

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

REVISION APPLICATION NO 92 OF 2020

(A rising from Labour Dispute No. CMA/ARS/ARS/154/20)

THOBIAS SARUNI MOLLELAPPLICANT

VERSUS

LODHIA STEEL IND LTD.....RESPONDENT

RULING

Date of last order:16-11-2021

Date of ruling:25-1-2022

B. K. PHILLIP, J

This application is made under section 91(1) (a) and (b) , 91(2) (c) and 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004 and Rule 24(1), (2), (a),(b), (c), (d), (e), (f), (3) (a), (b), (c), (d), and Rule 28 (1),(c), (d), (e), of the Labour Court Rules , G.N. No.106 of 2007.The applicant prays for the following orders;-

a) That, this Honourable Court be pleased to call for the records and proceedings of Labour dispute No. CMA/ARS/ARS/154/20 by the

Commission for Mediation and Arbitration at Arusha, revise it and set aside the said decision on ground that there has been material irregularity and an error material to the merit of the subject matter involving injustice.

b) Any other relief (s) this Honourable Court may deem fit and just to grant.

The application is supported by an affidavit sworn by the applicant. The applicant was unrepresented. The learned advocate Ahmed Hamisi who appeared for the respondent, filed a counter affidavit in opposition to the application. I ordered the application to be disposed of by way of written submissions. Both parties filed their written submissions as ordered by the Court.

The applicant's submission was very brief. He narrated the back ground to this matter to wit; That in 2008 he was employed by the respondent as a security guard. On 1st August 2018 he was terminated from employment for unknowns reasons. Upon being terminated, the respondent promised him to pay his terminal benefits. He had been making follow ups for the payment of his terminal benefits but in vain. The respondent kept on promising him the payment of his terminal benefits but did not fulfill his promise. Finally, since the time for lodging

complaints at the Commission for Mediation and Arbitration ("CMA") on non-payment of his terminal benefits expired while awaiting the fulfillment of the promise made by the respondent, in March 2020 he lodged an application for condonation vide Labour Dispute No. CMA/ARS/ARS/154/20. On 1st September, 2020 the mediator dismissed the aforementioned application on the ground that the applicant did not adduce sufficient reasons for the delay in lodging his Complaints.

The background was followed by the grounds relied upon in challenging the CMA's decision, to wit; That he was not paid his terminal benefits as provided in section 41 (5) and 44 (1) (d) of the Employment and Labour Relation Act, (Henceforth "ELRA"). The mediator erred in dismissing the application for condonation since it was clear that he was not paid his terminal benefits in contravention of the law. To cement his arguments the applicant cited the case of **Raia Mwema Company Limited Vs The Minister for Information Culture, Arts and Sports and the Director of Information and Service Department and the Attorney General Misc. Civil Application no. 21 of 2020.** (unreported). He implored this Court to revise the decision of the CMA.

In rebuttal the learned Advocate Ahmed Hamisi submitted that the decision of the CMA is correct and cannot be faulted because the applicant failed to adduce good reasons for the delay in lodging his complaints at the CMA. He argued that the applicant's allegation that he delay in filing his complaints at the CMA was due to the fact that the respondent promised him to pay his the terminal benefits is not a good reason to move this Court to grant the extension sought by the applicant. To cement his argument he cited the case of **Messi Rogers Kimei Vs Motel Sea view Labour Revision No. 14 of 2013** (unreported). He maintained that the applicant was negligent. He failed to account for each day of delay for a period of more than a year.

Moreover, Mr Hamis Distinguished the case of **Raia Mwema** (supra) from the instant application on the ground that in this matter there is no any illegality on the face of the record.

Having dispassionately analyzed the submissions made by the parties as well as perused the Court's records, in my considered view the issue for determination in this application is whether or not the applicant adduced good reasons for the delay in filing his complaints at the CMA.

As I have alluded earlier in this ruling, the major reason adduced by the applicant for the delay in lodging his complaints at the CMA is that time for filing the complaints lapsed while he was waiting for the respondent to full fill his promise to pay him his terminal benefits, a promise which was never fulfilled. By the time he decided to file his application for condonation more than one year had lapsed from the date he alleged he was terminated from employment.

The pertinent legal issue which arise here is whether a promise to be paid can be good reason for delay in filing a complaint at the CMA. Good enough is that there is a plethora of authorities on this issue. In short the position of the law is that a mere allegation that there was a promise to settle the matter amicably cannot be a justification for delay in filing a matter at the CMA, unless there is concrete and tangible evidence for proof of the alleged promise to pay.[See the case of **Messi Rogers Kimei** (supra)]

I think it is also worthy pointing out that the factors to be considered in deliberations on an application for extension of time have been stipulated in a number of cases. For instance, in the case of **Lyamuya Construction Company Ltd Vs Board of Registered Trsutee of Young Women's**

Christian Association of Tanzania, Civil Application No.2 of 2010,

(unreported) His Lordship Massati J.A as he then was said the following;

".. As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial , and so it must be exercised according to the rules of reason and justice , and not according to private opinion or arbitrarily. On the authorities, however, the following guidelines may be formulated;

- a) The applicant must account for all period of delay.*
- b) Delay should not be inordinate.*
- c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take*
- d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision to be challenged.."*

In the instant application the applicant has not brought any concrete and tangible evidence such a written document signed by the respondent committing himself to pay the claimed terminal benefits. Not only that the applicant delayed to file his complaint at the CMA for a period of one year. Definitely, this is inordinate delay. Under the circumstances, it is clear that the applicant has not shown any diligence in handling his case.

In the upshot, I do not see any plausible ground to fault the decision of the CMA. This application has no merits, the same is hereby dismissed.

Date this 25th day of January 2022.




B.K.PHILLIP

JUDGE