

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LABOUR DIVISION

REVISION NO. 109 OF 2021

(Originating from Commission for Mediation and Arbitration, Application No.
CMA/ARS/ARS/303/2021)

MARIA JACKSON MWITA..... APPLICANT

VERSUS

VIJJI CENTRE COMPANY LTDRESPONDENT

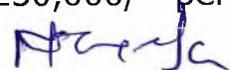
JUDGMENT

18th & 29th June, 2022

N.R. MWASEBA, J.

The applicant, Maria Jackson Mwita, seeks for revision of an award of the Commission for Mediation and Arbitration (CMA), Arusha in Labour Dispute No. CMA/ARS/ARS/303/2021. The application is supported by an affidavit sworn by the applicant herself.

The brief facts relevant to this matter reveal that, the applicant was employed by the respondent on 15th day of August 2015 until 26th day of January 2021 when she was terminated due to the failure of the respondent to run the company. She used to be paid Tshs. 250,000/= per



month. After her termination she made several follow ups to the respondent to be paid her outstanding unpaid salary of Tshs. 75,000/= for 50 months which the respondent alleged it was being deducted for Tanzania Revenue Authority. She reported her claim to the CMA where the respondent was summoned but they failed to settle the matter amicably. As she was already out of time, the applicant filed an application for enlargement of time (condonation) alleging that she was late to file her dispute at CMA due to the respondent's promises that he will pay her. At the end of the trial the CMA dismissed the applicant's application for condonation based on the reason that she had not provided sufficient reasons for the Commission to extend the time. Being aggrieved, she preferred the present application based on the following grounds as per paragraph 5 to 9 of her affidavit supporting the application:

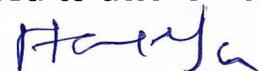
- i. That, the Honourable arbitrator erred in law and fact for failure to consider the facts adduced and as a result he pronounced an erroneous decision.*
- ii. That in determining the dispute, the said arbitrator gravely misdirected himself by not considering the Applicant's evidence*



- iii. That, the honourable arbitrator erred in law and facts for basing his decision on evidence that should have been brought by the respondent.*
- iv. That, the arbitrator failed to realize that the respondent was the applicant's employer and therefore could use myriad of technicalities to pursue the end.*
- v. That, if the prayers sought in the notice of application will not be granted, the applicant will suffer irrepealable loss.*

At the hearing of the application which was done orally, the applicant appeared in person, unrepresented whilst Mr. Peter Njau, learned advocate appeared for the respondent.

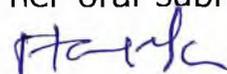
In support of her application, the applicant prayed to adopt her notice of application and affidavit to be part of her submission. She argues that after she was terminated, she went to CMA where they asked her to tender a termination letter which she did not have. Later on, the respondent called her to go and collect a termination letter but she refused and informed him that he should submit it at CMA. Then the CMA tried to settle the matter amicably but it failed and she was advised to file a case against the respondent. She did as she was advised and when the matter was called for mention, she was pregnant and failed to attend her



case because she was on bed rest as she was advised by a doctor. And when the ruling was delivered on 11.10.2021 the CMA ruled out that the application was instituted out of time and dismissed the matter without mentioning her arrears and leave as claimed in CMA F.1. She prays for the court to reconsider her prayer and grant the application since she was not out of time as it was held by the CMA.

Objecting the application Mr. Njau first of all raised an issue that some of the oral submission made by the applicant were not featured in her affidavit supporting the application. And he prayed for the said submission to be expunged from the records since submission that are not featured in affidavit will be just a political statement. He cited the case of **The Registered Trustees of The Archdiocese of Dar Es Salaam Vs the Chairman Bunju Village Government and 4 Others**, Civil Appeal No. 147 of 2006, (CAT-Unreported) to support his argument.

Coming to the merit of the application, he told the court that the applicant is contradicting herself, in her affidavit she pleaded that she was terminated on 26.01.2021 while in her oral submission she is alleging that she was never terminated since she was not given a termination letter. Another contradiction is on the time. In her affidavit she admitted to be late for five months to file her application whilst in her oral submission



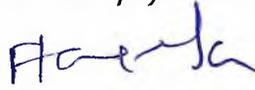
she said she was never late and the CMA was wrong to conclude the same. Further, the applicant is late for more than a year not five months as alleged and the reason that she was late due to the respondent's promise has no merit. The same was held in the case of **Mercy Rogers Kimai Vs Motel See View**, Labour Revision No. 4 of 2013 (HC - Unreported). Since the applicant failed to show even the existence of the amicable settlement which was going on between her and the respondent, he prayed for the application to be dismissed.

In her brief rejoinder the applicant insisted that she was not late to file her application at CMA and that she is still an employee of the respondent as he did not give her a termination letter. She prayed for the application to be granted so that she can get her benefits including arrears and leave.

Having gone through the submission made by both parties herein, the main issue for determination is whether the applicant provided sufficient reason for the Mediator to embark his discretionary powers to grant application for condonation.

Rule 31 of the Labour Institutions (Mediation and Arbitration)

Guidelines, GN 64 of 2007 provides that:

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

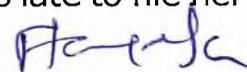
The same was held in the case of Topical **Air (TZ) Limited Vs. Godson ELiona Moshi**, Civil Application No. 9 of 2017, the Court of Appeal of Tanzania at Arusha, at page 9 and 10 set guidance on factors to be considered for good cause to extend time, these factors are:

1. *The applicant must account for all period of delay*
2. *The delay should be not inordinate*
3. *The applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take.*
4. *If the court feels that there are other reasons, such as the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.*

In our present application although in her oral submission the applicant denied to be late to file her dispute at CMA, her affidavit speaks louder that she was late for five months. Thus, it goes without saying that the applicant although she is denying, she was late to file her dispute at CMA. Paragraph 4 (v) of her affidavit states that:

"That, this application is late for five months due to the respondent's prolonged promises that he will pay the applicant."

She pleaded herself that she was late so she cannot deny her own affidavit at this juncture. Regarding the reasons that she was late to file her dispute



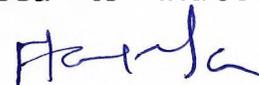
due to promises the respondent made to her the same does not hold water. As it was held in **Helen Jacob v. Ramadhan Rajabu**, [1996] TLR 139 where it was held inter alia that:

"A political solution out of court does not constitute any explanation for failing to appeal in time."

In the present application, the applicant's main reason for the delay was that, she was relying on the promises of the respondent (employer) that she will be paid her benefits of which in my considered view does not justify the court to grant the application.

As for the issue of amicable settlement at CMA before the applicant filed her dispute, her affidavit is silent on that fact. Thus, the same cannot be raised in oral submission. This has been decided in numerous cases including the case of **TUICO at Mbeya Cement Company Ltd Vs. Mbeya Cement Company Ltd and Another** (2005) TLR 41 where the Court of Appeal said:

"It is now settled that submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence....."



Being guided by the cited authority all the submission which does not feature in the applicant's supporting affidavit is hereby expunged from the record.

In the end, I agree with both the Mediator and the counsel for respondent that the application has no basis for failure of the applicant to account for each day of the delay and to adduce sufficient reasons for delay. Accordingly, the CMA's award is hereby upheld and the application is dismissed for want of merit. Since this is a labour matter each party should bear its own costs.

Ordered accordingly.

DATED at **ARUSHA** this 29th day of June 2022.



N.R. MWASEBA

JUDGE

29.06.2022

