

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

**LABOUR DIVISION**

**AT MOSHI**

**LABOUR REVISION APPLICATION NO. 18 OF 2022**

(Originating from Labour Dispute No. CMA/KLM/MOS/M/29/2022)

**ABUU ALLI KASSA ..... APPLICANT**

**VERSUS**

**CHARAN SINGH AND SONS LIMITED..... RESPONDENT**

**JUDGMENT**

*04/04/2023 & 06/06/2023*

**SIMFUKWE, J**

The Applicant Abuu Alli Kassa filed the instant application after being aggrieved with the ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/KLM/MOS/M/29/2022 of Moshi dated 30<sup>th</sup> June 2022. The application was filed under **Section 91 (1)(a), Section 91 (2) (b)** and **Section 94 (1) (b) (i) of the Employment and Labour Relations Act, No. 6 of 2004, Cap 366 R.E 2019 (ELRA)**; read together with **Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f), 24(3) (a) (b) (c) and (d) and Rule 28 (1)(c) and (e) of the Labour Court Rules, GN No. 106 of 2007**. The application was supported by the affidavit of the applicant which was contested by the counter affidavit deponed by Mr. Jefta Siao the Human Resources Officer of the respondent.

The Applicant prayed for the following orders:

- 1. This honourable Court be pleased to revise and set aside the decision of the Commission for Mediation and Arbitration for Kilimanjaro at Moshi dated 30<sup>th</sup> day of June 2022 delivered by Hon. R. Massawe (Mediator) in Labour Dispute No. REF.CMA/KLM/MOS/M/29/2022.*
- 2. Any other relief(s) this Honourable court may deem fit and just to grant.*

The background of the dispute is that the Applicant was employed by the respondent as a driver since 02<sup>nd</sup> February 2011. On 1<sup>st</sup> January 2016 he signed an employed contract which ended on 31<sup>st</sup> July 2021 when he reached retirement age. That, after he had retired, the respondent had promised to pay him his terminal benefits and other unpaid allowances at the tune of Tshs 10,750,557.53. However, the respondent changed her mind and alleged that he would pay the applicant Tshs. 459,000/ as severance pay and transport costs only. That, the respondent refused to pay other allowances. The applicant has alleged in his affidavit that he could not file his labour dispute within time because he was very sick. The Applicant instituted an application for condonation before the CMA for late referral of a dispute to the Commission. However, the same was dismissed. He attached copy of medical treatment reports to form part of his affidavit. Aggrieved with the ruling of the CMA, the applicant filed this application for revision.

When the matter was called for hearing the applicant was unrepresented. In his brief oral submission, he said that the facts which he had deponed in his affidavit sufficed. He prayed to adopt the same.

Mr. David Shilatu learned counsel for the respondent prayed to contest the application by filing written submission.

In his written submission, Mr. Shilatu adopted the contents of paragraph 1 to 9(i-v) of their counter affidavit to form part of his submission and insisted that the Mediator was correct in his decision as the application of the applicant had no legs to stand.

Mr. Shilatu submitted that time limitation to file the matter before the CMA and any court is the issue of law and in this matter, we are guided by **GN No. 47 OF 2017** which directs how to file employment matters. That, for the matter of unfair termination of employment the employee should file the dispute before the Commission within 30 days, and for other disputes, the same should be filed within 60 days and not otherwise.

The learned counsel referred the court to page 6 to 7 of the CMA award and argued that after retirement, the applicant was paid his retirement benefits by his employer. To substantiate that, the learned counsel referred to annexure AB-3 of the applicant which has the heading: "*HATI YA MALIPO*" dated 03/08/2021 addressed to Abuu Ally KHASSA.

Mr. Shilatu continued to explain that the act of the applicant of filing a dispute for payment of retirement benefits on 01/03/2022 was not only violation of the laws and procedures but also the same was filed extremely out of time without there being good reasons for the delay which were advanced before the Commission.

The learned counsel supported the findings of the Mediator which dismissed the claim of allowances which the applicant alleged that was not paid by the employer since 10/05/2015 to 01/03/2022 which is almost

7 years. He argued that such claim was out of time stipulated by the law. That, the claim of allowances was out of time for 2555 days.

Concerning the importance of honouring the time of filing matters before the CMA, Mr. Shilatu elaborated further that, the Mediator referred to the case of **Tanzanite One Mining Ltd vs AndreVenture, Revision No. 276 of 2009** in which this court emphasized that:

*"...CMA erred to entertain the Dispute that was time barred, hence exercising jurisdiction not vested on it, and it failed to exercise the Jurisdiction so vested by failing to reject the matter brought out of time thus it acted illegally..."*

It was emphasized by Mr. Shilatu that by considering the above authority, the CMA could not allow the applicant to proceed with his application as it was brought out of time. He asserted that, if the CMA had not dismissed it as it did, it would have failed to abide to its core functions. He referred to the case of **Tanzania Fish Processors vs Christopher Luhangula, Civil Appeal No. 161 of 1994** in which the Court of Appeal stated that:

*"Limitation is material point in the speedy Administration of justice. Limitation is therefore to ensure that a party does not come to court as and when he chooses."*

Also, Mr. Shilatu referred to the case of **Julius Kamote and 139 Others vs Tanzania Pipelines Co. Ltd, Labour Revision No. 317 of 2015** (High Court Labour Division at Dar es salaam) which held that:

*"If the plaintiff sues after the expiry of time, will be barred even where the defendant has betrayed him into permitting the time to elapse on fruitless negotiation. That,*

*negotiations between the parties cannot defeat the statutes, and the plaintiff who is negotiating should nevertheless file a suit."*

Mr. Shilatu averred that since the applicant failed to satisfy the CMA that he had a genuine reason to file the dispute out of time, then this court should also direct the applicant on a good way of managing time to file the matter within time as required by the law.

