

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

**AT TABORA**

**LABOUR REVISION NO. 22 OF 2020**

*(Originating from an Award of the Commission for Mediation and Arbitration Tabora in Complaint Number CMA/TAB/DISP/46 of 2010 delivered by Hon. H. I. Lukeha, Arbitrator dated on 11th November, 2010 at Tabora)*

**GUNDASON KANYERE.....APPLICANT**

**VERSUS**

**ULTIMATE SECURITY .....RESPONDENT**

**JUDGMENT**

*Date: 16/2/2022&25/3/2022*

**BAHATI SALEMA,J.:**

The Applicant in this application for revision, “**Gundason Kanyere**” filed a Notice of Application for Revision under Section 91 (1) (a) and (b), 91(2) (b),(c ), 91 (4)(a) and (b),(i) of the Employment and Labour Relations Act No. 6 of 2004 as amended by section 14 of the Act No. 17 of 2010 . Rule 24 (1), Rule 24 (2) (a-f), Rule 24 (3), (a), (b),

(c), (d) and Rule 28 (1, (b), (c), (d) and (e) of the Labour Court Rules, Government Notice No. 106/2007, together with the order of this honourable court.

The applicant prays for three reliefs namely;

- i. *That, this court to call for the original records with refere no. CMA/TAB/DSP/46/2010 and examine the proceedings and its award to satisfy itself as to the correctness, rationality , legality and propriety of the CMA finding in the entire award.*
- ii. *That, this court be pleased to revise , quash and set aside the impugned award and its proceedings and therefore allow the applicant to file the application out of time*
- iii. *Any other relief this court deems fit to grant.*

The applicant also filed the chamber summons, which is supported by the affidavit; the reasons for revisions are that there were irregularities in the application for condonation of the delay filed and granted to the respondents.

The application was opposed by the respondent. He filed a notice of opposition and an affidavit in which he prayed for dismissal of the application as meritless.

Briefly, the facts of the case are that the applicant herein was employed by the respondent at Tabora on 1/10/ 2009 as a security guard and on 19/7/2010, he was terminated by the respondent without having valid reasons and without following fair procedures for termination stipulated by labour laws of Tanzania. On 22/7/2010 the applicant wrote to his employer a letter of complaint, objecting to the termination and demanding reinstatement. The respondent did not reply to the said letter. The applicant was not satisfied by the respondent's decision and decided to refer the dispute to the Commission for Mediation and Arbitration at Tabora, pleading to be heard out of time, challenging the unfair termination undertaken by the respondent.

After hearing from both parties, the CMA proceeded to determine the claim and dismissed the application since it had no jurisdiction to determine the matter outside the prescribed time and the reasons given were not sufficient to grant such an application.

When the matter came for hearing, the applicant prayed to dispose by way of written submissions, and the respondent did not object to the prayer. The parties dutifully complied with the order. The applicant enjoyed the services of Kelvin Kayaga, learned counsel

whereas the respondent was represented by Richard Liampaye, Legal representative.

In support of the application, the applicant stated that the CMA was wrong to hold that it had no jurisdiction over the proceedings where the matter before it was an application for condonation, hence the CMA did not exercise its jurisdiction. He further prayed to this court to set aside and rectify by stepping into the shoes of the CMA and granting the prayer sought.

Moreover, he advanced that the reasons for the applicant's delay were delay in receiving the letter of termination because he made follow up with the employee and also going through the records of CMA the applicant had a distinct date and the respondent employer stated a distinct date which is not disputed. The fact that service of the termination letter to the applicant was not proved. In the copy of the counter affidavit, the respondent alleged on 22/7/2010 and then later on 19/7/2010. Even the fax number appearing in the letter is distinct from the one the respondent is alleged to have made service through. Hence, the CMA should have noted that the service of the termination letter to the applicant was not certain and the applicant's view that he was belatedly served with the copy should have held water. Thus, the applicant had a valid reason to warrant the grant of condonation.

