

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LABOUR DIVISION

REVISION NO. 108 OF 2021

(Originating from the Commission for Mediation and Arbitration of Arusha in Application No.

CMA/ ARS/ARS/88/2021)

HELPE E. MMARI.....APPLICANT

VERSUS

MOUNT MERU UNIVERSITY..... RESPONDENT

JUDGMENT

01.06.2022 & 22.06.2022

N.R. MWASEBA, J.

The applicant, Helphe E. Mmari, seeks revision of an award of the Commission for Mediation and Arbitration (CMA), Arusha in Labour Dispute No. CMA/ARS/ARS/188/2021. The application is supported by an affidavit sworn by the applicant himself.

Facts relevant to this application reveals that, the applicant was employed by the respondent as a driver in 2010 and later on in 2015 he was promoted to be a transportation officer. His employment come to an end

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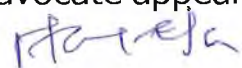
following the closure of the University by the Commission for University whereby the respondent promised the applicant that he will be paid his entitlements, the promise which was never fulfilled despite of several follow ups. Thereafter, the applicant referred his disputed at the CMA, however as he was late, he filed an application for condonation based on the reasons that, his delay was caused by his so long waiting to be paid his entitlements by the respondent and also due to his poor health.

After full trial the CMA dismissed the applicant's application for condonation based on the reason that he had not provided sufficient reasons for the Commission to extend the time. Being aggrieved he preferred the present application based on the following grounds a per paragraph 10 and 11 of his affidavit supporting the application;

10. That, the trial Commission erred in fact by failing to consider reasons for the Applicant lateness to refer the dispute within the prescribed time.

11. That, the trial commission erred in fact by considering only one ground for condonation which is sickness and ignore the fact that these was respondent agreement to pay the applicant.

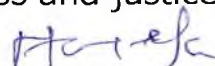
When the application was called for hearing, the applicant appeared in person, unrepresented whilst Ms. Anna Ngote, learned advocate appeared



for the respondent. The application was disposed of by way of written submission.

Supporting the application, the applicant prayed to adopt his notice of application and affidavit to be part of his submission. He added that his delay was caused by his belief to the respondent that he will pay him his entitlements as promised, thus the court need to grant him extension of time as failure to be granted he will lose all his entitlements. To support his argument, he cited the case of **Karibuel J. Mola Vs Tanzania Zambia Railway Authority**, Labour Revision No. 780 of 2019 (HC-Unreported) and **Mobrama Gold Corporation Vs Minister of Energy & Minerals and 2 Others** (1988) TLR 425.

It was his further submission that since his application was not yet heard his right to be heard will be infringed and his constitutional rights will be breached as it is provide under **Article 107 (2) (e) of the Constitutional of United Republic of Tanzania**, 1977 (as amended from time to time). He also cited the case of **Mbeya- Rukwa Auto Parts and Transport Ltd Vs Jestina George Mwakyoma**, Civil Appeal No. 45 of 2000 (Unreported). He submitted further that, the court need not to be tied up by technicalities but to ensure fairness and justice has been

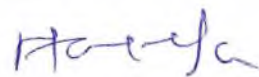


done, he prayed for the application to be granted as both parties will get a chance to be heard on merit.

Opposing the application, Ms. Ngote who prayed for their counter affidavit to be adopted to form part of his submission, submitted that although extending time is vested to court as a discretionary power, the same need to be exercised judiciously and the principle of natural justice to be adhered. She also cited the case of **Lyamuya Construction Company Limited Vs Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No 2 of 2010 (Unreported) which was quoted with approval in the case of **Joseph Paul Kyauke Njau and Another Vs Emmanuel Paul Kyauke Njau and Another**, Civil Application No. 105 of 2019 (Unreported) the CAT had this to say:

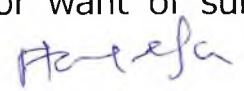
"In this case, the court formulated some principles, which can be applied by the court in assessing if indeed, there were good cause/ sufficient cause that occasioned the delay to the applicant. The principles read:

