

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[LABOUR DIVISION

AT ARUSHA

REVISION APPLICATION NO.108 OF 2020

(C/F Labour Dispute No. CMA/ARS/484/2020)

BETWEEN

ATHUMANI SALIMU.....APPLICANT

AND

BANSAL STEEL ROLLING MILL LTD.....RESPONDENT

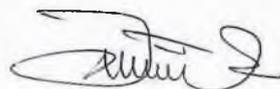
JUDGMENT

Date 4th & 11th August 2022.

TIGANGA, J.

The applicant and respondent were employee and employer respectively, having entered into employment contract from July 2014 to 30th June 2019 when the applicant's employment was terminated. The applicant was employed in the position of machine operator. According to the record, on 20th July 2016 the applicant got injured while at work. The injury caused him to loose his left leg.

Following that injury, he was admitted to surgery at Arusha Lutheran Medical Centre up to 23rd February 2017, before he was discharged from hospital on 08th March 2017. Thereafter, he continued attending clinic at KCMC Hospital Moshi. However, on 30th June 2019 the respondent issued the applicant with a termination letter on the ground that his employment



contract was completed. In the applicant's view, his employment was terminated before the expiration of the contract period.

He said, from when he was terminated up to when he was able to file the dispute he was late for 214 days and his delay was due to illness. Therefore, he filed an application for condonation before the Commission for Mediation and Arbitration, herein after the CMA by filing Labour Dispute No. CMA/ARS/ARS/83/20/151/20. The same was granted. However, at the advanced stage of the main application, the applicant noted some irregularities in the cause of action. He asked for leave to amend the application. The prayers were refused. Instead, on 03rd day September, 2020 the CMA struck out the application and informed the applicant that he was at liberty to refile the application subject to the law of limitation. On 11th September 2020, the applicant filed the new application citing reasons for delay among others the fact that the former application was struck out by the CMA.

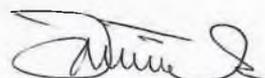
Moreover, on 04th December 2020, the application was refused on the ground that, the applicant did not adduce good cause to entitle him condonation. The application was therefore dismissed for want of merits. That ruling aggrieved the applicant, he decided to file this application for revision of the ruling in Labour Dispute No. CMA/ARS/484/2020. In this

application the applicant moved this court by way of notice of application, chamber summons and an affidavit sworn by one Athumani Salimu, (hereinafter the applicant).

In the chamber summons, he moved the court under section 91(1)(a) and (b) and 91(2)(a) and (c) and 94(1) (b) (i) of the Employment and Labour Relations Act, [Cap 366 R: E 2019], as amended by Written Laws (Miscellaneous Amendment) Act, Act No. 03 of 2010 and Rules 24(1), (2)(a), (b), (c), (d), (e), (f) and (3)(a), (b), (c) and (d) and rule 28(1), (c), (d) and (e) of the Labour Court Rules G/N No.106/2007

The Applicant had several prayers as shown in his chamber summons supported by the affidavit,

- i. That, this Honourable Court be pleased to call for the records and proceedings, revise and set aside the Arbitrator's award delivered by Hon. MWEBUGA O, Arbitrator, in order for this Honourable Court to satisfy itself as to the correctness, legality and the orders contained herein in dispute No. CMA/ARS/ARS/225/19 delivered on 04TH December 2020.
- ii. That, any other relief this Honourable Court will be pleased to make any other order that this court deems necessary in the interest of justice.



The applicant applied for this revision under the grounds stated in his affidavit:

- i. That the Mediator wrongly and failed to recognize and to consider the reasons of delay which were adduced in the affidavit, since (sic) the grant of the previous application for condonation.
- ii. The Mediator failed to recognize and to consider that, the delay was caused by the employer and the circumstance of the disability illness and struck out of the granted previous application No. CMA/ARS/20/15/20.
- iii. The Mediator erred in law and fact for holding that, the applicant did not say from when he was admitted and the last date of discharge by extension of reasoning while the medical documents which were attached with an application for condonation states clearly the date of admission and date of discharge. These medical documents were attached and was marked as **AS "2"**
- iv. That, the Mediator erred in law and in fact for holding that, the evidence is silent to state what the applicant was doing all that time, while it was clear stated in the affidavit that the delay was due to the scheduling of date for attending at the CMA regarding the struck out of the granted dispute.



