

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT ARUSHA

REVISION NO. 121 OF 2021

(Originating from Labour Dispute No. CMA/ARS/ARS/90/2021)

DEOGRATIUS FAUSTINE MWEMEZI.....APPLICANT

VERSUS

GLOBAL LEADER ENTERPRISES (T) CO. LTD.....RESPONDENT

JUDGMENT

22/08/2022 & 14/11/2022

GWAE, J

The applicant, Deogratius Faustine Mwemezi calls upon this court to revise the proceedings and ruling of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/ARS/ARS/316/21. The Commission dismissed the applicant's application for condonation on the ground for lack of sufficient cause.

A brief of facts giving rise to this application is as follows; the applicant complained against the respondent, Global Leaders Enterprises (T) Co. Ltd through his Referral Form No. one (1), which was prematurely admitted on 16th day of August 2021 that, had unfairly terminated his

employment on 26th April 2020. However, at the time of filing his dispute in the Commission, he found himself barred with the law of limitation, as he was late for about 16 weeks. Thus, his dispute had to go together with an application for condonation.

In his application for condonation which was to be determined first, the applicant alleged that, the reasons his delay to timely refer the complaint were; being ignorant of the law, he did not know that time was running against him. That after the termination of his employment he was engaged into fruitless negotiations with the respondent with regard to his terminal benefits. That, he visited different government offices including the District Commissioner's office and the office of the Labour Department as well as Prime Minister's Office Labour Youth, Employment and Persons with Disability with a view of getting necessary assistance,. According to him.

Apparently, the Commission was not convinced by the reasons advanced by the applicant. Its refusal to enlarge time was guided by the principle that, ignorance of the law is not a defence and therefore the same does not constitute good reason for extension of time. The Commission held that, fruitless negotiations could not defeat the statute. Consequently, the application was dismissed for lack of merit.

Aggrieved by the decision of the Commission, the applicant has filed this application accompanied with his sworn affidavit. His application has vividly reiterated the reasons for the delay as revealed at the CMA. The respondent strongly opposed the application through the counter affidavit sworn by her advocate Mr. Caesar Shayo who supported the CMA decision and further stated that, the applicant has never been an employee of the respondent. Mr. Shay further contended that, the applicant did not give sufficient reasons for his prayer of condonation of time.

On 22nd August 2022 when the matter was called on for hearing, the applicant and respondent were represented by Ms. Veneranda Joseph and Mr. Caesar Shayo respectively, both the learned advocates. With leave of the court, the application was disposed by way of written submission.

In his submission in chief, the applicant maintained that, he did not sleep on his right as he was making follow ups of the same through different forums, which nevertheless did not bear any fruit. The applicant urged this court to take into consideration the principle of natural justice and do away with technicalities so that the applicant's complaint can be heard on merit.

Responding to the applicant's submission the respondent insisted that, the applicant has not given sufficient reasons for his delay and that he slept on his rights. The counsel went on submitting that, the applicant has also failed to account for each day of delay for a period of about 14 months.

In her short rejoinder, guided by the decision of the court in the case of **Karibuel J. Mola vs Tanzania Zambia Railway Authority**, Labour Revision No. 780 (unreported) the applicant stated that, he was not expected to give an account on each day of delay mathematically without considering the circumstances and nature of the delay. The applicant then urged this court to condone the dispute as he had given genuine reasons.

The powers of this court or Commission to grant applications for extension of time are judiciously exercised upon good cause being shown. Now, the question is whether the applicant demonstrated sufficient cause before the Commission. From the outset, I am not persuaded, if there was good cause shown by the applicant. What I have gathered is the applicant's ignorance in filing his complaint in the Commission within time which has never not been considered as sufficient cause. This position was stressed in the case of **Ngao Godwin Losero vs. Julius Mwarabu**,

Civil Application No. 10 of 2015 (unreported) where the Court of Appeal of Tanzania held;

*"As has been held times out of number, ignorance of the law has never featured as a good cause for extension of time. See for instance, the unreported ARS. Criminal Application No. 4 of 2011 **Bariki Israel vs. the Republic** and MZA, Criminal Application No. 3 of 2011- **Charles Machota Salugi vs. Republic**".*

(See also the decision of the Court of Appeal in **Hadija Adamu vs. Gobless Tumba**, Civil Application No. 14 of 2013 (unreported))

As correctly held by the Commission, ignorance of the law and fruitless promises have never featured as sufficient reasons for granting applications for extension of time as doing so will allow parties to sleep on their rights and then come up to courts with such excuses of being ignorant of the law.

The applicant herein alleges that, he was terminated from his employment by the respondent on 26th day of April 2020 whereas he came to file his complaint at the CMA on 16/08/2021 almost 15 months. He relied his defence on fruitless promises by the respondent and also ignorance of the law. As to the defence of fruitless promises, this court is of the considered view that, when an employee is engaged into negotiations with his employer, he is nevertheless expected to have his

complaint filed at the Commission within time or substantiate his or her assertion that, there were truly employer's promises to settle the matter out of the Commission with cogent evidence.

Assuming that negotiations between the employer and employee is a good cause, taking into account that, the applicant is a layman as asserted by the applicant's counsel, yet, the applicant's delay in filing his complaint to the Commission is so inordinate and unjustifiable. Moreover, the applicant has failed to give an account of the days of delay from the time of his termination to the time of filing his complaint in the Commission.

In applications for extension of time the issue of accounting days of delay is of paramount (See decisions in the case of **Benedict Mumello vs. Bank of Tanzania**, Civil Appeal No. 12 of 2002 (Unreported), **Yusuf Same and Hawa Dada vs. Hadija Yusuf**, Civil Application No. 1 of 2002 (unreported) and **Sebastian Ndaula vs. Grace Rwamafe**, Civil Application No. 4 of 2014 (Unreported). In the latter case the Court of Appeal of Tanzania held that;

"The position of this Court has consistently been to the effect that an application for extension of time, the applicant has to account for every day of delay."


Given the above position, it the further the view of the court that, the delay of more than 15 months is so irrational and the applicant herein was expected to have accounted for each day of delay which is not the case here.

In the event, this application lacks merit. It is therefore dismissed. The decision of the Commission is hereby upheld. This being a labour case no order as to costs is made.

It is so ordered.

DATED at ARUSHA this 14th day of November, 2022




M.R. GWAE
JUDGE