- a) The applicant must account for all the period of delay.*
- b) The delay should not be inordinate.*
- c) The applicant must show diligence, not apathy, negligence or sloppiness in the prosecution of the action that he intends to take."*



She submitted further that apart from his failure to show sufficient cause the applicant failed to account for each day of his delay for a year to warrant his extension of time. She added further that in his CMA F1 the applicant alleged that she was sick but, in his affidavit, supporting the application he is claiming that it was the respondent's promise which caused his delay. However no prove was submitted to prove that he was sick or that there was a respondent's promise that he was waiting for. In the case of **Karibuel J. Mola** (supra) the court insisted that even if the applicant will fail to account days of delay, he had to show that he was prevented with a serious event.

Further to that, the court had held in number of cases that being late while negotiating with the respondent does not amount to sufficient ground for delay. One of them is the case of **Leons Barongo Vs Drinks Limited**, Labour Division (2013) LCCD, 45. Further to that as the applicant was late for more than 594 days and without being barred with any sufficient reason for delay, the CMA decision needs to remain undisturbed due to laxity and sloppiness on the part of the Applicant. So, she prayed for the application to be dismissed for want of sufficient reasons.



Having anxiously considered the submission made by both parties, the main issue for consideration is whether the applicant adduced sufficient reasons for delay to file his intended application at CMA out of time.

It is a trite law that, sufficient reason is a pre- condition for the court or Commission to grant extension of time. The same is provided under **Rule 31 of the Labour Institutions (Mediation and Arbitration) Guidelines**, GN 64 of 2007 which provides:

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

At the commission the applicant alleged that he failed to file his application within the time due to his sickness but nothing was submitted to prove that he was really sick. However, before this court he added other reasons that he was waiting for the respondent who promised him that he will be paid his entitlement and to this court too nothing was submitted to prove the said allegation from the respondent.

It was decided in a case of **Fidelis Fernandes Vs National Insurance Corporation (T) Ltd and PSRC**, Civil Case No. 26 of 2006, this judgment was recently quoted in the famous case of **Julius Kamote and 139 Others Vs Pipelines Co Ltd**, Revision No. 317 of 2015 (HC-Unreported) that:

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"If the plaintiff sues after the expiry of time, will be barred even where the defendant has betrayed him into fruitless negotiation. That, Negotiation between the parties cannot defeat the statutes, and the plaintiff who is negotiating should nevertheless file a suit."

Apart from waiting for the fruitless promise of the respondent the applicant failed to account each day of delay as he was late for more than a year and those days were uncounted for. The same was held in a case of **Karibu Textile Mills Limited Vs Commissioner General, Tanzania Revenue Authority**, Civil Reference No. 21 of 2017 (CAT-Unreported) that:

"As to whether the learned single Justice properly refused the extension of time sought, we are satisfied that he rightly held that the applicant had the onus to account for each day of the delay involved but that she failed to account for the delay of thirty days from 27th March, 2017 as the supporting affidavit was silent on that aspect."

In our present application the applicant failed to account for the delay of 594 days and the supporting affidavit is silent on that aspect.

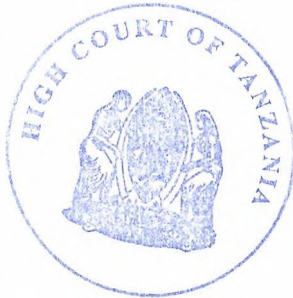
Thus, for the foregone reasons I find the delay was contributed by applicant dilatory conduct and lack of diligence in pursuing the matter. In


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the end result the CMA 's ruling is left undisturbed and the current application is hereby dismissed for want of merit. No order as to costs.

It is so ordered.

DATED at **ARUSHA** this 22nd day of June 2022.




N.R. MWASEBA

JUDGE

22.06.2022