- v. The Mediator erred in law and in fact to deliver the ruling out of prescribed time.
- vi. The Mediator erred in law and in fact to dismiss the application for condonation without considering the factors in the application for condonation CMA F2 at paragraph 4 page 3.

The application was opposed by the respondent who filed the notice of opposition and the counter affidavit.

With leave of the court and consent of the parties, the application was argued by way of written submissions. In those submissions the applicant was represented by Mr. Herode Bilyamtwe, personal representative of the party's choice, (PR) while the respondent was represented by Salvasia Kimario, Advocate.

Submitting in support of the application, Mr. Herode Bilyamtwe, (PR) for the applicant submitted that, the ruling of the CMA was composed without adherence to the proper procedures as laid down under the relevant laws especially rules 11(2) (3) (a) (b) (c) (d) (e) of the Labour Institutions (Mediation and Arbitration) Rules GN No. 64 of 2007.

He further submitted that, the application for condonation which was struck out by Hon. Mwebuga, Mediator resulted from the application for condonation which was already condoned in July 2020.

That the argument that, it is very unusual for the applicant to come with CMA F1 which is improperly filled, and that he ought to have filled it properly because he had a competent legal representative has no base.

It was his further submissions that, it was necessary for the Mediator to consider all factors indicated at CMA F2, the Mediator ought to have known the purpose of condonation after the matter was struck out, the purpose was to justify the date when the dispute arose.

He further submitted that, it was wrong for the Mediator to rely on the Civil Case of **Abdul Ramadhan vs Said Ramadhan Baamary and others**, Civil Application No. 14 of 1994 as the case is distinguishable with the case at hand, since it does not deal with labour matters. He concluded by praying this court to grant the application and set aside the CMA Mediator's ruling in dispute No. CMA/ARS/484/2020.

In the reply submissions by the counsel for the respondent, he submitted that, the applicant has failed to adduce sound grounds to move this court to grant the sought reliefs on the chamber summons, the facts alleged by the applicant are also absurd, he said.

He further submitted that, despite the discretionary powers which the court has, it should be moved with reasonable or sufficient cause.

This principle was given breath by the court in the case of **Godwin Ndewesi and Kroli Islungume vs Tanzania Audit Corporation** [1995] TLR 200 in which the court insisted that rules of court must be prima facie obeyed and in order to justify the extension of time during which some steps in proceedings require to be taken, there must be some material on which the court can exercise its discretion.

He further submitted that, the applicant's delay is very inordinate since he has failed to account for the whole period of his delay. He lacked due diligence and that his application constituted no good cause for the delay thus, the same was fairly and properly dismissed by the Mediator, he argued.

To justify his argument, he further submitted that, the applicant's employment contract was terminated on the 30th June 2019 and he filed his complaint at the CMA on the 17th February 2020. That, the CMA granted his condonation but his main application was struck out on the 03rd September 2020 for being incompetent.

Following the struck out of his application, he filled another application for condonation at the CMA stating that the reasons for his delay was that the first application he filled was struck out for being

incompetent. The applicant has also adduced the grounds that he was sick and hospitalized, but in his view the arguments lack justifications.

The counsel concluded his reply submissions by stating that, it is legally accepted to refile CMA F1 after withdrawing the matter, but it should be done in compliance with the law. In his view, the Honourable Mediator did not find sufficient causes to grant the application for condonation. Hence, he prayed this Court to uphold the decision of the Mediator.

In rejoinder submissions the applicant's personal representative reiterated his submissions in chief, therefore, since the arguments are already on record, for purposes of avoiding unnecessary repetition, I will not reproduce them here.

That marked the arguments by both parties. From the record, the affidavit, counter affidavit and submissions made in support of and against the application. I find the main issue for determination to be whether this application has merit.

