

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

LABOUR DIVISION

AT ARUSHA

REVISION APPLICATION NO. 29 OF 2021

*(Originating from Commission for Mediation and Arbitration Application No.
CMA/ARS/ARS/MED/638/2020)*

MOHAMED SALUM KONDO..... APPLICANT

VERSUS

STERLING SURFACTANTS LIMITED.....RESPONDENT

JUDGMENT

29/11/2021 & 28/02/2022

GWAE, J

This court has been moved under provisions of the Employment and Labour Relations Act, Chapter 366, Revised Edition, 2019 (the Act) and Labour Court Rules, GN 106 of 2007 for revision of the decision of the Commission for Mediation and Arbitration of Arusha ("CMA-Commission"). What triggered the applicant to file an application in the Commission for condonation is his failure to file the dispute in the Commission against his employer within the required period respondent herein within time.

The CMA's records reveal that, the applicant felt aggrieved to have his employment terminated on the 23rd June 2020, according to him, while he was still under police investigation. On the 12th December

2020, he opted to the filing of the application for condonation. According to the applicant's affidavit supporting his application for extension of time, the applicant's decree of lateness was five (5) months to file the dispute in the Commission, his reason being that, he was still under police investigation to the date of filing.

It is further revealed by the CMA's records that, the applicant's termination of his employment via termination letter dated 23rd June 2020 was due to the alleged abscondment or absenteeism from 27th May 2020 to the date on which the termination letter was issued whereas the respondent in her counter affidavit strongly opposed the application by stating that, the applicant was not under detention or under any restraint that would have prevented him from filing his complaints within the prescribed period.

In its final analysis, the CMA mediator held that mere argument with unauthenticated annexures did not constitute a good cause. He further held that, even if even the application for condonation would be allowed yet the Commission could not find any chance of the applicant to prove his case. The learned mediator consequently dismissed the applicant's dispute which was prematurely filed.

The CMA's decision aggrieved the applicant, thus, the application for revision accompanied with mainly one ground to wit; that the mediator erred in law and fact for his failure to consider the evidence adduced before him as a result he arrived at erroneous decision.

Before the court, the applicant and respondent were represented by Mr. Richard Manyota and Mr. Andrew Maganga, the parties' representatives are the learned advocates from Legal and Human Rights Centre -Arusha and JJM & Advocates respectively.

Arguing for the application, Mr. Manyota primarily sought for their adoption of affidavit adding that, the applicant is still facing a criminal allegation pending in police

On the other hand, Mr. Maganga not only adopted their counter affidavit but also seriously questioned merits of this application by stating that, as the decree of lateness is five months which is, according to him, not only inordinate but also the same is not accounted for. He added that being under police investigation does not necessarily mean being under restraint. He eventually urged this court to make reference to the case of **Stephano Mluge vs. 21st century Textiles Ltd**, Revision No. 59 of 2020 (unreported-H.C) where the applicant delayed for 96 days but the application was dismissed for want of sufficient

cause. He further referred this court to this court's decision in case of **Amos vs. Grumet Fund Labour Revision No. 94 of 2020** where all days of delay were said to be accounted for and the case of **Edgar Fabian vs. Ultimate Security**, Revision No. 120 of 2012, reported in Labour Court Digest 45 of 2013 when this court dealt with the same situation and facts.

In his brief rejoinder, the learned counsel for the respondent stated that, the case of **21st century** (supra) cited by the respondent's advocate is distinguishable in sense that in the former dispute the applicant was on police bail but in the instant dispute, the applicant was required to regularly report to police station. Equally, in the case of **Gurmet**, he therefore insisted that the applicant was daily reporting to police station.

Having briefly outlined what transpired before the Commission and before this court on revision, I am now bound to ascertain to, **whether the mediator was justified to dismiss the applicant's application for condonation.**

As the Commission was moved under Rule 11 (2) of the Labour Institution Mediation and Arbitration Rules, GN. 64 of 2007 and since under sub-rule (3) of the same Rules, the applicant was supposed to

firstly, demonstrate decree of his lateness, **secondly**, to give reasons for his lateness, **thirdly**, applicant's demonstration of any prejudice and **fourthly**, exhibition of any other factors.

