

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT MOSHI

LABOUR REVISION NO. 06 OF 2022

(Arising from Labour Dispute No. CMA/KLM/MOS/165/2021 of the Commission for Mediation and Arbitration of Kilimanjaro at Moshi)

CHARLES RICHARD MATERU..... 1ST APPLICANT

HAMIS ABDALLAH NDEGE 2ND APPLICANT

ANDREW EMMANUEL MSOGOLO 3RD APPLICANT

VERSUS

KIFARU QUARRY CO. LTD..... RESPONDENT

JUDGMENT

22/03/2023 & 05/04/2023

SIMFUKWE, J.

This is an application against the award of the Commission for Mediation and Arbitration (herein after referred as CMA) in Labour Dispute No. CMA/KLM/MOS/165/2021 of Moshi dated 28th February, 2022. The application was made under **sections 91 (1)(a), 91 (2) (b) (c) and 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004, Cap 366 R.E 2019 (ELRA); read together with Rules 24(1) (2) (a) (b) (c) (d) (e) and (f), 24(3) (a) (b) (c) and (d), 28 (1) (c) (d)**

and **(e)** and **55(1)(2) 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 call for and examine the record and proceedings of the Commission for Mediation and Arbitration for MOSHI at MOSHI in Labour Dispute No. CMA/KLM/MOS/165/2021.*
- 2. That, this honourable court be pleased to revise and set aside the Arbitrator's Award of the Commission for Mediation and Arbitration for Moshi at Moshi dated 28th day of FEBRUARY, 2022 delivered by Hon. R. Massawe (Arbitrator) in LABOUR DISPUTE REF. CMA/KLM/MOS/165/2021 for it being irrational and improper for the reasons stipulated herein.*
- 3. Any other relief(s) this Honourable Court may deem fit and just to grant.*

The application was supported by an affidavit sworn by Mr. Deogratias Matata Peter, learned counsel for the applicants which was contested by the counter affidavit sworn by Ms Sia Maria Sandi the Managing Director of the Respondent.

The brief background of the dispute in a nutshell is that, the applicants were employed by the respondent herein Kifaru Quarry Company Limited (hereinafter referred as the respondent) at Mwanga up to 27th April 2020 when the applicants were imprisoned by the district court of Mwanga vide Criminal Case No. 160 of 2020 in which the respondent was the complainant. The applicants were not satisfied with the decision of the Court in the criminal case, thus they appealed to the High Court where

their conviction and sentence were quashed and they were ordered to be released from prison. After their release from prison, the applicants instituted a labour dispute before the CMA along side an application for condonation for late referral of the dispute. The application for condonation was dismissed, hence the instant application for revision on the following grounds:

- i. That, the Honourable Commission erred in law and fact in dismissing the Applicant complaints without take (sic) note that the Respondent did not properly oppose the application.*
- ii. That, the Honourable Commission erred in considering the time in which the dispute between the parties arose.*
- iii. That, the Honourable Commission erred in law and facts for failure to properly evaluate the evidence on record.*

The applicants prayed this court to revise and set aside the Arbitrator's Award.

The application was argued by way of written submissions. Mr. Deogratias Matata Peter learned counsel argued the application for the applicants, while Mr. Julius Semali learned counsel, opposed the application for the respondent.

In support of the 3rd ground of the application, Mr. Matata for the applicants submitted inter alia that the Honourable Mediator did not consider the evidence before it. That is the affidavit, counter affidavit and the affidavit in reply which were filed before the Commission. That, the Commission considered the time which the applicants stayed in prison but did not consider the situations which the applicants were facing soon after their release. The learned counsel was of the view that the Honourable

Mediator did not consider life inconveniences which are normal and obvious to face after being imprisoned for more than a year. That, the issues were stated in their affidavit and affidavit in reply. That, the Commission ignored all the psychological, social, financial, physical health and other mental health issues which are attached to the punishment of imprisonment. That, the reasons for the delay included the challenge of residence of the 2nd applicant who was alleged to be a resident of Rufiji.

Mr. Matata cemented his averment with the case of **John Nicholaus Kimwaga v. Lake Oil Ltd, Labour Revision No. 132 of 2021** at Dar es Salaam in which the High Court adopted the position of the High Court of Uganda in the case of **Uganda of Kibuuka v. Uganda Catholic Lawyers Society and Two Others, Misc. Application No. 696 of 2018/ 2019 UGCCD 72** where it was ruled inter alia that:

"It is not a requirement of the law that whenever a person is ill, he/she must produce a medical document in proof of sickness or illness...."

The learned counsel invited this court to consider that the applicants were still incapacitated soon after their imprisonment and therefore consider that time has been accounted and proved alongside proof of imprisonment and proceed to extent the time for the dispute to be determined on merit.

On the second ground, Mr. Matata asserted that the labour dispute arose after the imprisonment of the applicants which was not disputed by the respondent. That, the Commission improperly considered the time when the criminal case was instituted as the same was not pleaded by any of the parties and by then the dispute had not risen.

On the first ground of appeal, Mr. Matata argued that their application for condonation was not properly opposed because the respondent did not adhere to the provision of **Rule 29 (5) of the Labour Institution (Mediation and Arbitration) Rules 2007, GN No. 64/2007** which require a notice of opposition to be filed alongside the counter affidavit. That, there was no notice of opposition filed by the respondent and that the same was a clear violation of the provision of the law.

