

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

REVISION APPLICATION No. 23 OF 2021

(C/F original CMA/ARS/613/2020)

EASTERN AFRICAN NATIONAL NETWORKS OF AIDS

SERVICES ORGANIZATION(EANNASO).....APPLICANT

AND

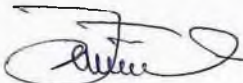
JULIUS CAESAR SABUNI.....RESPONDENT

JUDGMENT

29th September & 27th October 2022

TIGANGA, J

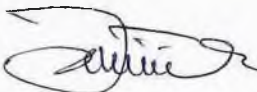
In this revision, the applicant filed this application praying for this court to revise, quash and set aside the ruling of the Commission for Mediation and Arbitration of Arusha at Arusha which was delivered on the 01st April 2021 which granted an application for condonation in favour of the respondent herein. The applicant further asked for the costs of this application to be provided for by the respondent. The application was preferred by way of chamber summons made under sections 91(1)(a), 91(2)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act No 06 of 2004, rule 28(1)(c)(d)(e) of the Labour Court Rules G.N 106 of 2007

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as amended and any other enabling provision of the law and it was supported by an affidavit sworn by Olive Mumba, the Executive Director of the Applicant in which the applicant stated the grounds and reasons of the application.

The application was opposed by the respondent who filed the notice of opposition and the counter affidavit sworn by himself. In that counter affidavit the respondent objected the application by putting forth the reasons for opposition of the application.

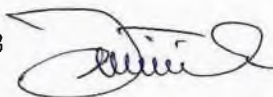
With leave of the Court, the application was argued by way of written submissions. Parties filed their respective submissions as scheduled. In the submission, the applicant was represented by Juliana Japheth Mono, learned Counsel while the respondent was represented by Mr. Stallone Baraka, Personal Representative. In support of the application, the learned Counsel for the applicant submitted that, the records of the proceedings of the application for condonation is clear that, the application was extremely time barred for about three years and two months. It was filed contrary to the Labour Court Rules. He further submitted that, it is a well known principle whoever seeks for extension of time has to account for each day of delay. The counsel further submitted that, the laws and the rules are there to be

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adhered to, they are not inflexible but the flexibility is directly linked to and apportioned in accordance with the interests of justice, the principle of prejudice, prospects of success, and finally, degree of delay and the explanation thereof.

In her view, in the application for condonation before the CMA, although the above conditions were not met, but still the arbitrator proceeded to grant condonation to the respondent, an act which raises questions and doubts towards the arbitrator as the respondent had no valid reasons to account the delay to bring the matter before the CMA for three (3) years and two (2) months and also failed to account for each day of the delay.

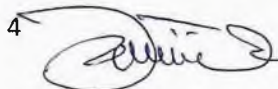
She further submitted that, it is evident that, the respondent was negligent as he could have filed his complaint while continuing with the negotiations of his salary arrears after he decided to resign on his own. He further stated that, the mere fact that he neglected to do the same for three years and two months is outrageous and somewhat convinces one to believe that such a ruling of granting him extension of time without meeting the laid down principles and conditions was illegal unfair and unprocedural procured and hence, the ruling needs be revised for the fairness of justice.

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For insistence she further submitted that, the respondent did not have valid reasons whatsoever for the failure to refer his dispute to the Commission and the delay in this application is inordinate. She prayed for the court to quash and set aside the ruling of the Commission for Mediation and Arbitration with costs for its irrationality goes against the established rules of justice and procedural fairness as laid down by the principles of laws which govern matters of condonation.

In reply submissions made by Mr. Stallone Baraka personal Representative of the employee's own choice in opposition of the application, submitted that, as a matter of fact though not time barred, the complaint was out of time as it was technically late for 38 months, that is 3 years and 2 months hence it necessitated the filing of the application for condonation by the respondent.

He further submitted that, as contended by the applicant that the respondent's complaint was extremely time barred, probably the meaning that there was a high degree of lateness as a factor to be borne in mind by the CMA when exercising his discretion, there is no specific measure as to the extreme high or low degree set out by the law. He further submitted that, it is the respondent's submission that, in light of the circumstances of

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the case as shown by the respondent in his pleadings and submissions, in light of the technical nature of the delay and other criteria set out by the law.

He further more submitted that, it is on records that the respondent's resignation was accepted by the applicant and that for 3 years after the respondent's resignation, the applicant continued paying of arrears, that is throughout 2015, 2016, and 2017 the last payment being on 23rd June 2017 after which, due to financial difficulties the applicant made a promise to continue payments in future but did not honour the promise, the fact which necessitated the respondent to approach the legal machinery for search of his legal right. In further opposing the application, he submitted that, the records are very clear at pages 4, 5 and 6 of the respondent's submissions before the CMA which contained a detailed account of the delay for the whole period of delay.

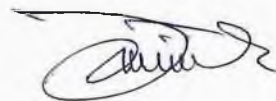
The Personal Representative further submitted that, in his views, the CMA was justified to grant the prayers for condonation basing on the reason of lateness as the applicant promised to pay the respondent, the degree of lateness is that, such delay was a mere technical one and was caused by the applicant's promise upon which the respondent honestly relied believing that

the applicant would honour the promise. On the issue of technical delay, this court was referred to the case of **Fortunatus Masha vs William Shija & Another** [1997] TLR 154 that if the delay is technical then the court sought to extend time should take into account that the delay was technical.

