IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB - REGISTRY OF MWANZA

AT MWANZA

LABOUR REVISION NO. 6 OF 2023

ANNA LUGAILA ANISETI ----------APPLICANT

VERSUS

KWETU FARAJA AND THE BRIDGE PRE&
PRIMARY ENGLISH MEDIUM SCHOOLS----------RESPONDENT

RULING

June 6th & 15th, 2023

Morris, J

The applicant above, Anna Lugaila Aniseth, invites this court to revise the decision of the Commission for Mediation and Arbitration for Mwanza (herein, **CMA**) dated December 5th, 2023. In the subject decision, her application for condonation to file a labour dispute against the respondent for breach of employment contracts out of time was denied. The application is supported by the affidavit of the applicant. However, hers is contested by the counter affidavit of Msafiri Aloyce Henga.

When the matter was tabled for hearing, parties were represented by Messrs. Lungano and Sepetu learned advocates for the applicant and respondent respectively. From the available record, the dispute herein is hinged on two employment contracts in favor of the applicant. It was alleged that the respondent breached them on 15/5/2022 via a *WhatsApp* message. The official letter thereof followed later. Further allegations by the applicant are that, she delayed to refer her complaint to the CMA as required by law. Hence, she filed application for condonation which was dismissed on merit hence this revision.

The rivalry submissions from each party are easy to summarize. The counsel for applicant, after adopting the affidavit, submitted that the Commission misdirected itself to hold that there was no discharge card in the medical report that was attached to the application. The said omission was held to act against the applicant's justification for her delay, namely, sickness. To the applicant, the CMA was wrong to hold that patients must be given discharge card. In practice, patients are given discharge forms. The latter together with medical report were attached to the application before CMA.

He also argued that the foregoing medical credentials indicate that the applicant was discharged on 9/6/2022. Further, it is evident from the medical documents that the applicant was attended and treated for three (3) consecutive months followed by medical checkups from 24/4/2022 to 20/7/2022. To the applicant's counsel, the certified sickness of his client was a valid ground for condonation.

The applicant further faulted the CMA to hold that time for the applicant to lodge the complaint was 30 days instead of 60 days. To him, the nature of dispute was breach of contract whose time limit, according to rule 10 (2) of ***the Labour Institution Rules***, GN 64/2017; is 60 days. Hence, as the dispute herein arose on 5/2/2022; 60 days expired on 6/4/2022. Accordingly, as the applicant fell sick on 1/4/2022, she was still in time to file her dispute at CMA. Her counsel concluded that, she has accounted for every day of the delay. Reference was made to the case of ***Zakayo Malulu v Pangea Minerals***, HC Labour Application No. 01/2021(unreported) prior to praying for the application to be granted.

In reply, advocate Sepetu first prayed to adopt the counter affidavit as part of his submissions. Then, he submitted that, extension of time is a

court's discretionary remedy considered judiciously. He argued that, in line with the case of ***Lyamuya Construction Ltd v Board of Registered Trustees of Young Women Christian Association of Tanzania***, Civil Application No. 2/2010 (unreported); the applicant did not satisfy the outlined conditions/criteria therein.

Regarding applicant's sickness, Mr. Sepetu submitted that it should have been a suitable ground for extension of time if she had fully proved it. Citing paragraph 8 of her affidavit, the respondent's counsel argued that the same states that she fell sick on 01/4/2022 and became admitted from 24/4/2022 to 9/6/2022. He, thus, argued that if these were true depositions, the applicant did not prove what she was doing from day of falling sick (01/4/2022) till when the medical attention was sought (24/4/2022). These are clear 23 unaccounted days. He cited ***Mgabo Yusuph v Chamriho Yusuph***, HC Civil Appeal No. 22/2019 and ***Khamis Ibrahim Zephania v James Samwel Otieno***, HC Application No. 102/2021(both unreported) to prop his argument.

