

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MOSHI

LABOUR REVISION NO. 12 OF 2022

(Originating from Labour Dispute No. CMA/KLM/MOS/M/14/2022 of the Commission for Mediation and Arbitration of Kilimanjaro at Moshi.)

BALTAZAR D. MAFUNGA APPLICANT

VERSUS

REGISTERED TRUSTEES OF SISTERS OF OUR

LADY OF KILIMANJARO..... RESPONDENT

JUDGMENT

20/10/2022 & 22/11/2022

SIMFUKWE, J.

The Applicant Baltazar D. Mafunga filed the instant application after being aggrieved with the ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/KLM/MOS/M/14/2022 of Moshi dated 25th March, 2022. The application was filed under **Section 91 (1)(a), Section 91 (2)(b) and (c)** of the **Employment and Labour Relations Act, No. 6 of 2004, Cap 366 R.E 2019;** read together with **Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f), 24(3) (a) (b) (c) (d) and Rule 28 (1)(c) (d) and (e) of the Labour Court Rules, GN No. 106 of 2007.**

The Applicant prayed for the following orders:



- 1. That this Honourable Court may be pleased to revise and set aside the award of Commission for Mediation and Arbitration for Moshi at Moshi in Dispute No. CMA/KLM/MOS/M/14/2022 dated 25th March 2022 procured by Hon. R. Massawe-Mediator and order condonation for the Applicant.*
- 2. Any other relief that the Honourable Court may deem fit to grant.*

The application was supported by an affidavit sworn by the Applicant himself which was contested by the counter affidavit sworn by Sr. Clement Engelberty Assenga, the Principal Officer of the respondent.

The background of the dispute is that the Applicant was employed by the respondent as Assistant Nurse Officer since 1/7/2012. The applicant alleged that his employer reduced his salary. Consequently, on 9/5/2021 the applicant wrote a resignation letter. Thereafter, he decided to file the dispute before the CMA; since he was out of time, the applicant instituted an application for condonation for late referral of a dispute to the Commission. However, the same was dismissed. Aggrieved with the ruling of the CMA, the applicant filed this application for revision.

When the matter was called for hearing it proceeded orally. The applicant was represented by Mr. Emmanuel Karia, learned counsel while the respondent enjoyed the service of Mr. Aristides Ngawiliau, learned counsel.

The Applicant's counsel prayed to adopt the applicant's affidavit to form part of his submission. He submitted among other things that; the law requires that any labour dispute for it to be filed out of time, the applicant/employee should advance reasons



for the delay. That, in this application the reason for the delay was promise by the employer to pay the applicant's entitlements.

Mr. Karia continued to argue that employer's promises are regarded as good cause for granting condonation due to the fact that promises by employer cannot be proved by paper records. Thus, it is difficult for the applicant to account for each day of delay.

It was submitted further that the applicant was employed as Senior Nursing Officer on 1/7/2012 until 26/10/2017 on permanent terms. On 26/10/2017 he was informed that his salary would be reduced because he had no diploma certificate. The salary was reduced to the extent that he could not proceed with his employment. Thus, he quitted from work and reported at labour office at Moshi where he was advised to settle with his employer amicably. The applicant did not proceed with instituting his dispute on the basis of the promises of his employer. Mr. Karia elaborated that, it is after failure to fulfil the said promises that the applicant decided to file an application for condonation which was dismissed.

It was the opinion of Mr. Karia that the Arbitrator erred in law and fact for misinterpreting case laws in respect of condonation. That, the dismissal of the said application occasioned injustice.

Moreover, Mr. Karia submitted that the Arbitrator stated that promise by employer is good cause for condonation as the promise have no proper records. At page 5 of the CMA decision the same was stated. He clearly differentiated employer's promises from normal civil cases promises. That, the CMA cited the case of **Athumani Kaisenge and 9 others vs RANGER Safaris Ltd, Revision No. 72 of 2013**; HC at Arusha and **Nyanjugu Sadiki Masoud vs Tanzania Mines Energy, Construction and**

Allied Workers Union (TAMICO), Labour Revision No. 5 of 2013 in which the CMA quoted part of the decision at page 6. In another case of **Agnes Aloys Kanki vs Manpower Solution Limited, Labour Revision No. 19 of 2018**; HC at Moshi it was held that the applicant had not accounted for each day of delay. That, physical follow ups cannot be accounted by paper records.

The learned counsel also submitted that for a labour dispute to be determined, it is prudent that justice is done to the applicant. That the employer has nothing to lose if the dispute is determined on merit.

The learned counsel for the applicant prayed that extension of time be granted to the applicant so that he can be accorded right to be heard.

In reply, the respondent's counsel adopted the counter affidavit to form part of his submission. Mr. Aristides submitted to the effect that the applicant was employed by the respondent as Assistant Nurse Officer Grade II on 10/03/2013. Annexure R2 is relevant. The applicant continued with his employment without any dispute or complaint till on 12/4/2021 when he decided to resign voluntarily by issuing a 24 hours' notice (annexure R.3 attached to the counter affidavit is relevant)

Mr. Aristides submitted further that the learned counsel for the applicant had submitted that the applicant was informed about the reduction of his salary on 26/10/2017 though he had not stated whether there was any exhibit to that effect. Since then, till when he referred his dispute before the CMA it is four years. Therefore, for four years he did not see any reason to complain any how against his employer because everything was okay. It was the opinion of Mr. Aristides that referring the



dispute to the CMA after four years is illegal and contrary to **Rule 10(1) of GN No. 64 of 2007**.

