

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

REVISION NO. 05 OF 2022

*(Originating from the Ruling of the Commission for Mediation and Arbitration at
Musoma in Labour Dispute No. CMA/MUS/114/2021)*

BETWEEN

PATRICK SAHANI OJWAN'G..... APPELLANT

VERSUS

NORTH MARA GOLD MINE LIMITED.....RESPONDENT

RULING

A. A. MBAGWA, J.:

This revision application emanates from the ruling and order of the Commission for Mediation and Arbitration at Musoma in Labour Dispute No. CM/MUS/114/2021.

The applicant, Patrick Sahani Ojwan'g is the former employee of the respondent, North Mara Gold Mine as mechanic of heavy-duty machines. According to the facts deponed, the applicant's employment was terminated on 10th June, 2020 due to operational grounds as exhibited through the notice of redundancy of employment (annexure NMGML1) to the counter affidavit which was filed in the CMA.

On the other side, the applicant disputes being terminated on 10th June, 2020 rather he states that the respondent only gave him a notice intention to terminate his employment as such, according to the procedures he was to go through medical examination before his employment came to an end. The applicant states that OSHA recommended him to under MRI checkup before termination of his employment and when he went for the checkup, it was revealed that the applicant was suffering from Lumbar sacral spine. According to the applicant, he started attending clinic at the costs of the employer. To his dismay, later on, he was informed by the employer that his employment was terminated on 10th June, 2020. According to the applicant, apart from the notice of termination which triggered his medical checkups, he was not served with termination letter. The applicant continued that by the time he was told his employer that his employment was terminated on 7th day of June, 2020, he was already out of prescribed time required for lodging a complaint before the CMA. Thus, through dispute No. CMA/MUS/114/2021 the applicant filed an application seeking for extension of time within which to refer his labour dispute for the alleged unfair termination. In his depositions, the applicant advanced illness as a ground for his delay. He attached medical documents which exhibit that the

applicant was attending clinic until 17th April, 2021. All medical documents are headed 'Barrick North Mara' to vindicate that the applicant was being attended as an employee of the respondent.

Upon hearing of the application, the arbitrator was convinced by the grounds advanced by applicant. He stated that the applicant failed to prove how the alleged sickness prevented him from referring his labour dispute within time. Consequently, he dismissed the application.

The applicant was aggrieved by the decision of the CMA hence he filed this revision application. The applicant prays the court to revise the proceedings and finally set aside the decision of the CMA which dismissed his application.

When this matter was scheduled for hearing, the applicant appeared through his personal representative one Ogola Elly Aman whilst the respondent was represented by Caroline Kivuyo, learned advocate.

Submitting in support of the application, Mr. Ogola Aman said that the applicant was denied right to be heard on his termination of employment. He continued that the applicant demonstrated sickness as a ground for delay and his employer was aware of the alleged sickness. Ogola said that the applicant got occupational disease i.e., Lumbar sacral spine in the course of his employment.

Ogola further stated that on 29/05/2020, the employer gave the applicant retrenchment notice which was to be carried on 10th June, 2020. He expounded that before the redundancy was carried out, consultation conducted in order to identify staff who were to be retrenched. The applicant's representative continued that on 03/06/2020 the respondent brought OSHA staff to carry out selection of staff to be retrenched and that OSHA recommended the applicant to be referred for further medical examination. As such, the applicant was examined and found with Lumbar sacral spine hence he started treatments. Ogola further expounded that while continuing with treatments, the respondent stopped payment of medical services. As such, the applicant went to the Commission for Mediation and Arbitration to enforce his rights and that is when he was told by the respondent that he was no longer her employee since 10th June, 2020. Based on his submission, the applicant prayed the court to set aside CMA decision and grant him extension of time so that his labour dispute could be heard on merits.

In reply, Caroline Kivuyo, learned counsel for the respondent strongly submitted that the applicant did not demonstrate sufficient reason to justify his delay. Referring to paragraph 3 of the applicant's affidavit, the counsel

said that the applicant clearly knew that he was terminated on 7th June, 2020.

The respondent counsel proceeded that, in terms of section 24(2) of Occupational Health and Safety Act, No. 5 of 2003, the applicant was to go through medical checkup after termination.

