

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT MOSHI**  
**MISC. LABOUR APPLICATION NO. 07 OF 2022**

*(Arising from Labour Dispute No. CMA/KLM/MOS/M/206/2021).*

**ELINSA ZAKAYO KIWIA..... APPLICANT**  
**VERSUS**  
**JACRO INVESTMENT CO. LTD.....RESPONDENT**

**RULING**

19<sup>th</sup> December 2022 & 2<sup>nd</sup> February, 2023

**A.P.KILIMI, J.:**

The applicant, ELINSA ZAKAYO KIWIA preferred this application by way of chamber summons under rules 24(1), (2)(a), (b), (c), (d), (e), (f) and 24(3)(a), (b), (c), (d) and rule 56 (1) and (3) of the Labour Court Rules, GN. No. 106 of 2007 (the LCR). The application is supported by an affidavit duly sworn by the applicant.

The crux of this application, is for extension of time within which to file Revision out of time in this court, after the applicant being dissatisfied with the decision of the Commission for Mediation and Arbitration in

CMA/KLM/MOS/206/2021. The Respondent has filed counter affidavit which was also duly sworn by Respondent.

Briefly, the background of the matter goes as follows: on 20/12/2021 the Applicant instituted dispute no. CMA/KLM/MOS/M/206/2021 at CMA Moshi, in which he claimed for termination letter, certificate of service and severance payment. The matter was resolved through mediation, whereby the applicant and respondent signed CMA Form 7. The applicant later realized he was not well informed about mediation before it was concluded, hence this caused to him to be the weaker party in the said concluded mediation. He kept making follow up for some time and later, he was informed that according to the said signed form CMA F7 he has nothing to claim, and by then time was expired.

At the hearing of the application, the applicant was represented by Mr. Manase Gideon, whilst Mr. Philemon Justin Shio learned advocate, appeared for the respondent. Both proposed the application be argued by way of written submission, the court acceded to their prayers and they duly submitted as per schedule ordered.

In his affidavit, applicant contended at para six that, after the dispute was mediated, it was agreed he will be paid Tsh. 1,298,124/=, but nothing was paid to him, and even the CMA F7 does not show the said agreed sum. Further at para eight insisted after mediation, he followed his employer, who kept promising to pay him, while the time was not in his part. At Para nine of his affidavit, the applicant averred that, after many follow ups of the said money. One day he met his employer in his office who told him, he has no claim and told him, even the form CMA F.7 shows nothing is supposed to be paid. He then returned to CMA where he was told the matter was closed, that is why he has knocked the door of this court in this way after being late.

In his counter affidavit, the respondent at para three averred that, it is the Applicant himself who resigned by writing termination letter, and after his resignation he decided to sue the respondent at the Commission for mediation for unfair termination in CMA/ KLM/ HAI/M/36/ 2021 where the matter was concluded in mediation and both parties signed CMA F.7.

Further at para four he averred that, the Applicant before institution of Labour Dispute No. CMA/KLM/MOS/M/206/2021 in the same year the Applicant had already filed another Labor Dispute No. CMA/KLM/HAI/M/36/2021 against the Respondent in which among other

things he claimed payments for Notice, Leave, 15 days salary and Severance payment. The matter also went for mediation and it was resolved in mediation that the Respondent to pay the Applicant as it appears in CMA F.7.

At para five, the Respondent contended that during mediation the Applicant was having a legal representation from Mr. Mgaya, who on the date of mediation was also present together with the Applicant, and that by the Applicant saying that he does not know law does not amount for him to be granted extension of time as ignorance of the law is not an excuse. lastly, the applicant also averred that the applicant did not give sufficient reasons for his delay and did not account for each day of delay.

I have considered the above averments from both sides and their submissions thereto, I have also considered the attachments to those affidavit, one issue appears to me to be vital for the disposal of this application, is nothing but whether there is sufficient grounds raised by the applicant for his prayer to be granted.

It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it, and the extension of time may

only be granted where it has been sufficiently established that delay was sufficient cause. (See the case of **Benedict Mumello V. Bank of Tanzania [2006]** 227 E. A. L. R. Vol 1.)

Moreover, in determining whether, in a particular case, sufficient cause has been established or not, a number of factors have to be taken into account depending on the circumstances of that particular case. The Court has to look, for instance, at whether the applicant was diligent, reasons for the delay, the length of the delay, the degree of prejudice to the respondent if time is extended, whether there is a point of law or the illegality or otherwise of the impugned decision etc. (see, **Dar es Salaam City Council v. Jayantilal P. Rajan**, Civil Application No. 27 of 1987, **Tanga Cement Co. v. Jumanne Masangwa and Another**, Civil Application No. 6 of 2001, **Tanzania Revenue Authority v. Tanga Transport Co. Ltd**, Consolidated Civil Applications Nos. 4 of 2009 and 9 of 2008 and **Bertha Bwire v. Alex Maganga**, Civil Application No. 7 of 2016, (all unreported).

The applicant's reasons for extension of time is that after the said dispute being mediated and signed CMA F.7, he was not well informed on the said mediation, he knew, he was supposed to be paid by the respondent his severance pay, and he believed so due to the kept promise of respondent

to pay him, finally he was told nothing should be paid to him, hence the time to file a case within time expired.

I have considered the reasons advanced by the Applicant and the rival arguments of the respondent. On my part, I am of considered opinion that the Applicant has not been diligent after his matter was mediated at CMA. His diligence is questionable, because, after he discovers there several inexecutable promises from the respondent. He did not take some crucial steps to know whether he had the claim of right, taking regard he was also supplied with the said CMA F.7. The steps may include lodging complaints to the CMA which mediated them about the said rights he alleges, which for sure could have known what was his rights after mediation. Having observed above, I am also in the same position with the respondent when he submitted the principle in the case of of **Lyamuya Construction Co. Ltd v. Board Of Trustees of Young Women's Christian Associtian**, Civil Application No 2 Of 2010, that in order to grant extension of time, the applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of action that he intends to take.

I agree that ignorance of law is not a defense, even in civil proceedings but it has always been held to have been a mitigating factor in most cases, but in the circumstances of this case, where the applicant diligence is questionable cannot act as a mitigation factor. I also agree with the respondent that, the applicant had not pointed out any illegality that was done by the Commission for Mediation during mediation process.

I must therefore conclude that the applicant has failed to convince me that there is any sufficient reason, to warrant an extension of time. It is for the above reasons; I hereby dismiss this application forthwith. Taking the nature of the dispute no order as to costs granted.

It is so ordered.

**DATED** at **MOSHI** this 2<sup>nd</sup> day of February, 2023.



*A.P.K.*  
**A. P. KILIMI**  
**JUDGE**  
**2/02/2022**

**Court:** - Ruling delivered today on 2<sup>nd</sup> day of February, 2023 in the presence of Manase Gideon Personal representative of the applicant and Mr. Philimoni Shio counsel for the Respondent. Applicant also present.

**Sgd: A. P. KILIMI**

**JUDGE**

**2/02/2022**

**Court:** - Right of Appeal duly explained.

**Sgd: A. P. KILIMI**

**JUDGE**

**2/02/2022**