He further stated that it is the stance of the law in this country that an extension of time is at the discretion of the court, but it is further cemented that such discretion must be exercised judiciously.

To fortify his stance, he submitted that in interpreting the word judiciously, most tribunals and courts have only limited their minds to adherence to the principles of natural justice. But in actual sense it extends up to looking into the interests of justice, how the other party will be prejudiced if such an extension is granted, the overriding objectives and the effect towards substantial justice.

Finally, he prayed to the court to quash and set aside the decision of the CMA and step into such shoes and grant the applicant's prayer so that this matter can be determined on merit.

In reply, the respondent submitted that the applicant was employed as a security guard on 1/10/2009 on a two-year fixed employment contract on which he was paid the sum of TZS.105,000/= per month. He further submitted that the applicant was terminated on 16/7/2010 and received the termination letter through fax on 19/7/2010. Then, he went to lodge a labour dispute at CMA Tabora on 15/9/2010 which was 57 days after his termination. The law under GN No. 64 of 2007 Rule 10 (1) provides that;

*"Any dispute after termination to be reported at the Commission for Mediation and Arbitration within 30 days from the day of termination. Also, Rule 10 (ii) stated that any dispute apart from termination should be reported at CMA within 60 days."*

Similar circumstances were discussed in the **Maujudhkan Asanullakan Phatan v. Amirali Ramji Dewj Ltd. Lab Div. DSM**, Revision No. 298 of 2016, 13/10/2017 where Nyerere, J held that:

*"Dispute about the fairness of an employee termination of employment must be referred to the Commission within thirty (30) days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate or uphold the decision to terminate."*

From the above reasoning, he submitted that this court is justified in dismissing the present application for lack of a sufficient reason for delay in filing a complaint to the CMA in conformity with the requirement under Rule 10 of the Labour Institution (Mediation and Arbitration) G.N. no. 64/2007.

It was further submitted that every single day must be counted to any delay. The applicant has not explained the delay of 57 days so that it may be granted by the CMA, in the case of **Ramadhani J. Kihwani vs.**



**TAZARA**, Civil Application No. 401/18 of 2018 originated from the Revision No. 215 of 2016 at Dar es Salaam; Mwambegele J.A. held that,

*"I find and hold that the applicant has not explained away every single day of delay to warrant the court's exercising its discretion to grant the enlargement sought."*

Also in **Bushiri Hassan V. Lafila Lukio Mashayo**, Civil Application No. 3 of 2007, **Sebastian Ndaula V. Grace Rwamafa (Legal Personal representative of Joshwa Rawamafa)** Civil Application no. 4 of 2014, **Said Ambunda V. Tanzania Harbours Authority**, Civil Application No. 177 of 2004 and **Abood Industries LTD. V. Soda Arabian Alkali Limited**, Civil Application No. 154 of 2008 (all unreported). In **Bushiri Hassan** (supra), the court made the following observation to underline the need to explain away every day of delay in applications of this nature. Otherwise, there would be no point in having rules prescribing periods within which certain steps have to be taken.

He further contended that the Commission for Mediation and Arbitration in Tanzania has been entertaining all the disputes lodged out of time concerning the good cause and that the CMA in Tabora had found that the reason for the delay given by the applicant had no merit to be entertained.

He contended that the applicant had failed to advance the good cause to warrant an extension of time so that this dispute could be entertained out of time. In **John Dongo and 3 others (applicants) vs. Lepasi Mbokoso**, Civil Application No. 14/01 of 2018.

As to the allegation in paragraph 11, that his application was not made on time due to the failure of his employer to reply to his complaint letter on time. The respondent submitted that the applicant did not follow good procedure since he was supposed to lodge a labor complaint at the CMA and not write a complaint letter while he was already terminated by his former employer. The applicant failed to establish good cause to warrant this court's exercising its discretion by extending the time for the applicant within which to file an appeal to this court as prayed. He finally submitted that, the applicant has failed to adduce sufficient and reasonable grounds for the court to revise the CMA award.