Regarding the second reason, the defence counsel contended that, although the applicant's affidavit (paragraph 9) states that she made

necessarily follow up with her employer for almost 42 days (from 9/6/2022 to 21/7/2022); no evidence was fronted to prove such follow ups. He referred to the cases of ***And Beyond Travel Ltd v Nemes John Chami***, HC Labour Revision No. 102/2021; and ***Angela Gerald Manyonyi v Bhunu Mbundi Co. Ltd***. HC Misc. Labour Application No. 60/2021 (both unreported). Accordingly, he prayed for the application to be dismissed.

In rejoinder it was submitted by the applicant's counsel that, CMA was bound to consider the medical report and hold that it proved the applicant's sickness and the seriousness of the disease because she was admitted for 3 consecutive months.

From the above contentious arguments, the obvious question to be determined by the court is whether or not the grounds advanced by the applicant (sickness; and follow-up for reinstatement) suffice for this court to allow the application. I will analyze each ground at a time, a little later.

Before I pedal-start with determination of the applicant's grounds, I find it pertinent to reiterate the general cardinal principle that the court is not supposed to interfere with the exercise of discretion by a subordinate court/tribunal. However, if the former is satisfied that the decision by its

subordinate court/tribunal was clearly wrong; or the latter misdirected itself; or because it acted on matters on which it should not have acted; or because it failed to take into consideration matters which it should have considered; all or either of which culminated into unjust decision, the subject discretion may be interrogated. I am guided by ***Mbogo and Another v Shah*** [1968] EA 93 at page 94; and ***Kiriisa v Attorney General and Another*** [1990-1994]1 EA 258.

In law, court's power to extend time is discretional. But such discretion must be exercised judiciously free from personal whims, sympathy, empathy or sentiment. See, ***Bakari Abdallah Masudi v Republic***, CoA Criminal Application No. 123/07 of 2018 and ***Bank of Tanzania v Lucas Masiga***, Civil Appeal No. 323/02 of 2017 (both unreported).

I, probably, should also state it here that, the essence of law setting the time limits is to, among other objectives, promote the expeditious dispatch of justice [***Costellow v Somerset County Council*** (1993) IWLR 256]; to provide certainty of timeframe for the conduct of litigation [***Ratman v Cumara Samy*** (1965) IWLR 8]; and enhance public trust to the judicial

system. Consequently, it works in the advantage of proper management of resources; most important of which are time and finance.

Further, the overriding principle is that, the applicant must demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in time. In so doing, he/she should prove how each day of delay justifiably passed by at no applicant's fault. This is the principle recapitulated in ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, CoA-Dar es Salaam, Civil Application No. 130/01 of 2020 (unreported).

Here and now, I examine the grounds supporting the present application. The first point by the applicant is sickness. As correctly submitted by parties, settled in numerous cases is the principle that sickness is beyond human control and, once proved, it suffices to warrant extension of time. Towards this conclusion, I subscribe to holdings in, for example, ***Alasai Josiah v Lotus Valley Ltd***, Civil Appl. No. 498/12 of 2019; ***Christina Alphonce Thomas v Saamoja Masingija***; Civil Appl. No. 1/2014 (both unreported).

In the matter at hand, the affidavit reveals that the applicant fell sick on 01/04/2022 and was hospitalized at Kanana Health Centre from

24/4/2022 to 9/6/2022. Evident, is the exposé that the applicant fell sick on 1/4/2022 and sought medical attention 23 days thereafter. To say the least, this incoherent revelation beats logic. It is odd, to me, that a person may become infirm and nest the frailty for about a month without seeking treatment.

Further, computing time applicable herein, the complaint to CMA was supposed to be filed on 7/4/2022. Thus, the applicant failed to prove 17 days of delay; working from 8/4/2022 to 24/4/2022. I am mindful of the fact that 7/4/2022 was a public holiday.

Another cardinal principle of law is that, one applying for extension of time must account for each and every day of the delay. In the case of ***Hassan Bushiri v Latifa Mashayo***, Civil Application No. 3 of 2007 (unreported), the Court 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".