From the materials submitted by the parties, the contention is that, while the applicant believes that he had good cause to entitle him condonation for the second time following the dismissal of the first application, that is Labour Dispute No. CMA/ARS/ARS/83/20/151/20 the

respondent believes that the applicant failed to adduce good cause to entitle him condonation.

It is a principle of law that, granting or refusing condonation is a matter within the discretion of the court. However, that discretion should as a matter of law be exercised judiciously. Further to that, judicious exercise of such discretionary powers as held in the case of **Godwin Ndewesi and Kroli Islungume vs Tanzania Audit Corporation** [1995] TLR 200, there must be some material on which the court can exercise it.

The materials referred to here, is what the law refers to be good cause. Although the term good cause has not been statutorily defined, case laws have done the same. In the case of **Valerie McGiven vs Salim Fakhrudin Dalal**, Civil Appl No. 11 of 2015, Tanga where Mjasiri J as she then was, held *inter alia* that;

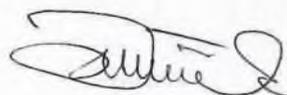
"The law is settled. This court has held in a number of cases that no particular reasons or reasons have been set out as standard sufficient, reasons. What constitutes good cause cannot therefore be laid down by any hard and fast rule. The term good cause is relative one and is dependant upon the circumstances of each individual case."

Moreover, in the case of **Lyamuya Construction Co. Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported), in which the court of appeal in its effort to define what is good cause, established some principles which when proved, suffices to be good cause and may entitle the person applying to have the time extended for him. **First**, the applicant must account for each day of delay. **Second**, that the delay is inordinate. **Third**, the applicant must show that he has been diligent in prosecuting the action he intends to take in that, he has not been negligent, apathy and sloppy in taking action. **Fourth** and last that, where there are other reasons like illegality of the decision intended to be challenged.

In this case when the applicant filed the first application for condonation, the court was satisfied by the reasons he advanced and therefore granted condonation and admitted the main complaint before the CMA. However, the CMA did struck out the said application on the reasons that, it was incompetent for having some error in form No. CMA F.1 in respect of cause of action. As instead of the cause of action, being breach of contract, he filled it to be unlawful termination. It is on record that the ordeal started with the applicant's prayer to amend CMA (F.1)

but instead of granting the same, the CMA said that given the advanced stage of the application, it decided to struck out the application for being incompetent with an advice that the applicant may file the same afresh but subject to the law of limitation.

In my considered view, at the time when the application was struck out, it was legally before the CMA having been admitted after the applicant had secured the condonation order. Secondly, if we need to count the delay then the same was supposed to start on the date when the application was struck out, that is on 03rd September 2020. I hold so because in the case **of Fortunatus Masha vs William Shija and Another** [1997] TLR 154 **Salvand K. A Rwegasira vs China Henan International Group Co. Ltd**, Civil Reference No. 18 of 2006 in which a distinction was made of actual and technical delay, and in the circumstances where the applicant delays because he has prior instituted the matter in wrong court, or in any way did it erroneously, and the same is either struck out or withdrawn as a result, termed that delay to be technical. This case also having been accepted after the first condonation had been granted, it falls within the category of technical delay, up to when the first application was struck out on 03rd September 2020. Therefore, counting should start from that date up to 11th September 2020



when the second application for condonation was filed. It is a period of eight days' delay.

Now the issue is whether, this was an in ordinate delay? In my considered view, and taking the circumstances of the applicant, especially the fact that he is permanently incapacitated, I find the eight days delayed to be reasonable time within which he could be preparing the application. In the circumstances of the application the condonation ought to be granted.

That said, I find merit in the application. I thus revise the ruling which denied the applicant an application for condonation. The same is quashed and the order which dismissed the application is set aside. The applicant is thus given 21 days within which to refer his complaint to the CMA as required by law. The same where practicable, be dealt with by another Arbitrator. Given the nature of the rival I order no costs.

Order accordingly.

DATED at **ARUSHA** on the 11th August 2022.



A handwritten signature in blue ink, appearing to read "J.C. Tiganga".

J.C. TIGANGA

JUDGE.