He also stated that, on the prospects of success by the respondent, the applicant is indebted to the respondent and does not deny the fact that he actually started and continued paying him, but for the financial woes faced by her, subsequently, he failed to continue paying. Last but not least, the base of the CMA was that, there was no any prejudice to the other party likely to occur due to condonation.

The Learned Counsel for the applicant rejoined by reiterating the submissions in chief which he has already made save on few issues said in insistence. The issue for determination before this court is whether this application is meritorious.

Before the CMA, matter pertaining condonation are regulated by rule **11(3)** of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007 provides as follows;

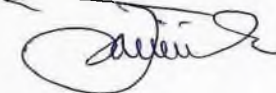
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"An application for condonation shall set out the grounds for seeking condonation and shall include the referring party's submission on the following;

- a. The degree of lateness*
- b. The reason for lateness*
- c. Its prospects of succeeding with the dispute and obtaining the relief sought against the other party*
- d. Any prejudice to the other party and*
- e. Any other relevant factors."*

In line with the above position, condonation being a form of extension of time to but this one being for referring the matter to the CMA, the principle applicable are similar to those applicable in the application for extension of time. Applying the principle governing extension of time, the Court of appeal in the case of **D.N Bahram Logistics Ltd Another vs The National Bank of Commerce Ltd & Another**, Civil Reference No. 10 of 2017 decided on 04/04/2021 in which it was held inter alia that;

"It is settled that extension of time is a matter of discretion on the part of the Court and that such discretion must be exercised judiciously and flexibly with regard to the relevant facts of the particular case. Admittedly, it has not been possible to lay down an invariable definition of good cause so as to guide the exercise of the Court's discretion.

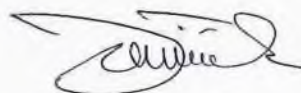
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*Nevertheless, the Court has consistently looked at a number of factors such as the reasons for the delay, the length of the delay, whether the applicant was diligent, the degree of prejudice to the respondent if time is extended, to name but a few: see, for instance, **Dares Salaam City Council v. Jayantilal P. Rajani**, Civil Application No. 27 of 1987; and **Tanga Cement Company Limited v. Jumarine D. Masangwa and Amos A. Mwalwanda**, Civil Application No. 6 of 2001”*

This means that there is no hard and fast rule as to what amount to the extension of time. The above are the criteria or guiding principles. However, doors are not closed for the court to consider other factors relevant depending on the facts of the case.

In the case of **Felix Tumbo Kisima vs TTCL Ltd and Another** [1997] TLR 57, the Court of Appeal observed that;

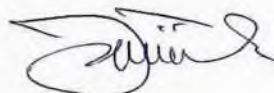
*“It should be observed that the term sufficient cause should not be interpreted narrowly but should be given a wide interpretation **to encompass all reasons or causes which are outside the applicant’s powers to control or influence resulting in the delay in taking necessary steps**” [Emphasis added]*



In this case the issue is whether the CMA when considering to grant condonation was actually guided by the relevant factors. From the record, the respondent's reasons for delay were that, before the applicant had stopped to pay in honouring the agreement between him with the respondent, he could not have referred a matter because by then, he could not have been referred a dispute which was not existing. In my view, that was a valid reason to exercise discretion and grant condonation. Further to that, there was no any prejudice to the applicant resulted from the grant of condonation.

It should be noted that, courts had been cautioned in interfering with the discretionary powers properly exercised by lower courts or tribunals. In the case of **D.N Bahram Logistics Ltd Another vs The National Bank of Commerce Ltd & Another**, (supra) Court of Appeal in the case of **GAB Swale vs TAZARA**, Civil Reference No. 05 of 2011 (Unreported) which also depicted principle the case of **Mbogo & Another vs Shah** (1968) EA 93, it was held that;

*"I think it is well settled that this Court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that the decision **is clearly wrong, because***

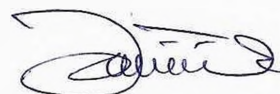


it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong decision." [Emphasis added]

Also see, **Vodacom Tanzania Public Limited Company (Formerly Vodacom Tanzania Limited) vrs Commissioner General, Tanzania Revenue Authority**, Civil Application No. 101/20 of 2021, CAT, Dodoma.

Basing on the above cited authorities, it is my considered view that, the respondent had sufficient reason since he had been waiting for the applicant to pay him his arrears. The fact that the applicant delayed to do so is the one that caused the respondent to delay filing the complaint. Annexure J2 evidences that the applicant promised to pay the respondent. it was due to the fact that the respondent was waiting for the applicant to fulfil the promise, the respondent delayed to file the dispute.

With such promise it goes without saying that, the respondent had a prospect and the extension of time did not in any way prejudice the applicant.

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Since justice hurried is justice buried, I subscribe to the position of the Commission despite the fact that the degree of lateness seems to be inordinate. It is my view that, since people stumble in court corridors to seek for their rights, it will not be wise to deny the respondent's grant for condonation at the CMA since it affects nothing with regards to the merit of the dispute which might have been filed before the CMA in time had there been no such a promise. In fine, I find the justification granting condonation to the respondent as he had sufficient reason. That said this court upholds the decision of the CMA. In the upshot, this application is hereby dismissed for being destitute of merit.

It is accordingly ordered.

DATED at ARUSHA on the 27th October 2022.



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J.C. TIGANGA

JUDGE