IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT ARUSHA

REVISION NO. 119 OF 2021

(Originating from Commission for Mediation and Arbitration Application No. CMA/ARS/ARS/258/2021)

PAULINA R. MOLLEL.....APPLICANT

VERSUS

VICTORY SUPPORT SERVICE.....RESPONDENT

JUDGMENT

31/10/2021 & 21/11/2022

GWAE, J

Aggrieved by the decision of the Commission for Mediation and Arbitration of Arusha at Arusha, the applicant, Paulina R. Mollel applied for revision by this court under provisions of section 91 and 94 of the Employment and Labour Relations, Act, Cap 366, Revised Edition, 2019 and Rule 24 and 28 of the Labour Court Rules, 2007. The impugned order of the Commission dismissed the applicant's application for condonation on 10th November 2021.

In the Commission, the applicant herein filed his application for condonation on 12th August 2021 which was accompanied by a Referral

Form No, 1 wrongly and prematurely admitted on the same date. In her sworn affidavit, the applicant showed reasons for delay of 360 days being that, after her termination on 10th July 2020, she sought assistance to the District Commissioner. That, when she was making follow ups of her claims namely; leave pay, NSSF, and Certificate of Service to the respondent, Victory Support Services she was promised to be paid. The Commission eventually found applicant's reasons to have not constituted reasonable cause in eye of the law.

The applicant's main grounds for the sought revision are as follows, **firstly,** that, the mediator erred in law and fact for his failure to consider the facts and reasons adduced as a result he pronounced an erroneous decision and

Secondly, that, the mediator erred in law and fact for failure to take notice that, the respondent being an applicant's employer could use any kind of technicality to interfere with the ends of justice.

The applicant's application is strongly contested through a sworn counter affidavit of one Joyce Majura, the respondent's Principal Officer. The respondent's representative stated that the Commission appropriately evaluated the evidence before it and eventually reached into a proper decision.

The applicant who had no legal representation together with one Joyce Majura sought and obtained leave to argue this application by way of written submission. Supporting her application, the applicant argued that right to be heard is not only a principle of natural justice but also a fundamental constitutional right; she therefore urged this court to do away with legal technicalities since the judiciary is the only body responsible for dispensation of justice in our country so that justice can take its course. She referred this court to Article 13 (6) (a) and the Case of **Mbeya-Rukwa Auto Ports and Tranasport Ltd vs. Jestina George Mwakyoma,** Civil Appeal No. 45 of 2000 (unreported-CAT).

Opposing the application, Ms. Majura has argued that the applicant failed to give sufficient reasons for the sought condonation. She further argued that as the applicant slept over her rights, she should be allowed to sleep forever. She supported her argument by the decision in **Elias Joseph Kivambe vs. Stephania Liganga**, Misc. Land Appeal No. 74 of 2017 (unreported), the High Court (**Mgonya,** J) stated inter alia that, it is unblemished evidence that the appellant herself denied his right to be heard. She further referred to this court's decision (**Ngwembe, J**) case of **Habiba Ahmadi Nangulukuta and two others vs. Hassani Ausi and another,** Land Appeal No. 7 of 2018 (unreported), held;

"Once you sleep over your right, you may sleep forever and this court cannot do otherwise but to follow the letters of the law.

Finally, the respondent's representative prayed for an order of the court striking out this application for lacking any legal basis considering the lengthy of delay and failure to account each day of delay

Earnestly, the applicant in her rejoinder stated that, the respondent's submission is baseless since it did not take into consideration of the fiduciary relationship that existed between the parties that is, that of boss and an employee, She stated that she was beneficiary while the respondent was holding the discretion or power. She buttressed her submission by the case of **Lac Minerals Ltd vs. International Corona Resources** (1989) 2 SCR 574 and Karibuel J vs. TAZARA, Labour Revision No. 780 of 2019 (unreported) where in the late decision it was held;

"Counting on each day of delay should not be imposed as a mathematical calculation. All what is required for the applicant to prove before the court that, he was prevented by a serious event or an act to initiate the matter at the required time. In this case, the fact that the applicant introduced the matter to the District Commissioner ....the applicant was prevented by his trust to the respondent and as a lay person to file the matter timely."

