THE UNITED REPUBLIC OF TANZANIA

IN THE HIGH COURT OF TANZANIA

MTWARA DISTRICT REGISTRY

AT MTWARA

LABOUR REVISION NO. 01 OF 2022

(*Arising from the ruling of the Commission for Mediation and Arbitration dated 10/12/2021, Labour Dispute No. CMA/LIND/22/2021*)

INNOCENT KALOKOLA ANTHONY.....APPLICANT

VERSUS

MPINGO CONSERVATION & DEVELOPMENT INITIATIVE..... RESPONDENT

RULING

Date of last Order: 21.03.2023
Date of Ruling: 10.05.2023

Ebrahim, J.

The hearing of this application proceeded virtually.

The applicant herein has made the instant application seeking for order of this court to call for the record of the proceedings and revise the ruling in the above-mentioned labour dispute. The application has been preferred under the provisions of **Rule 28 (1) (d) and (e), Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f), Rule 24 (3) (a) (b) (c) and (d), Rule 24 (11)**

(b) of the Labour Court Rules, GN No. 106 of 2007 and Section 91 (1) (a) of the Employment and Labour Relation Act.

The application is supported by the applicant's affidavit deponed by Innocent Kalokola Anthony. In challenging the application, the respondent filed a counter affidavit deponed by Jasper L. Makala Chief Executive Officer of the respondent. At the hearing, the applicant was represented by Mr. Julius Mkirya learned Counsel, and Mr. Raymond Wawa learned Counsel appeared for the respondent.

The brief facts leading to the present application is that, on 01/08/2019 the applicant was employed by the respondent as a Marketing and Sustainability Manager at Lindi. He was paid his salary on contract bases until July, 2020. However, from August, 2020 to 7th October, 2021 he continued working without being paid his salary. When he asked the respondent for the payments he was told that the donors have not yet deposited the money, once they bring the money he will be paid. As he had good relationship with the respondent he continued to wait. On 7th October, 2021 the employer wanted to terminate him from work, so the applicant went to seek for legal assistance so that he can get his entitlements. After seeing that there was no any response from the employer until on 27th

October, 2021, the applicant decided to refer the matter to CMA on 27.10.2021. His complaint was filed with the application for condonation to secure leave of the CMA to entertained his complaint out of time. The respondent protested the claim on the ground that the employment contract reached to an end on 30.06.2020 and the applicant was given notice to that effect. Having heard the matter on merits, the CMA pronounced the ruling in favour of the respondent. The Mediator dismissed the application for condonation for lack of merit.

Dissatisfied by the CMA's decision the applicant filed the present application. The ground for the application as contained in paragraph 5 (i) of the affidavit is as follows;

That the Mediator erred in law and fact by failure to consider Applicant's right to be heard.

Mr. Julius Mkirya learned Counsel prayed for the court to revise the ruling of the mediator and to adopt the affidavit and the supplementary affidavit.

It is worth to note here that in the course of hearing of the application, this court expunged from the records the supplementary affidavit as the same was filed without eave of the court.

Arguing on the ground for the revision Mr. Julius Mkirya, learned counsel for the Applicant submitted that hon. Mediator erred in law and fact by failure to consider Applicant's right to be heard. He said the Applicant was not served with the Counter Affidavit and was not availed with 14 days to rejoin. Therefore, his right to be heard was infringed. He thus prayed for the application to be granted.

Responding to the Applicant's submissions, Mr. Raymond Wawa, learned Counsel for the Respondent prayed to adopt their Counter Affidavit. As for their counter affidavit, he submitted that the sme has not been controverted so it should be adopted as it is. He referred to paragraph 5 of their counter affidavit and contended that it is not true that Applicant's right to be heard was curtailed it is also not true he was served with the counter affidavit on the hearing date.

He explained the scenario as stated at paragraph 5 (a)-(e) of their counter affidavit read together with annexure M-2 of the Counter Affidavit that when the applicant filed notice of representation, he availed the address of Advocate Sabas Shayo of Vertex Law Chambers. Therefore, the Counter Affidavit and annexures were served to the respective advocate Sabas Shayo. He brought to the attention of the court that other representative

who was brought by the applicant is not known in court and that he was supposed to communicate with his lawyer. Moreover, the Applicant did not even give notice to change the representative. He contended that at the hearing, the applicant was represented by Alice Chonya-TUICO, but the records show that his representative is Sabas Shayo. Referring to annexture M-2 again, he said the document shows that it was received by Vertex Law Chambers on 04.11.2021, hence the Applicant's argument is baseless, Mr. Wawa submitted.

