

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT ARUSHA

LABOUR REVISION NO. 28 OF 2022

(Originating from Labour Dispute No. CMA/ARS/ARS/457/2021)

ASTONVILLA TWIKASYGE KAMINYOGE.....APPLICANT

VERSUS

SENGO 2000 LIMITEDRESPONDENT

JUDGMENT

01/09/2022 & 17/11/2022

KAMUZORA, J.

This Application is brought under the provisions of sections 91(1), (a)(2)(b) and (c), and 94(1) (b) (i) of the Employment and Labour Relations Act No. 6 of 2004, Rules 24(1) & (2) (a) (b) (c) (d) (e) (f) and (3) (a) (b) (c)(d) and 28(1) (b)(c)(d) and (e) of the Labour Court Rules GN No 106 of 2007. The Applicant prays for this Court to call and examine the records of the proceedings of the CMA in Labour Dispute No. CMA/ARS/ARS/457/2021 and satisfy itself as to the correctness, legality and/or propriety of the ruling thereto.

The brief background of the matter albeit is that the Applicant was terminated by the Respondent from his employment on 7th April 2018.

In December 2021, he lodged an application for condonation before the CMA seeking for the CMA to allow late referral of the dispute to the CMA. The prayer for condonation was strongly opposed by the Respondent and after hearing the parties, the CMA made a conclusion that the Applicant failed to advance good reasons for the grant of the prayer for condonation hence dismissed the application. Aggrieved by the CMA ruling, the Applicant preferred this application praying this court to consider that the Applicant's delay was caused by the Respondent's malicious and endless promises to pay the Applicant and that the Applicant demonstrated good reasons for delay in preferring the dispute to the CMA.

When the matter was called for hearing, the Applicant appeared in person while Mr. Rashid Shaban, learned counsel appeared for the Respondent. They both opted to argue the application by way of written submissions and they complied with the submissions schedule save for rejoinder submission.

The Applicant agree that he was late in referring labour dispute to the CMA for three years and eight months. He claimed that he was late because he was trying to solve this matter through other administrative bodies as he was a lay person. While the Applicant acknowledge that

the law requires him to account each day of delay, he was of the view that such a requirement should not be interpreted in mathematical calculations. That, what is needed to prove is that the Applicant was prevented by serious events or act to initiate the matter at the required time.

The Applicant explained that he started to claim his entitlements at NSSF as the Respondent did not pay his entitlements. That, after termination of employment, the Applicant reported to labour offices with intention to resolve the matter but in vain. That, being a lay person, he approached different offices including the District Commissioner's office trying to resolve the matter amicably but also in vain. That, as he was late in referring the matter to CMA, he preferred an application for condonation believing that he had good reason for the delay in referring the matter on time. The Applicant also believes that he had a legitimate case to be tried as he was terminated without notice and was not paid his terminal benefits which makes the condonation application necessary to secure his entitlements.

The Applicant submitted further that denial of the condonation infringed his constitutional right, a right to be heard which is a principle

of natural justice enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania.

The Respondent submitted that the Applicant failed to demonstrate good cause for delay. Referring the case of **Lyamuya Construction Co Ltd Vs. the Board of Registered Trustees of Young Women Christian Association of Tanzania** Civil Application No. 2 of 2010, the Respondent's counsel insisted that the delay of 3 year and 8 months was inordinate. He was of the view that the Applicant acted negligently as he was able to write a letter complaining to the labour officer meaning that he knew that he was supposed to file a dispute before the CMA.

On the argument that the Applicant referred the matter to the administrative bodies, the Respondent submitted that no law which direct labour matter to be referred to the Regional or District Commissioner before being filed at the CMA. He insisted that ignorance of law or being a lay person is unacceptable reason and cannot form sufficient reason for grant of extension of time. The Respondent maintained that the Applicant acted negligently and threw away his right to be heard as he spent a lot of time in wrong forum and that does not

amount to good cause for delay. He prayed for the application to be dismissed.

I have considered the pleadings, the CMA record and submissions by the parties. It is clear that the CMA dismissed the application for the reason that the Applicant was unable to account for the delay of 3 years and 8 months. I support that conclusion for the same reason that pursuing legal matters through administrative machineries cannot be justifiable reason for delay in taking legal action. Where the law provides for a clear forum in pursing any right, the parties are bound to abide.

Even if I assume that the Applicant was pursuing other administrative measures, the letters attached does not justify the delay for the whole period. The records show that the employment relation between the Applicant and the Respondent ended on 7th April 2018 when the Applicant opted to terminate the contract and requested for payment of his entitlements. No action was taken by the Applicant until 28/08/2019 when his advocate wrote to the Respondent claiming for payment. There are two other letters related to the complaint sent to the District Commissioner one dated 12/03/2020 and another dated 23/03/2020 and another letter related to the complaint to the Regional Commissioner dated 31/01/2018. The letter was even before the


termination of employment. In my perusal of the annexures to the affidavit in support of application for condonation before the CMA I did not see anything justifying the delay of more than three years in referring the matter to the CMA. I am of the settled mind that the CMA was justified to conclude that the Applicant failed to account for the delay.


The argument that the Applicant was a lay person hence ignorant to the procedures, I subscribe to the CMA conclusion that it is the principle of law that ignorance of law is not a defence. As well pointed out by the Respondent, the Applicant was aware of the existence of the CMA because in his complaint to the Regional Commissioner he indicated that he made a complaint to the labour office but was advised to refer the complaint to the Regional Commissioner. Thus, if he had genuine claim, he could have raised the same on time.

On the argument that he was denied constitutional right, it is my considered view that nothing was demonstrated proving that the Applicant was denied right to be heard. He had three years to pursue his right if any but he failed to justify the reasons for delay thus, he cannot be heard to complain on being denied the right to be heard.

In concluding, I am in full support of the CMA conclusion that no any relevant factor was pointed out by the Applicant justifying the delay to convince the CMA to grant the condonation. I therefore find that this application lacks merit and it is hereby dismissed with no order as to costs.

DATED at **ARUSHA** this 17th day of November, 2022.


D.C. KAMUZORA
JUDGE

The seal of the High Court of Tanzania is a circular emblem. It features a central shield with a sunburst design, flanked by two lions. The words "THE HIGH COURT OF TANZANIA" are inscribed around the perimeter of the seal, with a small circle at the bottom.