

THE HIGH COURT OF TANZANIA

HIGH COURT LABOUR DIVISION

AT MUSOMA

LABOUR REVISION NO. 14 OF 2023

(Arising from Labour Application No. CMA/MAR/MUS/40/2022)

AZIZ RASHIDAPPLICANT

VERSUS

NORTH MARA GOLD MINE LIMITED RESPONDENT

JUDGMENT

29th & 31st May, 2023.

M. L. KOMBA, J.:

The applicant herein is seeking for the following orders;

- a) This honorable court be pleased to exercise its revisional jurisdiction, call for and examine the records of proceedings and application for condonation thereof before the commission for mediation and arbitration for Musoma in labour application no. CMA/MAR/MUS/40/2022 for the purpose of satisfying itself as to the correctness, legality and or propriety of the reliefs or decision made by the mediator (Hon. Wambali, V.) against the applicant dated 13/10/2022.*
- b) Any other relief this court may deem fit and just.*

The application is preferred by way of chamber summons made under sections 91(1)(a), 91(2)(b) (c)(4)(b) and S. 94 (1) (b) (i), of the Employment and Labour Relations Act, No. 6 of 2004, read together with Rules 24(3)(a)(b)(c)(d) and rule 28(1) (a- e) of the Labour Court Rules of 2007 GN No. 106 of 2007 which has been supported by the applicant's affidavit.

In his affidavit specifically at paragraph 5 applicant deponed that Mediator misdirected himself by failure to understand that the applicant was not given notification to appear before disciplinary hearing by respondent, he was issued termination letter 14 days latter from the date of termination and that allegation against him was not proved.

The respondent on the other hand filed the counter affidavit sworn by the Human Resources Manager to the effect that;

1. Applicant termination was substantively and procedurally fair.
2. Decision of the commission was just to dismiss the application for condonation as the application did not disclose good cause to justify extension of time
3. Termination letter was given on 25/02/2022 and the application lodge his dispute to CMA on 28/04/2022 which is out of time.
4. This revision be dismissed for lack of merit.

The factual brief of the matter is that the applicant filed condonation before the Commission for Mediation and Arbitrator (the CMA) so that the CMA can extend time within which the applicant to file labour dispute for termination of employment. Mediator dismissed condonation application hence this appeal.

When the application was called for hearing the applicant was represented by Mr. Geoffrey Kishosha assisted by Mr. Emmanuel Elinami both advocates while Mr. Faustine Malongo learned advocate represented the respondent.

Mr. Kishosha, counsel for the applicant brought to the attention of this court that they had good cause in their condonation application as depicted in paragraph 4, 5, 6 and 7 of affidavit in support of this application that he believed employer would handle it and found he is out of time. Application submitted that he was given termination letter nine (9) days after the termination and that he was making a follow up of his entitlement and he was waiting for negotiation which did not happen.

Mr. Kishosha contended that applicant utilized internal remedies by appealing to higher authority in vain and when he decided to pursue his right to CMA he discover to be out of time hence application for condonation. He

further he complained of mediator's decision at page 9 of the Ruling that it was not proper for the mediator to rule out that application was premature as the appellant did not exhaust all remedies available in work place and that applicant was supposed to file and challenge termination of contract by using referral form. He argues that mediator misdirected himself as the time was not in favour of the applicant.

It was his submission that condonation was properly filed and prayed for it be granted as applicant has reasons for delay. He said reasons forwarded to mediator were genuine and prayed this court to be moved by those reasons.

Finally, he submitted that the degree of lateness was one month and 14 days only and applicant explained what happened in those days and prayed this court to adopt affidavit and consider his application.

Fearing the application, Mr. Malongo prays this court to adopt notice of preposition and counter affidavit and application be dismissed as the applicant failed to explain why he did not file dispute on time. It was his argument that reasons forwarded before this court are found at paragraph 5 of the affidavit which are not reasons for delay that required by the law. Analysing issues which are not acceptable, Mr. Malongo mentions the issue

that applicant was not given notification of hearing on disciplinary committee, no enough time for preparation of hearing, delay of the employer to give him his termination letter, that allegation was not proved, all these cannot be a ground for condonation as time started to be counted after termination.

Counsel for the respondent argue that, applicant was given his termination letter on 25/02/2022 and he admitted the same at paragraph 5 of his affidavit. Termination was on 17/02/2022 the day which he was given the decision of the employer. But he filed condonation on 28/04/2022 as said without good reason and what was decided by mediator was correct.

About the contents of page 9 of the decision of the mediator, counsel argue that mediator was analyzing the point of illegality in termination which cannot be the ground of condonation. It was his observation that the same it was supposed to be filed in main suit and not on condonation and that is the position of the law. He said illegality is raised when the CMA is in connection to that decision but not when illegality is raised by parties before they file their case to CMA. This was the position in **William Wambura vs. Grumet**, Application for Revision No. 18 of 2020 at page 6 in 3rd para about illegality.

Mr. Malongo submitted that, another reason addressed by mediator was negotiation between the applicant and his employer. He said negotiation is not a bar to find other legal remedies as was in the case of **Karibuel J. Mola vs. T Azar**, Labour Revision No. 780 of 2019 at page 7. Another reason like that of clearance which was done by the applicant and looking for legal aid considered not to be a reasonable reason. He refers this court to the decided case of **Athman Kinyoni vs. Jumanne Mtambo**, Misc. Land Application No. 54/2021 Land Division Arusha at page 8 that failure to obtain legal assistance is not a reason.

