

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LABOUR DIVISION)**

**AT ARUSHA**

**REVISION APPLICATION NO. 92 OF 2019**

*(Originating from CMA/ARS/ARS//4812019)*

**MERU HAMIMU NZOBE ..... APPLICANT**

***Versus***

**ANGELICO LIPANI NURSERY AND PRIMARY SCHOOL ..... RESPONDENT**

**JUDGMENT**

*7<sup>th</sup> December, 2021 & 15<sup>th</sup> February, 2022*

**Masara, J.**

In the Commission for Mediation and Arbitration (the CMA), **Meru Hamimu Nzobe** (the Applicant herein), filed an application against the Respondent herein seeking for condonation in order to be allowed to refer his labour dispute thereat. The CMA dismissed the application for what it held that the Applicant failed to adduce sufficient cause for the delay. The Applicant has preferred this application seeking to challenge the decision of the CMA. The application is supported by the affidavit of the Applicant. The application is contested by the Respondent who filed a counter affidavit deposed by Sister Maria Grace Niyigena, the Respondent's Director.

Briefly, the Applicant was employed by the Respondent as a teacher on 06/05/2010. According to the Applicant, he was terminated from employment on 05/01/2019 for unknown reasons. On its part, the Respondent stated that the Applicant was not terminated rather his employment contract came to an end, since he was working on contractual basis. On the reasons for not challenging the alleged termination on time, the Applicant stated that on 08/01/2019 he travelled to Kigoma for family problems. He came back to Arusha on 17/07/2019. By then the time for challenging the Respondent's decision had expired. He was therefore forced to seek condonation as a condition for his matter to be adjudicated.

The Applicant's main reasons for the delay as pleaded under paragraphs 3 and 4 of his affidavit filed at the CMA were that he travelled to Kigoma for family problems and that he delayed due to the Respondent's futile promises to pay him. After hearing both parties, the CMA was not convinced by the reasons advanced by the Applicant. The application was thus dismissed. Knowingly or unknowingly, the Applicant has preferred the instant application challenging the decision of the CMA "for failure to order payment of his terminal benefits" and failure "to consider other prayers of the Applicant in CMA F1".

At the hearing of this application, the Applicant appeared in Court in person, unrepresented. The Respondent was represented by Mr. Kennedy Mapima, learned advocate. The application was heard *viva voce*.

In his submission, the Applicant was very brief. He submitted that his claims relate to payment of 9 months leave and severance allowance because he did not take any leave. He added that the employer used to deduct NSSF pension and he was paid in full.

On his part, Mr. Mapima submitted that the instant application was not in line with the decision of the CMA. That the said decision denied the Applicant condonation to refer his labour dispute out of time. In any case, that the Applicant failed to satisfy the CMA on the reasons for the delay. Mr. Mapima informed the Court that the Applicant had an employment contract with the Respondent that was broken into two years. One month before his contract expired, he was notified that the contract was not to be extended. Therefore, according to the Respondent's counsel, the contract expired on 05/01/2019. But he did nothing. On the reasons for the delay, Mr. Mapima submitted that after returning from Kigoma, the Applicant also stayed for over a month before he filed the application in the CMA. He maintained that since the Applicant did not give reasons why

he challenges the CMA decision, he prays that the CMA decision be confirmed and the application be dismissed for being devoid of merits.

In a rejoinder submission, the Applicant submitted that in 2017, he was allowed to travel for similar reasons that made him travel in 2019. He contended that in January, 2019 he was not paid anything. He concluded that he tendered documents to prove that he had travelled. He asked that his quest for condonation be granted.

I have dispassionately considered the affidavits of both parties and the rival submissions for and against the application. The issue for determination is whether the Applicant adduced sufficient reasons to warrant condonation of his claims.

As pointed out earlier, the Applicant does not appear to be asking for condonation; rather, he is challenging his termination of employment. That is deduced from a quick scan of the affidavit supporting the application. Paragraphs 3, 4 and 5 thereof indicate that the Applicant was dissatisfied by the CMA decision of not ordering the Respondent to pay his terminal benefits. He further complains that the decision of the CMA aggrieved him as the mediator did not consider other prayers made in the

CMA F1. The trend was replicated in his oral submissions where the Applicant informed the Court that he was asking for 9 months leave and severance pay.