Other cases in line with the foregoing legal position are ***Yazid Kassim Mbakileki v CRDB (1996) Ltd Bukoba Branch & another***, Civil Application No. 412/04 of 2018; ***Sebastian Ndaula v Grace Rwamafa***

(*legal personal representative of Joshua Rwamafa*), Civil Application No. 4 of 2014; ***Dar es Salaam City Council v Group Security Co. Ltd***, Civil Application No. 234 of 2015; ***Muse Zongori Kisere v Richard Kisika Mugendi***, Civil Application No. 244/01 of 2019, ***Ally Mohamed Makupa v Republic***, Criminal Application No. 93/07 of 2019; and ***Lyamuya Construction Company Ltd. vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010 (all unreported).

In view of what is elucidated above, thus, the ground of sickness is devoid of merit. It is accordingly disallowed.

The second ground is under 9th paragraph of the affidavit. The applicant alleges to had been making follow-up to the respondent's office for reinstatement or payment of her accrued benefits. But, as rightly submitted by the respondent, the applicant's averment hereof makes a total of 42 days (from 9/6/2022 to 21/7/2022); which duration is not supported by evidence whatsoever. That is, she did not prove the said allegation with requisite documentary or allied evidence. For example, the affidavit does not contain a letter outlining her demands to the employer and/or written

response therefrom. Better still, she would be expected to have a written commitment or affidavit from her former employer to the effect that she indeed was following up her dues for that time.

Law is very categorical that, out-of-court communications or negotiations associated with the matter in court do not constitute a ground to stopping the running of time. I am not short of supporting reference. ***Fortunatus Lwanyantika Masha and another vs. Claver Motors Limited***, Civil Appeal No. 144 of 2019; ***M/S P&O International Ltd vs. the Trustee of Tanzania National Parks*** (***TANAPA***), Civil Appeal No. 265 of 2020; and ***Kigoma Ujiji Municipal Council v Ulimwengu Rashid t/a Ujiji Mark Foundation***, Civil Appeal No. 222 of 2020 (all unreported); are some of the cases in my mind to such effect.

Obviously, I will not misdirect myself to hold that the applicant's allegations of negotiations herein have not moved me to find for a good cause to extend time, especially when she did/has not exhibited any proof of such negotiations. Without stretching my imagination beyond elasticity, I am inclined to opine that, allowing parties to sleep on their rights under the

guise of flimsy excuses of amicable out-of-court negotiations; is to pave way for chaos to justice and mockery to due process of law.

The applicant herein was terminated on 5/2/2022. Therefore, it was unreasonable for her to make a long time-pursuit for her reinstatement without the employer showing any positive gesture or step towards getting her back to work or indicating that she would be paid any benefits due to her. Hence, the allegations that she spent 42 days while negotiating with her former employer without any corresponding proof is incomprehensible. In consequence, the second ground is equally abortive.

As I veer towards halting, I perhaps should also make a remark on the submission by the applicant's counsel that time for his client to lodge the complaint was 60 days instead of 30 days pursuant to rule 10 (2) of ***the Labour Institution Rules***, (*supra*). I have gone through the applicant's affidavit but none of paragraphs therein specifically points to such line of argument. This being a point of law, I would expect the appellant's counsel to build a firm foundation thereon in favour of his client. That is, he did not expound it to reflect the extent to which the same was helpful in the circumstances. It was not clear the direction of the applicant in such regard.

Further, one fails to establish whether or not the applicant wished to argue that if time was calculated on the 60 days basis, she would have been in time to lodge a complaint with CMA. All the same, in view of the fact that she has had several delay-days which remained unaccounted for, this argument continues to be unyieldingly inoperable.

In upshot, I have found no need to interfere with discretion of the CMA. This application lacks merit. It is accordingly dismissed. Each party is ordered to shoulder own costs. It is so ordered. Parties' right of appeal is fully explained.

C.K.K. Morris

Judge

June 15th, 2023

Ruling is delivered this **15th** day of **June, 2023** in the presence of Ms. Anna Lugaila Aniseth - the applicant and in the respondent's absence.

C.K.K. Morris

Judge

June 15th, 2023