In his conclusion, Mr. Shilatu prayed the court to dismiss this application as it has no legs to stand, and it has no justification to be before this court or even to be remitted back to the CMA.

I have considered the rival submissions of both parties and the CMA record as well as parties' affidavits. The issue for determination is ***whether the applicant had advanced sufficient reasons for the CMA to grant application for condonation.***

Labour laws are very clear in so as far as condonation for the delay is concerned. **Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules**, GN No. 64 of 2007 provides that:

*"The commission may condone any failure to comply with the time frame in these rules on good cause."*

Also, **Rule 10(1)(2)** of the same Rules provides that:

*"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 that*

*the employer made a final decision to terminate or uphold the decision to terminate.*

**2. other disputes must be referred to the Commission within sixty days from the date when the dispute arises.**" Emphasis added

It is trite law that to grant or not to grant condonation is the discretion of the CMA/court. However, such discretion must be exercised judiciously.

The applicant must establish good reasons for the CMA to extend time. In the case of **Airtel Tanzania Limited vs Misterlight Electrical Installation Co. Limited & Another, Civil Appeal No. 37/01 of 2020** at page 8 the Court of Appeal had this to say concerning extension of time:

*"It may not be possible to lay down an invariable or constant definition of the phrase "good cause", but the Court consistently considers such factors like, **the length of delay involved, the reasons for the delay; the degree of prejudice, if any, that each party stands to suffer** depending on how the Court exercises its discretion; the conduct of the parties..." Emphasis added*

In the present matter, the applicant advanced two reasons before the CMA for his delay to file the matter within time. The reasons were sickness and the promise from the respondent that he will pay him. The CMA dismissed the application where at page 8 of its decision among other things the Mediator explained that the applicant did not manage to account for the days of delay from 17/08/2021. Also, the Mediator found

that the fact that the applicant went to KCMC for further treatment was not substantiated with evidence. Before this court the learned counsel for the respondent averred inter alia that the act of the applicant of filing a dispute for payment of retirement benefits on 01/03/2022 was not only violation of the laws and procedures but also the same was filed extremely out of time without there being good reasons for the delay which were advanced before the Commission. However, paragraph 8 of the affidavit in support of this application, shows that the applicant filed his dispute on December 2021 and not March 2022 as averred. Annexure AB-5 which is the summons dated 24/12/2021 in respect of Labour Dispute No. CMA/KLM/MOS/M/209/2021 is relevant. Also, apart from other allowances, according to the affidavit of the applicant which he filed before the CMA, he is dissatisfied with severance pay as well.

With due respect, guided by the above cited authorities, I differ with the findings of the Mediator. As per paragraph 7 of the applicant's affidavit before the CMA the applicant deponed that:

*"I failed to file my labour dispute on time because I was very sick and admitted at Mawenzi Government and later on in KCMC Hospital (copies of the medical treatment reports are collectively annexed herein to form part of this affidavit)."*

From the above quoted paragraph, attached documents show that the applicant was referred to KCMC for further treatment. A letter with reference No. P.2/1/VOL/IX/198 dated 23<sup>rd</sup> December 2021 is to the effect that the applicant was treated at Mawenzi Regional Referral Hospital from 11/6/2021 to 17/8/2021. Thereafter, the applicant was referred to KCMC

Hospital for further management. The applicant told the tribunal as well as this court that he was restricted to contact people due to the nature of the disease he suffered. That alone would suffice to grant extension of time basing on the circumstances and reasons for the delay. I am persuaded by the case of **Karibuel J. Mola vs Tanzania Zambia Railway Authority, Labour Revision No. 780 of 2019**, where this court held that:

*"I have careful (sic) examined the Record and I am of the view that, counting on each day of delay should not be imposed as a mathematical calculation. All what is required is for the Applicant to prove before the court that, he was prevented by a serious event or act to initiate the matter at the required time."*

In the instant matter, in line of the above case and the case of **Airtel Tanzania Limited** (supra), I am of considered opinion that the respondent herein will not be prejudiced if the application will be granted. In the circumstances of this case, I am convinced that it is in the interest of justice of both parties that the dispute should be determined on merit. The case of **Godwin Ndewesi and Karoli Ishengoma vs TZ Audit Corporation [1995] TLR 200** is relevant.

That said and done, I am strongly convinced that the Mediator overlooked the applicant's reasons for the delay as well as the substance of his application and dismissed his application for condonation. In the upshot, I revise the findings of the CMA and hereby grant 21 days to the Applicant to institute his dispute before the CMA, from the date of being supplied



with the copy of this judgment. This being a labour dispute, no order as to costs.

It is so ordered.

Dated and delivered at Moshi this 6<sup>th</sup> day of June 2023.



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S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

**06/06/2023**