In a brief rejoinder the applicant reiterated his submission in chief.

Having heard the rival submissions and having perused the proceedings leading to the filing of this revision, the court is called upon to first determine whether the application has merit.



From the above submission there are three main issues to be determined. However, the court will deal with two issues.

- i. *Whether the Honourable arbitrator has no jurisdiction to determine the matter out of time.*
- ii. *Whether the reasons given by the applicant for failure to file an application in time has no legal stand.*

According to the first issue, it is on record that the applicant was terminated by the respondent on 16/7/2010 and received the termination letter on 19/7/2010 then went to lodge a labour dispute on 15.9.2010.

The law in the GN No. 64 of 2007 Rule 10(i) provides that;

*"Any dispute after termination to be reported at the Commission for Mediation and Arbitration within 30 days from the day of termination. Also, Rule 10 (ii) states that any dispute apart from termination to be reported at CMA within 60 days. "*

Also under **Rule 10 (1) of the Labour Institutions (Mediation and Arbitration)** rules, it is required that, I quote:

*"Disputes about the fairness of an employee's termination of employment must be referred to the Commission within 30 days*

*from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate."*

Under these circumstances, the applicant filed the case after the lapse of 57 days, which is contrary to the law.

In **J W Ladwa and Peter Kimote, LC**, Revision No. 52 of 2008, Rweyemamu J ruled out that;

*"Dispute referred to late cannot be processed unless the CMA has condoned the delay....After receiving the respondent's (applicant) application, the CMA should have served the same on the applicant (respondent) as per rule 29(5) then proceeded to hear and determine it under rule 29(10) or (11).That it did not happen in this case, thus the CMA was not properly seized with jurisdiction when it processed the respondents' referral filed out of time without condonation."*

Therefore, according to the CMA, the Commission had no jurisdiction to hear the matter outside the prescribed time upon sufficient grounds.

As to the second ground, that the reasons given by the applicant have no legal stand.

*must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules."*

Has the applicant shown good cause? As noted from the records, the applicant was terminated on 19/7/2010 and filed the application on 15/9/2010. It is my view that, having received the termination letter on 19/7/2010 he had ample time. All in all, I find no good reason has been advanced by the applicant.

I have perused the applicant's records, including the affidavit in line with his submission, and found that the applicant has not indicated reasonable or sufficient cause to enable this court to consider and grant his application. Since the applicant did not give sufficient reasons to be considered by the CMA. As clearly seen from the record, during the trial at the CMA, the applicant, when asked, replied that;

*" Lini ulipata barua ya kuachishwa Kazi*

*Tarehe 19/7/2010*

*Lini ulifungua Mgogoro*

*Tarehe 14 /09/2010*

Therefore, I find no reasonable grounds were adduced by the applicant. Thus, the CMA was right to dismiss the application. Since the issues

surrounding the extension have been dismissed, this court cannot go further to examine whether it was fairly terminated or not, as it was not discussed in the CMA.

In these circumstances, I agree with the arbitrator and respondent that, since the applicant failed to adduce sufficient reason to justify the CMA's granting of an extension of time, the CMA has no jurisdiction to entertain a matter that was preferred out of time. Consequently, the application is dismissed in its entirety for want of merit. The CMA award is hereby upheld. Each party to bear its own cost.

Order accordingly.



**BAHATI SALEMA**

**JUDGE**

**25/3/2022**

Ruling delivered under my hand and Seal of the court in Chamber this 25<sup>th</sup> day March, 2022 in the presence of both parties.