In his conclusion this counsel submitted that taking into consideration that applicant was issued a termination letter on 25/02/2022 and he filed his application for condonation on 28/04/2022 he was late for 60 days and he did not explain what was doing all those days. He prayed this application to be dismissed as CMA well considered facts before it.

During rejoinder Mr. Kishosha while argue on supplied cases by the counsel for respondent he was of the view that each case is decided depending on its circumstance and explained that he was late for one month from 28/04/2022 which he was supposed to file his dispute as it was the date which applicant and his employer ended communication as shown in

paragraph 14 of affidavit. While insisting the issue of handling over the office to be considered he said applicant was on a top position so it was not possible to leave the office casually although he agrees that applicant has the knowledge of termination on 25/02/2022 and reiterate his submission in chief over prayers.

Before venturing into the merit of the application, I must emphasis at the outset that parties are bound by their own pleadings. Such position has been highlighted in range of Court decisions including the case of **Makori Masoga vs. Joshua Mwaikambo & Another** (1987) TLR 88 where it was held that:

'In general, I think it is elementary a party is bound by his pleadings and can only succeed according to what has averred in evidence. He is not allowed to set up a new case.'

After careful consideration of the parties' rival submissions, CMA and Court records as well as relevant law, I find the Court is called upon to determine only one issue; whether the applicant adduced sufficient reason to warrant condonation.

In his affidavit at paragraph 11, 12 and 14 in support of the application for condonation at the CMA, the Applicant deponed the following reasons which hindered him to file his application on time;

11. *That, the reasons for delay of filing the breach of contract dispute is that the termination letter was served to me on 25th February 2022 while the same was written on 17th February 2022. And the respondent technically served the termination letter to me after a lapse of 9 days.*
12. *That, from 17th February 2022 up to 01st April 2022, I was making other legal remedies from the respondent of which proved unfertile. And from 2nd April 2022 up to the date of filing this matter, I was looking for legal assistance and preparing the documents for filing the matter before the Commission.*
13. *That, after receiving final decision from the respondent's appellate board, other exit procedures continued including medical and site clearance from 7th March to 23rd April 2022 so that the respondent could make my final payments of which make me to delay to file a complaint within time. **The said clearance form dated 23rd April 2022 is hereby attached as ANNEXURE – AR6 to form part of this affidavit.***

Notwithstanding the Applicant's submissions before this Court, the above were the main reasons adduced before the CMA. The record shows that the Applicant was terminated from employment on 17/02/2022 (this according to CMA F1), he was served with a termination letter on 25/02/2022. He referred the dispute to the CMA on 28/04/2022. Time limit for filing disputes about fairness of termination are referred at the CMA within 30 days from the date of termination in terms of Rule 10(1) of GN. No. 64 of 2007. In the present application, the Applicant delayed to file the dispute timely, that is from the date of termination as he declared in CMA F1 which is 17/02/2022 to 28/04/2022 is 70 days. That means applicant was late for 40 days.

This Court has examined the reasons advanced to CMA as narrated in foregoing paragraph. To start with the first ground, that he was served on 25/02/2022. This is not a reason for delay, nevertheless applicant was supposed to account each day from the date he claims to be served the letter to the date when he referred the application at the CMA. Mr. Kishosha who represented the applicant during hearing failed to count days which he claimed to be late when he informed this court that the application was late for one month only.

Another reason is searching for legal remedies and finding legal assistance. I fully agree with the counsel for respondent that failure to obtain legal assistance is not a reason. See **Athman Kinyoni vs. Jumanne Mtambo** (supra) and **Aziz Mohamed vs. Republic**, Crim Application no. 84 of 2019 CAT at Mtwara. He also relied on the exit process after termination, with due respect how can those process hinders him to file application on time. During hearing counsel explained that applicant has to utilize internal remedies that why he found himself out of time. Internal remedy referred includes negotiation. This court in **Leons Barongo vs. Sayona Drinks Ltd** Lab. Rev. no. 182 of 2012 it was held that;

'Though the court can grant an extension, the applicant is required to adduce sufficient grounds for delay. I believe the reason that the applicant was negotiating with the respondent does not amount to sufficient ground for delay, more so, because the respondents have denied to be engaged in such negotiations'.

Examining the records at hand, no reason has been adduced to such effect. Each day of the delay had to be accounted for as it is the Court's position in range of decisions including the case of **Ludger Bernard Nyoni vs.**

National Housing Corporation, Civil Application No. 372/01/2018 where it was held that:

"It is settled that in an application for enlargement of time, the applicant has to account for everyday of the delay involved and that failure to do so would result in the dismissal of the application".

See also **Deonis Kitoga vs. East Africa Fruits Co. Limited**, Revision No. 396 of 2022.

In this application, the Applicant failed to account for all the days of the delay to refer the matter to the CMA. Thus, the Court finds no justifiable reasons to depart from the CMA's decision and grant the relief sought. In the end result, the present application has no merit and it is dismissed accordingly.

It is so ordered.

Dated at **MUSOMA** this 31st Day of May, 2023.



Nlk
M. L. KOMBA
Judge