

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

AT TABORA

LABOUR REVISION NO. 3 OF 2022

*(Originating from the Disputed No. CMA/TAB/TBR.MJN/MISC.28/2021 before the
Commission for Mediation and Arbitration at Tabora)*

MNEMA MICROFINANCE LIMITEDAPPLICANT

VERSUS

BERTHA MWOMBELARESPONDENT

JUDGMENT

Date of Last Order: 31/07/2023

Date of Judgment: 10/08/2023

MATUMA, J.

In the Commission for Mediation and Arbitration for Tabora at Tabora the Respondent obtained extension of time by way of condonation so that she could lodge her labour dispute against the Applicant herein. The applicant (*MNEMA Microfinance Limited*) was aggrieved hence this application for revision.

At the hearing of this matter the applicant was represented by M/S Stella Nyakyi learned advocate and the respondent was absent without notice. In that regard, I ordered this case to be heard ex-parte.

M/S Stella learned advocate in arguing for this application adopted the contents of the affidavit which was filed to support the Applicant's

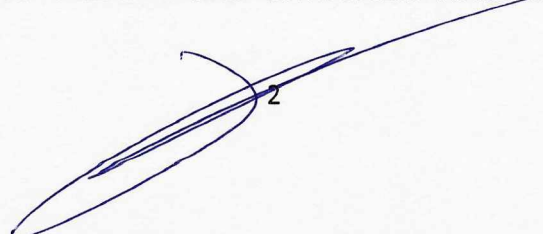
application. She then submitted that the trial commission reached its decision on sympathy basis instead of considering the prerequisites before one is extended time to take any action. She was of the view that the respondent failed to account for each day of delay. The learned advocate cited the case of ***Nyanza Road Works Limited vs Giovanni Guidon, Civil Appeal No. 75 of 2020*** to the effect that extension of time should be granted upon sufficient cause of the delay and not on sympathy basis. The learned advocate therefore prayed for this application to be granted.

Having heard this matter and considering carefully the arguments of the learned advocate, I find that there is no any merit in this application. The trial Commission for Mediation and Arbitration exercised its discretion in granting the prayer for condonation. The Court or commission cannot be faulted for the exercise of its discretion unless such discretion was exercised injudiciously.

In the instant matter the Commission for Mediation and Arbitration granted the condonation on the ground that the interest of justice demanded that the condonation be granted having taken into consideration all the surrounding circumstances of the dispute between the parties.

The trial Commission was of the view that the surrounding circumstances of the dispute including the nature of the claims demanded the parties to be heard and the dispute conclusively determined between the parties. It held and I quote;

".....katika maelezo yake mbele ya Tume mleta maombi kupitia kwa wakili wake ameeleza kwamba wakati wa ajira

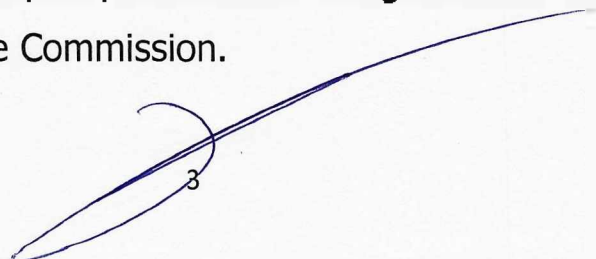


yake alikuwa anayo madai ya malimbikizo ya mishahara pamoja na malipo ya likizo ya uzazi. Hivyo basi kwa umuhimu mkubwa ni mawazo yangu kwamba kwa kuwa Tume hii ni Tume ya usawa wa haki; ninafikiri ni vema na haki kuyakubali maombi haya na kuongeza muda ili hoja za msingi ziweze kujadiliwa na kuumaliza mgogoro huu kwa ujumla wake.”

I am of the firm view that the quoted reasoning of the Honourable trial arbitrator supra sounds better as a judiciously exercise of the discretion. It was not a sympathy but the need to have the dispute between the parties conclusively determined. It cannot therefore be faulted.

In granting the condonation the Commission cited the case of ***Simon John versus Brac Finance Tanzania Ltd [2018] LCCD 4*** to the effect that in deciding whether or not the condonation should be granted, the court should determine **the facts in its generality** (*mazingira ya ujumla ya shauri husika*).

In its judicial determination, the Commission then found that the matter before hand as a whole demanded the condonation to be granted. I cannot interfere such discretion for I don't see the reasons to do so. The Applicant has not established that the discretion of the trial Commission was exercised injudiciously or that such condonation prejudiced her in any manner. Instead, this application is brought on allegations that the trial Commission acted on sympathy basis. Such allegations are without any merits. I don't see any sympathy as some of the grounds of the respondent were rejected by the same Commission.

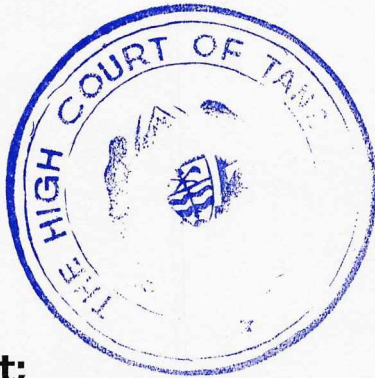


Even those other grounds set out in the respondent's affidavit at the trial Commission which I consider to be good cause for the delay were rejected by the Commission. For instance, the respondent deposed that one of the grounds for the delay was the act of the Applicant herein to fire her out orally and proceeded to drag her into criminal allegations which she had to fight to establish her innocence. These averments were not counter argued by the respondent as there is no affidavit of the Applicant to counter them.

The counter affidavit filed was that of advocate Stella Thomas Nyakyi who did not state to be an officer of the Applicant. Instead, she verified the counter affidavit to the effect that she was informed of such contents of the counter affidavit by one Matiku Mnema. The said counter affidavit did not identify who is Matiku Mnema in the Applicant's office. As such in law the counter affidavit was useless for having originated from strangers. In that respect the affidavit of the Respondent ought to have been treated by the trial Commission as being uncontested. In so doing it could find that the respondent having been fired orally it was difficult for her to act promptly against the unfair termination because she had no evidence of the alleged termination. Not only that but also the affidavit indicated that the Applicant having been fired out, she was subjected to criminal allegations and dragged into police corridors in which she had to fight for her innocence. These were good grounds for extension of time but the trial Commission accommodated the unfounded counter affidavit of the applicant and by using the same denied such grounds for the delay along with some others which was deposed by the respondent in her affidavit.



Having said all these, I find that this application has been brought without any sufficient cause. It is hereby dismissed.



**MATUMA
JUDGE
10/08/2023**

Court;

Judgement delivered in chambers in the presence of M/S Aneth Simba holding brief of M/S Stella Nyakyi learned advocate for the Applicant and in the absence of the respondent.



**MATUMA
JUDGE
10/08/2023**