The Applicant's termination of employment cannot be a basis of the application before me. The revision application before this Court should be limited to whether or not he satisfies conditions for condonation. It is then that the issue of the legality of his termination can be considered by the CMA. I will however proceed to consider the application for condonation considering that the Applicant is a lay person, who appeared before me unrepresented.

In order to succeed in an application for extension of time it has to be established sufficiently that the delay was with sufficient cause. Courts are vested with discretionary powers to grant extension of time but such powers must be exercised judicially. As alluded to above, the main reasons for the Applicant's delay in filing the dispute in the CMA are spelt out in paragraphs 3 and 4 of the affidavit in support of the application for condonation. Under paragraph 3, the Applicant stated that he delayed because on 08/01/2019 he travelled to Kigoma for family problems and returned on 17/7/2019. He attached bus tickets to and from Kigoma as

evidence. The other reason advanced for the delay is provided in paragraph 4 to the effect that the employer promised to pay him but without any success. In deliberating on those reasons, the mediator disregarded the Applicant's ground that he travelled for family problems because such family problems were not disclosed. Further, the mediator made a finding that the promises by the employer to pay the Applicant were not proved. I go along with the mediator's observations. Sufficient reason for the delay goes hand in hand with disclosing all impediments that might hinder a party from taking an action he was required to take at a particular time.

I take note that in his rejoinder submission, the Applicant submitted that in 2017 he was allowed to travel for reasons similar to those of 2019. Those reasons were not disclosed. A disclosure of the reasons and evidence of a previous event might have moved the Court to weigh whether to grant extension of time sought. Mere assertions that the Applicant travelled for all seven months without any proof of the reasons for his travel cannot constitute sufficient cause for the delay. Failure to disclose the reasons for delay was refused as sufficient reason for the delay by the Court of Appeal in **John Dongo & 3 Others Vs. Lepasi**

**Mbokoso**, Civil Application No. 14/01 of 2018 (unreported), where it held:

*"As shown earlier, the affidavit and written submission indicate the sole ground for delay is the fact that, **the counsel for the applicants was overwhelmed by a myriad of both domestic and international undertakings. It is so unfortunate, the said undertakings were not disclosed and when exactly they did take place as a way of accounting for each day of the delay.** The law is well settled, in case of delay, the applicant has to account for each day of delay. But, this is not the case in the matter at hand."*  
(Emphasis added).

The above notwithstanding, as correctly submitted by Mr. Mapima, the record shows that the Applicant returned from Kigoma on 17/07/2019. The application in the CMA was filed on 20/8/2019. That is more than a month after returning from Kigoma. In both his affidavit and submissions nothing was said on this period of delay. It is trite law that in applications for extension of time the Applicant has to account for each day of the delay. On return from Kigoma, the Applicant knew that he had been terminated and that he was out of time to challenge the termination. He was not expected to delay for over a month to initiate the process for condonation. The inaction cannot be condoned because the aim of having specific time for filing suits will not be achieved.



The second reason for the delay is that the Applicant was promised by the Respondent to be paid but in vain. As it was ruled out by the mediator, that assertion has no proof. The Applicant did not substantiate when was he promised and for how long had he been waiting for the payments. Such disclosure would have assisted the mediator and this Court to weigh whether he acted promptly. Nevertheless, it has been held by the Court of Appeal that time spent in negotiations cannot act as a bar to limitation of time. In the case of **M/S. P and O International Limited Vs. The Trustees of Tanzania National Parks (TANAPA)**, Civil Appeal No. 265 of 2020 (unreported), the Court referred to a persuasive decision of the High Court in **Makamba Kigome & Another Vs. Ubungo Farm Implements Limited & PRSC**, Civil Case No. 109 of 2005 (unreported) where it was held:

*"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time, "*

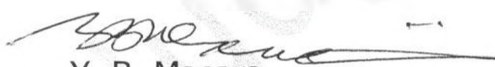


Therefore, the Applicant's assertion that he delayed to file the application due to promises by the Respondent cannot amount to sufficient reason for the delay because that was not even proved.

For the foregoing reasons, the Applicant has failed to advance good cause to justify condonation sought. The decision of the CMA is hereby confirmed. The Application is dismissed in its entirety. Since this is a labour dispute, I make no order as to costs.

Order accordingly.



  
Y. B. Masara

**JUDGE**

15<sup>th</sup> February, 2022