Having considered the rival submissions by the parties, I am of the view that the issue for determination is whether the Commission was justified in finding that the applicant had not given sufficient cause to enable it condone the dispute. It is trite law that, in applications for extension of time to appeal or file an application out of the statutory time, the courts have discretionary powers to grant or refuse such applications however there are factors that lead the court's judicious exercise such statutory power. Good Cause has not been statutorily defined but there are judicial guidance for instance in the case of **Osward Masatu Mwizarubi vs Tanzania Fish Processing Ltd,** Civil Application No. 13 of 2010 (unreported-CAT), the Court of Appeal held that:-

> "*What constitutes good cause cannot be laid down by any hard and fast rules. The term 'good cause is a relative one and is dependent upon the party seeking extension of time to provide the relevant material in order to move the Court to exercise its discretion.*"

Basing on the above judicial jurisprudence, I am of the view that, though the applicant's degree of lateness is 360 days as revealed by the records, if she sufficiently gave explanation as why she was unable to file her dispute for such a long period, her application would be granted. For example, she was continuously and evidently being admitted at Hospital for medical treatments

which, prevented her from timely referring the dispute in the Commission in time or she was unaware of a decision or an act subject of determination by the court or tribunal or any other good reason.

The applicant's assertion that, she initially referred her complaints to the District Commissioner is not attainable since there is no cogent evidence to that effect. In addition to that, these flimsy excuses cannot be entertained by the court in applications for extension of time unless sufficiently established that, both parties were summoned and discussions before the District Commissioner were held. The decision of this court in **Lac Minerals Ltd** (supra), in my considered view is distinguishable from the instant matter.

More so, the assertion that the respondent promised the applicant to settle her claims is, not backed by tangible evidence such correspondences between the parties relating to the applicant's claims. In the absence of cogent evidence, this court and or the Commission is not expected to rely on mere assertions to condone the dispute while the opponent side is found seriously refuting those assertions.

I am also asked by the applicant to observe the principle of natural justice especially the right to be heard. I am alive of the principle of law enshrined in the Constitution, 1977 under Article 13 (6) (a) however, that alone cannot work in favour of a person who unreasonably sleeps over his or her rights. In my view, our courts or tribunals cannot permit the provision of the Constitution,

1977 to be abused by persons who do not comply with mandatory rules of procedure due to their laxities or gross negligence. Perhaps, I would subscribe my finding by the judicial decision in **Paul Mgana vs. Managing Director Tanzania Coffee Board**, Civil Appeal No. 82 of 2001 (unreported), where the Court of Appeal rightly stated;

> *"It is common knowledge that, rules of procedure being handmaids of justice, should be complied with by each and everybody.....whether the case involved a constitutional right as the as the appellant urged or not, so long as the provision of Rules (1) are mandatory going to the root of matter, there is no way in which the appellant could be exempted from complying with the rule."*

Basing on the above decision cementing on the requirement to comply with procedural law and considering the applicant's inordinate delay as well as applicant's failure to give sufficient reasons for her delay, I am therefore not enjoined to invoke Article 13 (6) (a) of our Constitution of 1977 as amended from time to time to salvage the applicant's dispute. It goes without saying that, the applicant was expected to sufficiently explain her days of delay as opposed to the flimsy reasons, which, she gave before the Commission.

That said and done, this application is found to have lacked any merit, it is therefore dismissed. The decision of the Commission is hereby affirmed accordingly. This being a labour matter, I make no order as to costs.

It is so ordered.

DATED at **ARUSHA** this 21st day of November 2022

M. R. GWAE
JUDGE