**A. BAHATI SALEMA**

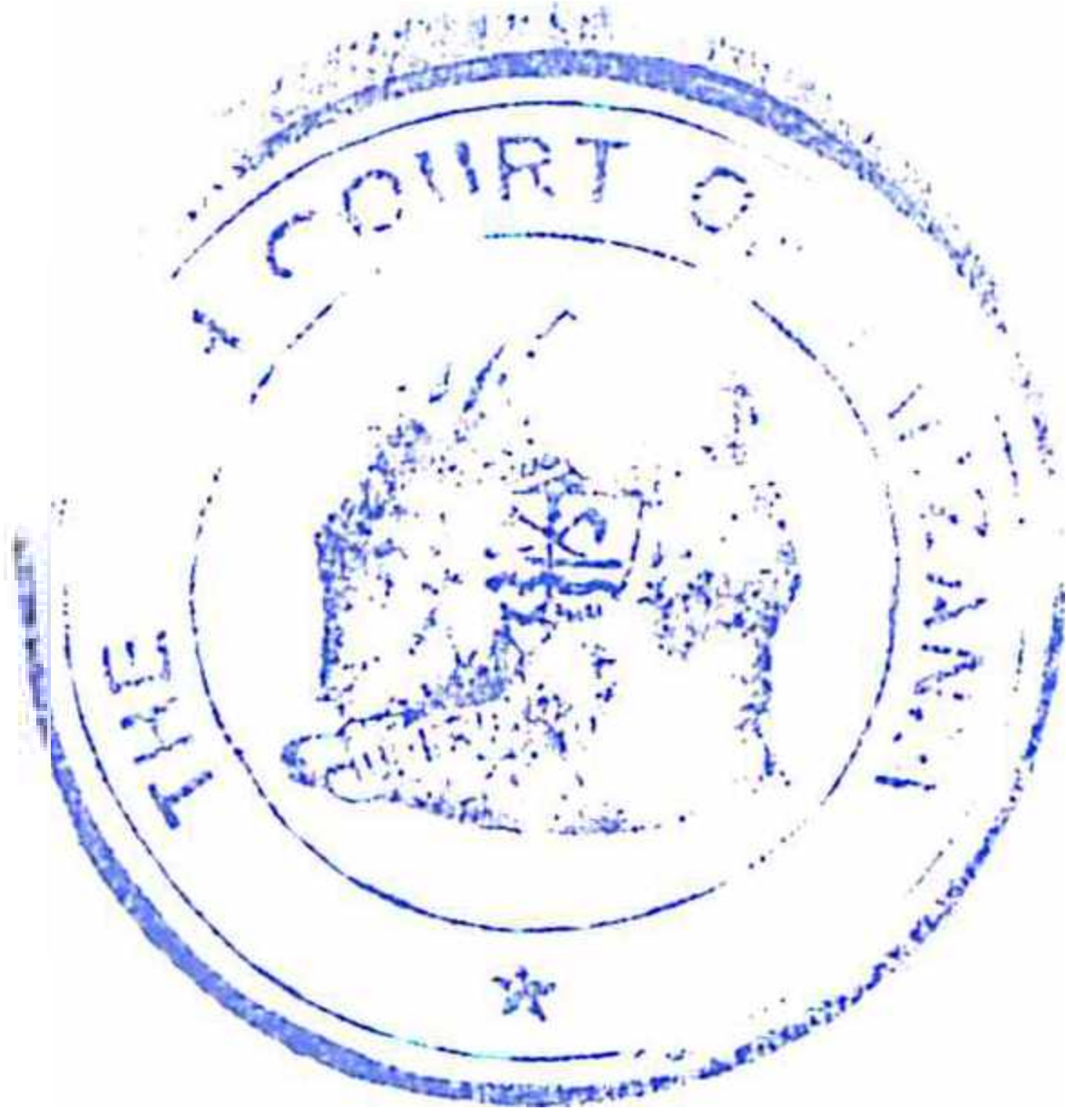
**JUDGE**

**25/03/2022**



*Kahati*

Right to appeal is fully explained.



**A. BAHATI SALEMA**

**JUDGE**

**25/03/2022**