

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOKA DISTRICT REGISTRY**

**AT BUKOKA**

**LABOUR REVISION NO. 12 OF 2021**

*(Arising from Labour Dispute Ref. No. CMA/MUL/10/2021 at the Commission for Mediation and Arbitration for Bukoba)*

**ST ANNE MARIE ACADEMY.....APPLICANT**

**VERSUS**

**VIVA SALVATORY MUGASHE.....RESPONDENT**

**JUDGMENT**

27/04/2022 & 15/07/2022  
**E. L. NGIGWANA, J.**

The instant revision was lodged by way of notice of application made under Rule 24 (2) (3) and Rule 28 (1) (c) and (d) of the Labour Court Rules, G. N. No. 106 of 2007 (The Rules).

The applicant is moving this court to call for record, revise and set aside the ruling dated 19<sup>th</sup> day of November, 2021 by G.P. Migire (Mediator) made in Labour Dispute Ref. No. CMA/MUL/10/2021 of the Commission for Mediation and Arbitration for Bukoba, with the view to satisfy itself as to the legality, propriety, logical and correctness thereof.

The application is supported by an affidavit sworn by the applicant's learned counsel Mr. Dustan Mutagahywa. The applicant filed a counter affidavit to oppose the application.

For the better understanding of the essence of this application, I find it pertinent to briefly narrate the facts of this matter as can be gathered from the affidavit in support of the application, and the CMA records. The respondent was employed

For the better understanding of the essence of this application, I find it pertinent to briefly narrate the facts of this matter as can be gathered from the affidavit in support of the application, and the CMA records. The respondent was employed ~~as a teacher St. Anne Marie Academy at its school named Rweikiza Nursery and~~ Primary School at Bukoba where he worked under contracts renewed yearly until 31/12/2020.

In the CMA, the respondent alleged that he was not paid monthly salary of February 2019 and allowances but he continued performing his duties under the promise that salary and arrears did not work out. The respondent further stated that he made several follow-ups for his entitlement through different means including writing letters to school administration as well as to the District Commissioner. He also stated that while making efforts to secure his entitlement, he got serious sickness where he had to go for medical check-ups and treatment. The respondent further alleged that the efforts proved futile, only to find himself out of time to file a complaint at the CMA against the applicant.

In that respect, the respondent on 25/08/2021 filed a notice of application for condonation in the CMA at Bukoba, seeking for extension of time within which to file a complaint against the applicant.

Upon being served with the notice, the respondent now applicant filed a counter affidavit opposing the application on the ground that the applicant now respondent had not adduced any sufficient of reason for delay and he had failed to account for each and every day of delay in filing the complaint against the applicant St. Anne Marie Academy.

Upon hearing the parties, the Mediator in his ruling dated 19/11/2021 ruled out in favor of the respondent that the grounds; **one**, peace and harmony existed

between the applicant and the respondent, **two, continuous** unfulfilled promises to pay, **three**, economic hardship and, **four**, severe sickness constituted sufficient cause for the grant of extension of time, and he proceeded to grant the application.

It is that ruling of the mediator which prompted the filing of this revision. Paragraph 8 & 9 of the founding affidavit carries the grounds of this revision. The grounds were coached as follows:-

*8. That, the first issue which arise from the material facts herein above is whether the reasons relied upon by the mediator in granting the extension of time were sufficient reasons justifying the extension of time.*

*9. That, the second issue, which arise from the material facts herein is whether the respondent clearly accounted for each day of delay in filing his complaint as between February 2019 when the dispute arose and 25<sup>th</sup> August, 2021 when the respondent filed an application for condonation in the Commissioner for Mediation and Arbitration.*

When this application came for hearing, the applicant had the legal services of Mr. Dustan Mutagahywa learned advocate while the respondent appeared in person, unrepresented.

Submitting in support of the application, Mr.Mutagahywa argued that the founding affidavit filed at the CMA carried two reasons for the delay one being **sickness** and the other being **negotiations**.

