IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

REVISION APPLICATION No. 81 OF 2020

(C/F a labour dispute No. CMA/ARS/ARS/MISC.APPL/322/2020)

ALBERT ABSALOM NANYARO.....APPELLANT

VERSUS

ASILIA LODGES AND CAMPS LTD.....RESPONDENT

JUDGMENT

30th June & 14th July 2022

TIGANGA, J

The applicant moved this court under section 91(1)(a) (b) and (c), section 91(4)(a)(b) and section 94(1)(b)(i) of the Employment and Labour Relations Act No.6 of 2004 together with rule 24(1), rule 24(2), (a), (b), (c), (d), (e) and (f) and rule 24(3), (a), (b), (c), (d) of the Labour Court Rules, G.N. No.106 of 2007 and any other enabling provision of the law applying for following order from this Court;

i. That, this honourable court be pleased to call for and examine the record of the proceeding and ruling in the Commission for Mediation and Arbitration for Arusha, at Arusha in Labour Dispute No.

CMA/ARS/MISC.APPL/322/2020 dated 17th September 2020, for the purpose of satisfying itself as to the regularity, legality and propriety thereof.

ii. That, this Honourable court may be pleased to revise the Arbitrator's ruling in Labour Application No. CMA/ARS/MISC. APPL/322/2020 dated 17th September, 2020 by quashing and setting it aside.

The highlight on the background of this revision application is that, the applicant had been working for gain at Asilia Lodges and Camps Limited since 1st June 2008 as a Safari guide until 31st May 2020 when he was terminated allegedly by retrenchment. Following that termination, the applicant to complain against the respondent on 9th July 2020 before the Commission for Mediation and Arbitration for Arusha at Arusha, hereinafter, the CMA. However, before his action, he realized that, he was out of time. Therefore, along with labour Dispute, he also filed an application for condonation.

The ground for condonation was that, after his termination on 31st May 2020, on 27th June 2020 he fell sick and was hospitalized at Meru District Hospital where from he was discharged on 07th July 2020. The CMA denied the condonation application for the failure of the applicant to account for the

days delayed. As out of 40 days delayed, the applicant accounted only 10 days. The rest 30 days remained un accounted.

Following the denial of the application for condonation, the main application automatically failed and it was dismissed. The applicant was dissatisfied with the ruling delivered by the CMA, he opted to apply for this revision.

With leave of this court, parties argued this application by way of written submissions which they filed as scheduled. In the submission in chief the applicant submitted that, the Honourable Mediator erred in law and in fact when he decided the dispute in question by misconducting himself and failed to consider whether there were valid reasons for condonation as there are good reasons adduced by an applicant. In his view, that error resulted into miscarriage of justice. He further submitted that, the Honouarable Mediator erred in law by dealing with the matter of extension of time in a checklist fashion. He further stated that, the applicant was supposed to file the matter before the Commission between the period of 31st May 2020 to 29th June 2020 but following his delay he filed an application for condonation without success before the Commission.

The applicant further submitted that, he delayed for 10 days and the Honourable Mediator confirmed as it is found on records at page 3 of the CMA's ruling, among the reasons for the applicant's delay to institute his case was sickness. He further submitted that, he experienced sporadic rising of high blood pressure which led to the case of hypertension together with diabetes and pneumonia since June 2020 as referenced by exhibit A-1.

In his view, it is upon the court to determine as to whether the period that the applicant delayed be counted as a delay of 40 days or 10 days.

The applicant further submitted that, the trial CMA improperly ruled the matter, an Arbitrator relied on his own opinions without assessing the incompetence of the respondent's reply submission before the CMA. He further stated that, the time schedule for filing of the reply submission was on 24th August 2020 but the respondent filed the reply submission on the 25th August 2020 which is fatal as he filed it out of time ordered by the CMA.

The applicant requested the court to quash and set aside the Commission's ruling as it goes without saying that the applicant adduced sufficient reasons which are good cause for his delay to institute his case within the prescribed time. the other ground for allowing this application is

the fatality of the respondent's reply submission which was filed out of time which fact was skipped during the CMA's ruling.

In the reply to the submission in chief, the Counsel for the respondent submitted that, the award by the CMA was the right one, it was logical and complied with the principles of natural justice. According to him, the award based on the issues relevant to the matter before the CMA, it based upon the evidence adduced by both parties. In that respect, he submitted that, the present application for revision lacks merit.

The other point on which he based his argument is that, applicant's affidavit was contradictory with regards to the date of the respondent's admission at the hospital. The contraction he cited is that, it is impossible for someone to be admitted on the 27th June 2020 then be discharged on the 7th June 2020. Such contraction on the applicant's affidavit signifies that the applicant was frustrated by his attitude of trying to manipulate the legal system by faking the sickness.

A further argument on that area is that, the applicant failed even to explain as to why there were some days after his discharge unutilized. The date he filed the application was the 26th day following his retrenchment, the

applicant has failed to give reasons as to what caused all that unnecessary delays.

In his view, taking into account the fact the applicant is enjoying the services of the person who is competent and knowledgeable in labour laws and has been practicing in labour laws for a bit long, the said representative has sufficient knowledge in the labour rules concerning time stipulated for the filing of labour disputes, as failure to do so in time evidences lack of seriousness on the part of the applicant and his representative.