Mr. Aristides contended further that the learned counsel for the applicant had alleged that within four years there were amicable discussions which were going on. However, no exhibit had been tendered to prove that fact. That, they had alleged that the respondent was called at the labour office but they had not mentioned the date and manner used to summon the respondent.

Elaborating the requirement of the law, the learned counsel for the respondent explained that for extension of time to be granted as per **Rule 11(3) of GN No. 42 of the Labour Rules**, the applicant must state sufficient reason for the delay. It was the opinion of Mr. Aristides that four years alleged to have been delayed for unfulfilled promises, the applicant has not stated the said promises. Before the CMA they did not show even phone communications. The learned counsel referred the court to the case of **Sebastian Ndaula vs Grace Rwamafa (Legal Personal Representative of Joswa Rwamafa), Civil Application No. 4 of 2014** at page 8 where it was stated that:

The applicant has to account for everyday of the delay. The need to account for each of the delayed day becomes even more important where matters subject of appeal like the present one was decided 18 years ago."

In this case, the learned counsel asserted that it has not been stated what transpired for all the four years. That, when the applicant wrote the resignation letter, he had already been employed by another employer.



Mr. Aristides went on to state that the wisdom of the enactment of labour laws by providing the time limit of instituting disputes should be honoured.

Furthermore, Mr. Aristides averred that in the resignation letter the applicant did not state the reasons for terminating his employment within 24 hours. That, it is obvious the allegations of the applicant leave grave doubts.

The learned counsel condemned the learned counsel for the applicant for failure to cite the law which provides for extension of time in his submissions. Also, he did not cite any authority to the effect that the applicant's application for condonation cannot be proved by written paper empty promises given by the respondent and that each day of delay cannot be accounted for.

Mr. Aristides concluded that the Mediator before the CMA was justified in his decision in respect of this matter after referring to the statutes and case laws. He prayed the court to dismiss the application in order to save time of the court and parties.

In rejoinder, replying to the contention that the applicant delayed for four years, the learned counsel for the applicant said that the delay was not for four years but for nine months. He referred to Annexure R3 which shows that the applicant resigned on 12/4/2021.

Responding to the submissions that the applicant did not state the reason for terminating his employment, Mr. Karia said that before the CMA, the applicant stated the reason of his resignation to be reduction of his salary, thus he could not survive.

Mr. Karia referred to the cited case of **Sebastian Ndaula** (supra) which he cited earlier and reiterated that the same states that promises by the employer are good

cause for condonation. That, in that case the distinction of extension of time in other civil cases have been stated.

In addition, it was stated that other exhibits were in the CMA record thus, there was no need of producing the exhibits before this court.

Further to that, the learned counsel argued that, he did not cite the exact law for extension of time because as a matter of practice it is known that for extension of time to be granted one must advance good cause for the delay.

I have carefully considered the rival submissions of both parties, the CMA record as well as parties' affidavits. The issue for determination is ***whether the applicant had advanced good cause for the delay for the CMA to grant application for condonation.***

The law is very clear in so far as condonation for the delay is concerned. **Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, GN No. 64 of 2007** provides that:

"The commission may condone any failure to comply with the time frame in these rules on good cause."

It is trite law that to grant or not to grant condonation is the discretion of the CMA/court. However, such discretion must be exercised judiciously. The applicant must establish good reasons for the CMA to exercise its discretion of extending time.

In his ruling, from page 5 to 8, the Arbitrator was of the view that the applicant had not accounted for nine months of delay. Also, the learned Arbitrator after long scrutiny coupled with authorities decided that the employer's promises amount to sufficient cause for


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condonation. However, he was of the view that the applicant did not prove the said promises.

Basing on the findings of the CMA, I find no cogent reason to fault the decision of the CMA since the applicant failed to account for each day of delay. He was late for nine months but he did not account for each day of delay as rightly argued by Mr. Aristides.

As far as communications between the applicant and the employer are concerned, it is an established principle of law that negotiations between the parties cannot stop time to run. In the case of **Fortunatus Lwanyantika Masha and Another vs Claver Motors Limited, Civil Appeal No. 144 of 2019 [2022] TZCA 433** at page 13 it was stated that:

"It is settled that communications or negotiations between the parties is not a ground for stopping the running of the time."

In the instant matter the main reason for the delay advanced by the applicant was that he was communicating with his employer several times as deponed under paragraph 7 of the applicant's affidavit before the CMA. Guided by the above authority, his advanced reason could not hold water.

I thus support the findings of the Arbitrator of dismissing the application for condonation. Hence, I hereby dismiss this application for revision for lack of merits. Since this is a labour matter, no order as to costs.

It is so ordered.

Dated and delivered at Moshi this 22nd day of November, 2022.




S. H. SIMFUKWE

JUDGE