicant passed away.

Basing on the circumstances of this case, I am of considered view that since




Page 12 of 13

there is allegation that the applicant was terminated without being heard, on the strength of the decision in the case of **Essanji and Another** (supra), I find it justifiable for the CMA to determine and consider the case of both parties for the dispute to be finalised on merit. Nevertheless, determining the dispute on merit will not prejudice the respondent anyhow.

That said and done, I am strongly convinced that the Mediator overlooked and misunderstood the applicant's reasons for the delay and dismissed his application for condonation. In the upshot, I revise the findings of the CMA and hereby grant 21 days to the Applicant to institute his dispute before the CMA, from the date of being supplied with the copy of this judgment. The dispute should be determined by another Arbitrator for interest of justice. This being a labour dispute, no order as to costs.

It is so ordered.

Dated and delivered at Moshi this 31st day of May, 2022.



S. H. SIMFUKWE
JUDGE
31 /5/ 2022