In as far as he agrees that, sickness is among the grounds for extension of time but it should not be applied blindly without logical facts as to its impact on the one alleging it, but also a proof that such sickness affected the ability to file the application or to move any motion.in his conviction, the applicant failed to show as to how he utilized the period from 31st May 2020 to 26th June 2020 so as to justify his failure to file the case before the CMA. He also failed to tell the court to tell the court as to how he utilized the period between 7th July to 9th July when he was discharge from the hospital. That said, he submitted that, the precious time of the court cannot be wasted basing on unjustifiable grounds for delay, the reasons adduced are just afterthoughts.

The Respondent's counsel concluded his reply submission by stating that, the delay was unreasonably caused by the applicant and it proves that the applicant lacks diligence which amount to deficiency of good causes.

In rejoinder, the Counsel for the applicant submitted that, there are no laws and evidence cited supplied to this court by the respondent's Counsel in support of his submission. He also submitted that, what was raised by the counsel in reply submission is not worth enough to clear the mischiefs pointed out by the applicant while submitting in chief.

The Respondent further rejoined that, the issue of contradiction on dates of admission and discharge is a mere mistake resulting from slip in typing. He further rejoined that, the Honourable Mediator failed to interpret properly the requirement of rule 11(3)(a) of the Labour Institutions (Mediation and Arbitration) GN No. 64 of 2007 why requires the accounting of only the period of delay. He submitted by way further by way of insistence that, the ground of delay was the sickness as it was submitted in submission in chief. He also stated that, the law requires the counting to be within the period of delay, therefore, it is not right for the respondent to count even the period which is prescribed under rule 10(1) of the Labour Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007 which requires the

disputes for termination of employment to be instituted within 30 days from the moment the dispute arose. He concluded his rejoinder by praying this court to allow his application.

Having gone through the grounds of application and opposition filed by the parties in their respective affidavits, and on considering both parties' submissions, filed for similar purposes, I find it established that the time to refer labour dispute after termination is 30 days counted from the date of termination. It is also established that, the ground for this application for delay which was relied upon before the CMA was sickness. It is also established that, sickness is one of the ground which could be used to justify the delay. I also entirely agree that, for the sickness to be relied upon, it must be supported by evidence. In this case, there is no complaint that there was no evidence to prove that sickness, the complaint is that the applicant did not account how he used the days before he fell sick and did not do so for the days after he was discharged from hospital.

Regarding the days before expiry of date, I entirely agree with the applicant that, the applicant is by law required to account the delayed days. That being the case, then, the duty of the applicant before the CMA was to account for the delay from 30th June 2020. Counting from that date up to 9th

July 2020 when the application was filed, then the applicant delayed for about 9 days. Accounting the said 9 days the applicant said up to 7th July 2020 he was sick, and was hospitalized in hospital he was discharged on that day from hospital. Therefore, that means the only days which the applicant did not account was two days that is 7th and 8th July 2020.

I am aware of a number of authorities insisting on the accounting of days delayed, one of the case authorities being the case of **Almram Investment Limited vs Print Park Tanzania Limited and Martin Shinyanga, civil case No. 125/1997** in which the Court held *inter alia* that;

> *"In application for extension of time, the applicant must prove on the cause of delay for every single day after the expiry of the time set for limitation"*

Also see the case of **John Mosses and Three others vs The Republic,** Criminal appeal No. 145 of 2006 where it was also held that;

> *"We need not belabor, the fact that it is now settled law that in application for extension of time of time to do an act required by law, all that is expected of the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the*

delay was not caused or contributed by dilatory conduct or lack of diligence on his part."

In proving the reasons for the delay, the standard depend on the nature of the case, but in most cases it is not beyond reasonable doubt. In this case there is evidence that, the applicant was sick and was attended at hospitalized. There is no dispute that the applicant was not admitted at Meru District Hospital from where he was discharged on 07th July 2020. That in my view enough to cover the period from when the judgment was delivered up to when he filed this application was filed. Perhaps, we should be asked to account, from 07th July 2020 when he was discharged. It is true that he did not account by evidence what prevented him to do so on 7th and 8th July 2020.

However, the Court of Appeal of Tanzania, in the case of **Elius Mwakalinga vs Domina Kagaruki & 5 Others**, Civil Application No. 120/12 of 2018 at page 9 the test of granting the extension of time includes the following factor to consider;

i. *The length of the delay,*
ii. *The reasons for the delay,*

iii. *Whether there is arguable case susch as there is a point of law on the illegality of otherwise of the decision sought to be challenged*

iv. *The degree of prejudice to the defendant (respondent) if the application is granted.*

Basing on the criteria of the length of delay, basically the delayed days which are un accounted, are two days, i.e on 7th July 2020 and 8th July 2020. Though not expressly said but one may be justified to hold that, those days were used to prepare the application.

On the test of prejudice to the respondent, it was not established that the grant of condonation would have prejudiced the respondent. it is an established principle that, condonation is grantable at the discretion of the CMA, however, that discretion must be exercised judiciously. In this matter, the CMA did not exercise its discretion judiciously.

That said, it is clear from the records and my findings herein above, that, the applicant was entitled to condonation. On that base I hereby revise and set aside the ruling by the trial CMA and direct that, the applicant is hereby granted 14 days within which to refer the matter to the CMA.

That said, the application is allowed to the extent explained above.

It is accordingly ordered.

DATED at **ARUSHA** on the 14th day of July 2022.

J.C. TIGANGA

JUDGE.