The learned counsel further argued that, the medical chit annexed to the founding affidavit to form part of it revealed that the respondent was not sick all the time. He added that the dispute arose in February 2019, thus the complaint ought to have been filed at the CMA within 30days, it was filed on

24/08/2021, a day before the filing of the complaint to the CMA were not accounted for.

The learned counsel added that, the days of delay before he became sick were not accounted for as required by the law. He made reference to the case of

**Bushiri Hassan versus Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 CAT (Un-reported) quoted with approval in the case of **Maua Selemani & 19 others versus Halmashauri ya Manispaa ya Temeke**, High Court Labour Division at Dar es Salaam, Revision No.821 of 2018 where it was held that;

*"It is also a trite principle of law that a party should adduce good and account for every day of delay".*

As regards the issue of negotiations, the learned counsel argued that negotiations have never been a sufficient ground for extension of time. He added that, even if it is considered that negotiations constitute sufficient cause, still the same cannot apply in this case because; **one** respondent has never made the applicant the part of the process, instead he was communicating with the District Commissioner who is not a party to this case. He added that even the affidavit filed in the CMA does not at all reveal that the respondent had negotiations with the applicant as the letter dated 20/8/2021 was addressed to Rweikiza, another letter was addressed to Jason Rweikiza and the last letter dated 20/06/2021 was addressed to the District Commissioner. **Two**, no evidence produced to prove that negotiations were on for the period of **two and a half years**.

On his side the respondent, that he told the CMA that the grounds which led to his delay were; **firstly**, peace and harmony existed between the applicant and the respondent, **secondly**, continuous unfulfilled promises to pay, **thirdly**, economic hardship **and**, **fourthly**, severe sickness. He argued that the CMA was

On his side the respondent, that he told the CMA that the grounds which led to his delay were; **firstly**, peace and harmony existed between the applicant and the respondent, **secondly**, continuous unfulfilled promises to pay, **thirdly**, ~~economic hardship and, fourthly, severe sickness~~. He argued that the CMA was correct when ruled that he had demonstrated sufficient cause for the extension of time. He ended his submission urging the court to dismiss this application.

In his rejoinder, Mr. Mutagahywa stated that economic crisis, Negotiations and good relationship have never been the grounds for extension of time. He also invited this court to look on the affidavit filed in the CMA to see the grounds which were stated therein for extension of time.

Having appropriately considered the rival submissions and examined the record, it is desirable that I determine the substance of this revision application. It is undisputed that the matter at hand arises from the decision of CMA granting the respondent extension of time within which to file a complaint before it out of time. In granting the application the mediator had this to say;

*"The reasons which led to delay of the case were peace and harmony existed between the applicant and the respondent, continuous unfulfilled promises to pay, economic hardship and severe sickness. I have considered these reasons along with other explanations adduced at the hearing. Primarily, the applicant was a teacher at Rweikiza Primary School as can be seen in the congratulation letter dated 14/01/2018. He claimed for his salary and allowances total sum Tsh1, 246,000/= by letter dated 3/3/2021. Then the applicant referred his complaint to the District Commissioner see the letter dated 20/06/2021. On 20/08/2021 the Office of the District Commissioner (DC)-Bukoba wrote a letter to the respondent. The respondent never replied to that letter. This proves that he does*

*not wish to respond to the written communications directed towards him. The respondent's counsel says DC office is not a proper forum for this kind of cases. However, it should be noted that the DC office is overall Government Administrative office in the District. Hence has overall duty to oversee and deal with any complaint referred there. The Applicant never made any mistake by sending his letter to try to sort it administratively. In addition, on 18/06/2021, the applicant was sick as can be seen in the medical sheet from Bukoba Regional Referral Hospital.....The reasons advanced by the applicant are good and sufficient to warrant extension of time within which to file the matter to the Commission".*

To justify his position, the Mediator cited the case of **Felex Tumbo Kisima versus TTCL Limited and Another** [1997] TLR 57 where the Court of Appeal held that;

*"The term sufficient cause (which is equal to good cause) should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking necessary step".*

Therefore, in determining the substance of this application, I will confine myself to these two issues; **One**, whether the reasons relied upon by the mediator in granting the extension of time were sufficient reasons justifying the extension of time. **Two**, whether the respondent clearly accounted for each day of delay in filing his complaint as between February 2019 when the dispute arose and 25<sup>th</sup> August, 2021 when the respondent filed an application for condonation in the Commissioner for Mediation and Arbitration.