The learned counsel concluded by praying this court to revise the decision of the Commission and grant extension of time for the applicants.

In his reply submission Advocate Julius Semali submitted that the applicants failed to account for each and every day of delay as required by the law. That, the applicants were acquitted by the court on 09th July 2021 and filed their application for condonation before the Commission on 21st October 2021 which means it was almost three months later which are not sufficiently justified/accounted for by the applicants.

The learned counsel argued the first and second grounds of application together. He argued that the said grounds lack merit as the Commission considered the whole period of delay and found out that the time the applicants were imprisoned was accounted for, while almost three months after imprisonment were not sufficiently accounted for. Mr. Semali cemented his argument with the case of **Hawa Issa Nchirya v. Ramadhani Iddi Nchirya and 2 Others, Civil Appeal No. 27/03 of 2021**, Court of Appeal (unreported), at page 10 last paragraph where it was held that:

"I have no doubt that Mr. Wasonga is aware that it is settled law that in considering application such as this one, the court is guided

by established principle to wit, reasons or cause and length for delay, whether the applicant has accounted for each and every day of delay etc.”

It was clarified further that the applicants herein having failed to account for each and every day of delay as required by the law, the ruling of the Commission for Mediation and Arbitration is very proper and correct hence no need of this court to disturb. That, the submission by the applicants that they got life inconveniences is not a sufficient reason for the delay to refer the dispute to the Commission. Mr. Semali was of the view that the applicants slept on their rights if at all they had any.

The reason that the second applicant resides at Rufiji was also challenged that the same is not ground for extension of time as referral of the dispute to the Commission had nothing to do with his residence. That, that is why the second applicant later in October 2021, he referred the dispute to the Commission without shifting his residence to elsewhere. Mr. Semali concluded that the first and second grounds of application have to be dismissed for lack of merit.

Furthermore, Mr. Semali challenged the health issues alleged by the applicants to the effect that the same were not deposed in the affidavit in support of the application. Thus, the same was a mere statement from the bar as held in the case of **Hassan Kapera Mtumba v. Salim Suleiman Hamdu, Civil Application No. 505/12 of 2017**, CAT (unreported).

Concerning the ground that the application was not properly opposed, Mr. Semali replied that the application was properly opposed and that the filed counter affidavit was itself a signification of opposing the application for

condonation. Regarding failure to file notice of opposition, the learned counsel opined that the applicants had not shown that any inconvenience or injustice was resulted by such omission. Thus, the ground lacks merit and ought to be dismissed.

Mr. Semali finalised by submitting that the applicants have failed to prove any of the grounds to warrant revision of the ruling of the Commission as required under **Rule 28 of the Labour Court Rules of 2007**. He prayed that this application should be dismissed for lack of merit.

Having considered the rival submissions of both parties together with their affidavits, the issue is *whether the applicants have shown good cause for the delay*.

It is trite law that granting extension of time is the discretion of the court upon the applicant showing good and sufficient cause. There is a plethora of authorities to that effect. In the case of **Brazafric Enterprises Ltd vs Kaderes Peasants Development (PLC), Civil Application No. 421 of 2021 [2022] TZCA 624 (13 October 2022)** [Tanzlii] at page 8 & 9 the Court of Appeal held that:

*"It is noteworthy that there is no universal definition of the term 'good cause'. Therefore, good cause may mean among other things, **satisfactory reasons of delay or other important factors which need attention of the Court**, once advanced may be considered to extend time within which a certain act may be done."* Emphasis mine

In the case of **Michael Lessani Kweka v. John Eliafye [1997] TLR 152** His Lordship Kisanga J.A held that:

*"The Court had power to grant an extension of time if sufficient cause had been shown for doing so; in the instant case **the Applicant had shown reasonable diligence in correcting the error immediately upon discovery** and this conduct warranted consideration for enlarging the time in his favour."* Emphasis added

In the instant application, the applicants were acquitted on 09th July 2021 and they filed their application before the CMA on 21st October 2021 which is more than three months. The reasons for the delay advanced by the applicants were life inconveniences after being imprisoned for more than a year. That, the issues were stated in their affidavit and affidavit in reply. That, they faced psychological, social, financial, physical health and other mental health issues which are attached to the punishment of imprisonment. Mr. Semali for the respondent was of the opinion that the applicants had failed to account for each day of delay as required by the law and supported the findings of the CMA.

I subscribe to the case of **Hawa Issa Nchirya** cited by the learned counsel for the respondent, in which the Court of Appeal observed inter alia that length of delay is among the issues which should be considered in granting extension of time. In the instant matter I am of settled mind that the challenge on part of the applicants is the length of delay. The fact that they might have faced life inconveniences after being released from prison is not an issue. Rather, the delay of three months does not exhibit diligence on part of the applicants as it has been settled that extension of time may not be granted where the delay is inordinate.

Concerning the issue of residence of the second applicant, I find it to be a mere excuse having regard to the delay of three months.

It on the basis of the fact that the delay by the applicants was inordinate that I find this application has no merit. I therefore dismiss it forthwith.

It is so ordered.

DATED and DELIVERED at Moshi this 05th day of April 2023.



X

S. H. SIMFUKWE
JUDGE

Signed by: S. H. SIMFUKWE

05/04/2023