He argued further that the Applicant has not shown how his right to be heard was infringed because it was him who filed an application for condonation after the expiration of 420 days. He urged the court to refer to the proceedings and the ruling of the CMA where the applicant admitted to have delayed for 420 days without stating the reasons for the delay.

He contended further that the CMA invoked **Rule 10 (2) of Labour Institutions (Mediation and Arbitration) Rules G.N 64 of 2007.** As for the reason that he was promised to be paid, Mr. Wawa said the same is not substantiated because the Applicant did not attach any document to prove the promise. He concluded on the point that the Applicant had no good reason to warrant extension of time becasue he did not explain on

the sixty (60) days. He invited this court to visit the case of **Nyanza Road Works Ltd Vs. Giovanni Guidon, Civil Appeal No. 75 of 2020 at page 14, CAT-Dodoma** where CMA refused to extend time because the applicant delayed for 137 days and the Court wanted him to account for each day of delay. He appealed at the High Court then to the Court of Appeal. He said in the cited case it was held that the law assists those who are vigilant and not who sleep. He prayed for the application to be dismissed.

In rejoinder Mr. Julius Mkirya reiterated what he submitted in chief. And argued that Sabas Shayo was an addressee and that there is no hard and fast rule to file notice of representation but rather notice of application.

I have dispassionately followed the rival submissions and noted that the issue for determination is whether the applicant advanced good cause for the delay to file his complaint at the CMA.

It is a settled principle of law that in an application for extension of time the applicant must adduce sufficient or good cause for the delay and prove before the court that he was prevented by sufficient ground to file his application on time.

What amounts to sufficient or good cause has been discussed in a numerous decisions of the Court of Appeal. In the Court of Appeal case of **John Mosses and Three Others vs. The Republic, Criminal Appeal No. 145 of 2006** where the case of **Elias Msonde vs. The Republic, Criminal Appeal No. 93 of 2005** was quoted with approval, it was stated that: -

> *"We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part".*

In the instant matter the applicant alleged that he failed to file his application before CMA on time because the respondent had promised to pay his salary after the donor has deposited the money. Therefore, because they had good relationship he kept on waiting. On 07.10.2021 he wrote a demand letter to the respondent to alert him about his entitlements, so that they can discuss about it, but no response was given to him. The applicant continued to wait for the respondent's reply until on 27/10/2021 when he decided to refer the matter to CMA.

Limitation of filing a complaint before the CMA is provided under **Rule 10 (1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 (GN 64 of 2004)** which provides that: -

> *"Rule 10 (1) Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date the employer made a final decision to terminate or uphold the decision to terminate".*
> *"Rule 10 (2) All other disputes must be referred to the Commission* ***within sixty days from the date when the dispute arose****"*[emphasis added].

Under the circumstances, in so far as the facts of this case are concerned, even if the court would take the applicant's reason of waiting for the respondent's reply to his demand letter, he still ought to have accounted for each day of delay. Although he contends to have been denied his right to be heard, looking at Annexture M-2 of the counter affidavit filed by the respondent, it shows that the applicant was served with the counter affidavit at CMA on 04.11.2021 throw his addressee Vertex Law Chamber and it was signed to have been received as clearly confirmed by Mr. Julius Mkirya in his submission. His argument that the same was received but

Antipas Rahamu and not Sabas Shayo is not plausible because they have not denied that the said Rahamu is not working at Vertex Law Chambers.

All in all, I find that the respondent did complied with **Rule 6 (1) (b) (i) and Rule 7 (1) (ii) of the Labour Institution (Mediation and Arbitration) Rules, G.N 64 of 2007**, and hearing at CMA was conducted on 10.11.2021.

Due to the reasons stipulated above it my position that it is not true that the Applicant was not availed his right to be heard but rather he slept on his right. The delay of 420 days is too long and unjustifiable for the Applicant to wait to be paid his entitlement by the Respondent.

The Applicant submitted that the Respondent stopped paying him the salaries from August, 2020 to 7th October, 2021. Therefore, the applicant ought to have accounted for each day of the delay. This was also the position in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo, Civil Application No. 3 of 2007 (unreported)** the Court of Appeal held that:

> *"Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken".*

I subscribe to the wisdom of this court in the persuasive case of **Ezekiel Kiango Vs. Lake Oil Co. LTD, Labour Revision No. 369 of 2019, HC-Dar es Salaam** where it was held that;

> *"It is worth to note that limitation is there to speedy administration of justice. A party will not be allowed to institute proceeding as to when he wishes and choose".*

As above said, the applicant's application is unmeritorious. It is thus dismissed. Being a labour matter, I make no order as to costs.

Ordered accordingly.

R.A Ebrahim

JUDGE

Mtwara

10.05.2023