From the herein above decision, it is apparent that the extension of time can only be granted where it has been sufficiently established that the delay was due to sufficient cause.

Though the law does not define what amounts to sufficient cause or good cause, ~~the Court of Appeal of Tanzania in the case of **Oswald Masatu Mwizarubi**~~ **versus Tanzania Processing Ltd**, Civil Application No. 13 of 2010 the Court of Appeal had this to say;

*"What constitutes good cause cannot be laid down by any hard and fast rules. The term good cause is a relative one and is dependent upon party seeking extension of time to prove the relevant material in order to move the court to exercise its discretion".*

Again from the herein above decisions, it goes without saying that a trial court or tribunal enjoys a wide discretion to grant or not to grant an application for extension of time, however, such discretion has as of law to be exercised reasonably, judiciously and on sound legal principles.

Therefore, although as a general rule, a revisional court like this or an appellate court would not interfere with the discretion of the lower court or tribunal, unless the discretion is exercised in violation of sound legal principles, or unreasonably or arbitrarily instead of judicially, the revisional or appellate court may, where the result thereof leads to miscarriage of justice, interfere. See **Mic Tanzania Ltd, versus Imelda Gerald**, Civil Appeal No. 186 of 2019, **Swababa Mohamed Shoji versus Saburina Mohamed Shoji**, Civil Appeal No. 98 of 2018, and **Tusukile Dancan versus Republic**, Criminal Appeal No.202 of 2009 (All CAT –Unreported).

The founding affidavit of the respondent in the CMA under paragraph 4 is very clear that the cause of action arose in February 2019. Application for extension

was filed on 25<sup>th</sup> August 2021. The medical chit annexed to the affidavit is dated 18/06/2021. Indeed, I do agree with Mr. Mutagahywa, learned advocate that the respondent had the duty to account for every day of delay from March 2019 up to 24/08/2021 save **for 18/06/2021 the date he attended to Hospital.**

~~The Court of Appeal in a number of cases including **Bushiri Hassan versus Latifa Lukio Mashayo**, Civil Application No.3 of 2007 and **Karibu Textile Mills versus Commissioner, (TRA)** Civil Application No. 192 of 2016 (Both unreported) has emphasized on the duty imposed upon the applicant to account for every single day of delay. The court had this to say;~~

*"Delay, of even a single day has to be accounted for otherwise there would be no reason of having rules periods within which certain steps have to be taken"*

In the case at hand, **the delay of 29 months was not accounted for;** therefore, it is apparent that the herein above principle was offended for no reasons at all.

It is trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally straight that the applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein. It follows therefore, that the applicant must set out sufficient facts in his founding affidavit which will entitle him to the relief sought.

In the matter at hand, the Mediator considered the issues of economic crisis on the respondent's side, and peace and harmony existed between the respondent and the applicant. Again, that was misdirection because the same were not stated in the founding affidavit as the grounds for extension of time. Even if it is assumed for the sake of argument they were grounds, still they could not



stand because the principle is very clear that financial constraints or economic crises is not a sufficient ground for extension of time.