Regarding to the medical documents attached to the applicant's affidavit, the counsel submitted that whatever he annexed was not enough to explain the whole time of delay. The counsel stressed that the respondent countered the contents of the annexures at paragraph 11 of the counter affidavit to the effect that the applicant did not account for the whole delay. To bolster her position, she cited the case **Dan O'bambe Iko (By William Dan Iko as Administrator of the estates vs Public Service Social Security Fund and another**, Civil Application No. 182 of 2005,

Citing the case of **Nyanza Road Works Limited vs Giovanni Guidon**, Civil Appeal No. 75 of 2020, CAT at Dodoma at page 13, the counsel submitted that it is a cardinal principle that whenever sickness is pleaded, it should cover the whole time of the delay. Caroline continued that, as per the last medical report, the applicant was normal to continue with his duties on

3rd May, 2021 but he did not file his complaint until 25th May, 2021 without any explanations.

It was Caroline's submission that the applicant failed to account for every day from 7th June, 2020 when he was terminated to the time he filed the dispute. Further, the respondent's counsel referred this court to the case of **Deus Morris Alexander vs Sandvik Mining and Construction (T) LTD**, Revision No. 14 of 2011, HC at Shinyanga at page 7 to 8 and submitted that the applicant was duty bound to explain how sickness prevented him from filing the case but he failed to do that.

With regard to the argument that the applicant was not aware of the termination, the counsel submitted that these were the words from the bar as they were not pleaded in the affidavit before CMA. She also that the extent of sickness was not supported by evidence. In the event, the counsel prayed the court to affirm the decision of CMA and dismiss the revision for lack of merits.

I have carefully considered the rival submissions by the parties along with the record of application. The key issue for deliberation is whether the CMA was right to dismiss the applicant's application for extension of time. In resolving the issue, the relevant question for consideration is whether, on

the strength of the record, the applicant demonstrated good and sufficient cause to warrant him extension of time.

It is common cause that there is no decisive interpretation of a good reason for extension of time. Good cause may therefore differ from one case to another depending on the circumstances of each case. In the instant matter there is no dispute that the applicant was medically examined and found with Lumbar sacral spine, a disease which made him cripple. It is further uncontested that the applicant was continually attending clinic in Mwanza for a span of time until April, 2021.

It is now an established position that in determining good cause for extension of time, courts may take into account various factors including length of delay involved, reasons for delay, the degree of prejudice if any that each party is likely to suffer, the conduct of the parties and the need to balance the interests of a party who has a decision in his favour against the interests of a party who has a constitutionally underpinned right of appeal. See **Paradise Holiday Resort Limited vs. Theodore N. Lyimo**, Civil Application No. 435/01 of 2018, CAT at Dar Es Salaam, **Jaliya Felix Rutaihwa vs Kalokora Bwasha & Another**, Civil Application No. 392/01 of 2020, CAT at Dar es Salaam and **Ludger Bernard Nyoni vs. National**

Housing Corporation, Civil Application No. 372/01/2018, CAT at Dar Es Salaam.

As hinted above, in this instant revision, there is no gainsaying that the applicant was sick and he is continually sick as evidenced in the annexures attached to his affidavit. I have also glanced at the alleged notice of redundancy of employment dated 29th May, 2020 (annexure NMGML1) which is attached to the respondent's counter affidavit. Indeed, the said notice is not clear whether it served as termination letter or it was just a notice of intention to terminate employment.

Having gone through the applicant's affidavit and its accompanying annexures, I have been satisfied that the applicant was critically sick in such a way that it was not easy for him to pursue his labour issues even if he were aware of the termination. Further, I agree with the applicant that he came to be informed of his termination later because annexure NMGML1 to the respondent's counter affidavit is not clear whether it is a termination letter. In addition, I have assessed the degree of prejudice which the applicant is likely to suffer if this application is not allowed vis a vis the prejudice which the respondent is likely suffer in case the time is extended to the applicant. In brief, I am of considered opinion that the respondent

not suffer severe prejudice as the applicant would suffer if he is denied the right to be heard on his alleged unfair termination.

On all the above account, I am opined that the applicant had sufficient cause to warrant him extension of time. In the premises, I find merits in this revision and consequently allow it. Thus, the ruling and dismissal order of the CMA is hereby quashed and set aside.

The applicant, Patrick Sahani Ojwan'g is given thirty (30) days from the date of this ruling to file his labour dispute before the Commission for Mediation and Arbitration. Since this is a labour matter, I order no costs.

It is so ordered

The right of appeal is explained.



A. A. Mbagwa
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JUDGE

17/10/2022