The position for extension of time in labour disputes is not far from the decisions of our courts in ordinary civil cases when dealing with application for extension of time within which to file an appeal, or filing an application for revision out of time or notice of appeal out of the prescribed period for instance in **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (unreported), where the Court of Appeal stated;

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

See also courts' decisions in **Stephano Mluge vs. 21st century Textiles Ltd**, Revision No. 59 of 2020 (unreported-H.C) and **Tanga**

Cement Company Limited v. Jumanne Mawangwa, Civil Application No. 6 of 2001 (unreported-CAT).

Basing on the applicable provisions of the Rules and decisions cited above, the applicant had vividly delayed for about five (5) months. Hence the decree of lateness is plainly inordinate which ought to have seriously been accompanied by sufficient cause. In our case the main cause for such a long delay for filing the dispute in the Commission is and was being regular reporting to Police Station for the intended investigation.

If as per the applicant's complaints or rather main reasons that, there were criminal accusations against him, yet to be brought to the court of law, in my view, the applicant ought to have annexed documentary evidence to substantiate such assertions such as IR, RB Number, an affidavit from police authority. In the absence of reliable and tangible evidence to support the assertion, the applicant's reason is left with no legs to stand.

Even by pretentious that, the applicant was required to regularly report to police, yet I am not satisfied if the police could put him under full restraint for all working hours. Mere reporting to police station does not, in my considered opinion, curtail a suspect of a crime to be in the

police station throughout the working hours. More so, even if he would be required to do so, which is not possible, yet he would seek permission for not reporting in a certain day (s) for any other lawful reason (s) including reference of his complainants to the Commission taking into account that, he had already been issued with letter of termination since 23rd June 2020 whereas he filed his application for condonation on the 12th December 2020.

In my view, had the applicant been able to establish that there were criminal accusations against him pending in police station and that he was evidently prevented from entering his work place by his employer or employer's agent, he would have been salvaged under section 37 (5) of ELRA and as per judicial decision of this court in **Stella Manyah and another vs. Shirika la Posta** Labour Division Reference No. 2 of 2010 reported in Labour Court Digest 2013. I am saying so because there would be other factors, to wit; legal irregularities. And or that, he was prevented from seeking permission for leave of his absence of the alleged reporting or if he was actually supposed to daily report in the police station on the working days and if his movements upon his regular reports were curtailed throughout the working hours.

Having observed as herein, the applicant is found to have clearly not been serious in pursuing his complaints and above all he has failed to account for the such inordinate delay. The applicant's mere assertions that, he was to regularly report to police is not only substantiated by palpable evidence but also that alone could not prevent him from filing the dispute to the Commission within time.

Before concluding composing this judgment, I find a substance of making a comment on the order of the Commission dismissing the applicant's dispute, it is my increasing opinion, that it was not legally proper for the mediator to dismiss the applicant's dispute which was merely appended on the ground that, it was filed out of the prescribed period (thirty days). I am of that thought for an obvious reason that, the applicant was yet to file the labour dispute that is why he filed his application for condonation in order that if his application was granted, it would follow that, the appended Referral Form No. 1, was, to be duly admitted by the Commission. Therefore, the annexed referral form No. 1 ought to have been considered as a mere appended document like proposal Memorandum of Appeal appended in an application for extension of time or leave. Therefore, the dismissal order in respexct of

the applicant's appended referral formno.1 is illegal, the same order is therefore quashed and set aside.

It follows that, admitting Referral Form No. 1 before condonation is unprocedural though the Commission used to admit Referral Forms No. 1 whose disputes need to be condoned, that is wrong in law save that it operates as annexures appended to the applications subject to being admitted immediately after grant of the sought extension of time to file the same.

Consequently, the applicant's application for revision is found lacking any merit, the same is dismissed with no order as to costs since the same is neither irritating nor frivolous.

It is so ordered




M. R. GWAE
JUDGE
28/02/2022