The Court of Appeal of Tanzania in the case of **Wambele Mtimwa Shahame versus Mohamed Hamis**, Civil Reference No.8 of 2016 cited with approval the case of **Yusufu Same and Another versus Hadija Yusufu**, Civil Appeal No.1 of 2002 and held that;

*"We are aware that a financial constraint is not a sufficient ground for extension of time".*

Another ground which was considered by the Mediator was sickness. This court is alive that sickness is a good ground for extension of time however it has to be proved by evidence establishing not only that the applicant was sick but also that his sickness happened at the time when he is required by law to take action in respect of the matter he seeks extension of time for, and that the sickness really prevented him from taking the action. **See Masalu Kazinza versus Christian Boniphace(Adminitratrix of the estate of the late Boniphace Sanyenge**, Misc. Civil Application No. 90 of 2021 HC-Mwanza (Unreported).

In the instant case, there was no such proof at all therefore; it was misdirection for the mediator to rule out that the respondent was prevented by sickness from filing the complaint within time.

Another ground which was considered by the Mediator was pre-court negotiation. I have gone through the Arbitral Tribunal records and found that, there is no evidence proving that the respondent have ever engaged in negotiations with the applicants. The letter dated 20/06/2021 written by the respondent to the District Commissioner and the letter dated 20/08/2021 addressed to the Director of Rweikiza Primary School cannot amount to negotiations between the parties to this case, since the District Commissioner is

not a party to this case, the correspondences were made on 2/06/2021 and 20/08/2018 while the cause of action arose in February 2019.

If it were to be assumed for the sake of argument, still the same cannot constitute a good cause for extension of time because the issue of negotiations ~~not amounting to a sufficient cause for extension of time was clearly put forward~~ in the case of **Leons Barongo versus Sayona Drinks Ltd, LD Dsm**, Revision No. 182 of 2012 where the court held as follows;

*"Though the court can grant an extension of time, the applicant is required sufficient grounds for delay. I believe that the reason that the applicant was negotiating with the respondent does not amount to a sufficient ground for the delay. More so, because the respondents have denied to be engaged in such negotiation".*

See also Barnabs **M. Mpangala versus TANESCO**, Misc. Labour Application No. 448 of 2019.

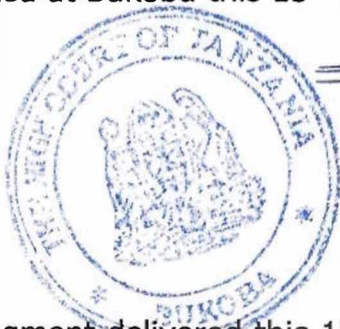
It is simple to think that the respondent was ignorant of the law and procedures. It is, however, a long-established principle in our Jurisdiction that, ignorance of the law or rather procedure involved in doing something does not constitute good cause to warrant extension of time. This position was emphasized in the case of **Farida F. Mbarak and Another versus Domina Kagaruki and 4 others**, Civil Reference No. 14 of 2019 CAT (Unreported)

Therefore on the basis of the above discussion, this court has no option except to interfere with the discretion of the CMA owing to the reason that the discretion was exercised unreasonably, arbitrarily and in violation of sound legal principles.

In the premise, the court has found the application for revising the ruling of the CMA meritorious. Consequently, the application for revision is hereby allowed, and the ruling emanating from Labour Dispute **Ref. No. CMA/MUL/10/2021** is quashed and set aside.

~~It is so ordered.~~

Dated at Bukoba this 15<sup>th</sup> day of July, 2022.

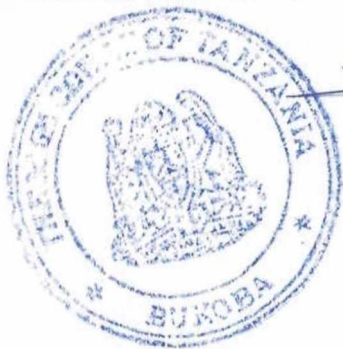


  
E. L. NGIGWANA

JUDGE

15/07/2022

Judgment delivered this 15<sup>th</sup> day of July, 2022 in the presence of the respondent in person, Hon. E. M. Kamaleki, Judges Law Assistant and Ms. Grace John, B/C, but in there absence of the Applicant.



  
E. L. NGIGWANA

JUDGE

15/07/2022