

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

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**LABOUR REVISION NO. 4 OF 2021**

(Original Labour Dispute No. CMA/KG/220/2021 from Commission for Mediation and Arbitration for Kigoma at Kigoma)

**EDISSA D/O MELKION MITTI.....APPLICANT**

**VERSUS**

**PLAN INTERNATIONAL TANZANIA.....RESPONDENT**

**RULING**

20/8/2022 & 20/9/2022

**L.M. Mlacha,J**

This is a ruling on an application for revision of the decision of the Commission for Mediation and Arbitration for Kigoma (the CMA) made in Labour dispute No. CMA/KG/220/2021 refusing to extend the time within which the applicant, Edisa Melkion Mitti could file her case against the respondent Plan International Tanzania (hereinafter to be referred as the respondent or simply the employer).

The revision seeks for the following orders:

1. That this honourable Court be pleased to call for and examine records of proceedings in Labour dispute No. CMA/KIG/220/2021 of the

Commission for Mediation and Arbitration for Kigoma at Kigoma, revise and set aside the ruling therein dated 21<sup>st</sup> June 2021, for it was delivered with illegality and material irregularity involving injustices to the Applicant.

2. Any other relief the Honourable Court deems just and equitable to grant.

It is a fact not disputed that the applicant was employed in January 2018 as a social worker – Case management stationed at Kibondo district, Kigoma region. She worked up to 31/12/2020 when her services were terminated. It is not disputed that earlier on 20/10/2020 she was interdicted for a month to pave way for an investigation against her conduct on accusations of employing 2 refugee children. It is not disputed that she was sent to Kibondo district court on 30/11/2020 in criminal case No. 293/2020 charged of two counts of Harmful Employment c/s 12 and 159 of the Law of the Child Act, cap 13 R.E 2019. She was aggrieved by the termination but could not challenge it at the CMA because she was late hence the application for extension of time.

Based on the interdiction, the existence of the criminal case and the existence of negotiations between her and her employer, the applicant filed

an application for extension of time at the CMA seeking a room to challenge the termination. There is a delay of 32 days. The CMA could not see legal base in the application which was dismissed hence the revision.

During the submissions, the applicant denied to be the cause of delay. She said that it was caused by the existence of the criminal case which was opened by the employer. She proceeded to submit that the criminal case was opened to delay the process of opening the case. She requested the court to grant the application.

Ms. Rosemary Maajar had this to say in her submissions. That, the Criminal case was filed by the Republic not the employer. It was opened on 30/11/2020 as reflected in the charge sheet but did not affect her because she was out on bail. She referred the court to **Wambele Mtumwa Shaane v. Mahamed Hamisi**, Civil Reference No. 8/2016 (CAT) which set the grounds upon which extension of time can be granted. None of the grounds are seen in the affidavit of the applicant, she said. She denied the existence of any discussions between the applicant and her employer which can be used as a base of delay. She said that the only Communication made between them in the period was a letter sent through an e-mail seeking extension which was written 5 days after the expiration of the contract. The



employer acknowledged receipt of it without making any promise to her. She referred the court to its decision made in **Filipo Katembo Gwandeme v. Tanzania Forest Service Agency and another**, Labour Revision No. 981/2019 (Maruke J) page 4 where it was said that the existence of discussions between the employer and employee is not a ground for extension of time. She said that time can only be extended on good cause being shown as provided under regulation 31, adding that the applicant failed to show good cause.

Making reference to **Hamisi Mohamed Mtumwa v. Mtumwa Moshi**, Civil Application No. 407/17 of 2019 (CAT) counsel submitted that the applicant must account for the whole period of delay, the delay must not be inordinate and the applicant must show diligence not apathy, negligence or sloppiness. She argued the court to dismiss the application.

The applicant made a rejoinder and stressed that the criminal case was opened by the Republic but the employer was the complainant. She found her as being instrumental in the matter.

Having examined the record and considered the submissions closely, I could agree with Ms. Rosemary Maajar that interdiction cannot be a ground for

delay because it was done at an earlier stage. The record is clear that the period of Interdiction was between 20/10/2020 and 19/11/2020. It was prior to the date of termination which was on 31/12/2020. It had no bearing in the delay. It was not a base for the delay. I agree with Ms. Rosemary Maajar and the CMA.

I also agree based on the position set by this court in **Filipo Katembo Gwandeme** (supra) that discussions with the employer cannot be used as a base for extending the time. This is necessary so because if discussions will be used as a base for extending the time, there will be no end to litigation. Every employee can come even after a lapse of years of and say that he was in discussions etc. That is not a good system of administration of justice.

I will finally speak of the criminal Case. The charge sheet is reproduced as under:

*THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT COURT OF KIBONDO  
CRIMINAL CASE NO. 293/2020  
REPUBLIC  
V.  
EDISA D/O MITTI*

### **STATEMENT OF OFFENCE**

#### **1<sup>st</sup> Count**

*Harmful employment C/s 12 and C/S 159 of law of the child Cap 13 [R.E. 2019]*

#### **PARTICULAR OF OFFENCE**

*That EDISA D/O MITTI is stand charged that on 08<sup>th</sup> day of July, 2020 during morning hrs at Nduta Camp within Kibondo District in Kigoma Region did employ MAOMBI D/O BEATRICE the child of sixteen years old out of protection and against the will of her parents.*

### **STATEMENT OF OFFENCE**

#### **2<sup>ND</sup> Count**

*Harmful employment C/S 12 and C/S 159 of law of the child Cap 13 [R.E. 2019]*

#### **PARTICULAR OF OFFENCE**

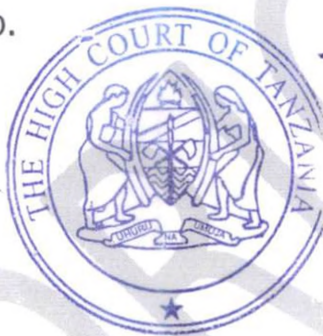
*That EDISA S/O MITTI is stand charged that on 21<sup>st</sup> day September, 2020 during morning hrs at Nduta Camp within Kibondo District in Kigoma Region did employ NIYONKULI D/O SWAVISE the child of sixteen years old out of protection and against the will of the parents.*

With respect to Ms. Rosemary Maajar, I do not agree that the existence of the criminal case did affect the applicant. Criminal cases are known to be very harassing. A person with a criminal case is usually stressed and is more focused in liberating himself from the jail chains other than anything else. Further, the Criminal Case facing the applicant was not on account of issues outside the employment. It was part and parcel of the employment dispute.



The allegations in the criminal case constitute the reasons why she was terminated. I think that much as the employer was not the prosecutor but we cannot avoid the reality that the case must have stressed the applicant so as to prevent her to attend other issues. More so, the employer who was the complainant cannot deny to be part of the cause of delay. It was therefore wrong, in my view, to hold that the Criminal Case did not contribute to the delay.

That said, the application is granted. The applicant is given 14 days upon which to file her application at the CMA to challenge the termination. It is ordered so.



  
**L.M. Mlacha**

**Judge**

**20/9/2022**

**Court:** Ruling delivered. Right of Appeal Explained.



  
**L.M. Mlacha**

**Judge**

**20/9/2022**