

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LABOUR DIVISION**

**REVISION NO. 26 OF 2023**

(Originating from Commission for Mediation and Arbitration, Application No.  
CMA/ARS/ARS/108/23)

**BETWEEN**

**HARUNA MWAKU.....APPLICANT**

**VERSUS**

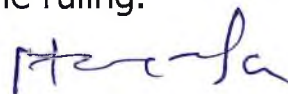
**S & S AFRICA SAFARI LIMITED..... RESPONDENT**

**JUDGMENT**

18/10/2023 & 22/11/2023

**MWASEBA, J.**

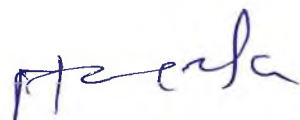
Aggrieved by the decision of the Commission for Mediation and Arbitration (CMA) procured on the 14<sup>th</sup> day of April, 2023 in Labour Dispute No. CMA/ARS/ARS/108/23), the applicant has filed this application calling for this court to examine the records of the proceedings of the Commission in the said dispute and satisfy itself as to the correctness, legality, and/or propriety of the ruling.



The application is supported by the applicant's sworn affidavit and the respondent opposed the application through the counter affidavit of her Principal Officer one, Sadiki Athumani Kimbo.

Essentially, the applicant was an employee of the respondent since 1/6/2021 as a reservations and operation manager and he was terminated unfairly on 27/01/2023. He alleged that after he was terminated, he made a follow-up on his entitlement to the residence director, but no consensus was reached. Thereafter, he consulted his lawyer who advised him to write a complaint email to the Managing Director and a copy to the residence director, but no consensus was reached. After his follow-up's efforts failed, he decided to approach CMA, however, he was late that's why he preferred an application for condonation.

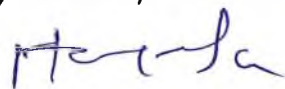
After hearing of the respondent's application, the CMA dismissed the application on the reason that, the same was vividly time barred. The CMA held that, the applicant did not adduce sufficient reasons and he failed to account for each day of delay. The decision aggrieved the applicant who preferred the present revision based on the following grounds:



- 1. That, the arbitrator erred in law and fact for failure to consider the facts and evidence adduced as the result he pronounced an erroneous decision.*
- 2. That, in determining the dispute, the honourable arbitrator gravely misdirected himself in ignoring the evidence adduced and thereby arriving at a flawed conclusion.*

During the hearing of this application, Mr. David Kawa, learned counsel represented the applicant, on the other hand, Mr. Mohamed Majura, also learned counsel represented the respondent. The application was disposed of by way of written submissions, which, I shall consider while determining the application.

In determining the merit of the application, this court is essentially called upon to examine as to whether the Hon. Mediator was correct to dismiss the application for condition on the grounds that no sufficient reason was advanced by the applicant. I have thoroughly gone through the CMA's records; the law is clear that the CMA may condone any failure to comply with the time frame in the rules upon showing good cause. This is well stipulated under **Rule 31 of the Labour Institution (Mediation and Arbitration Guidelines) Rules, GN 64 of 2007** which provides that:



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

The same was expounded in the case of **Shanti v. Hindoche & Others** [1973] E. A 207 the then Court of Appeal for East Africa had this to say:-

*"The position of an applicant for extension of time is entirely different from that of an application for leave to appeal. **He is concerned with showing sufficient reason why he should be given more time and the most persuasive reason that he can show..... is that the delay has not been caused or contributed to by dilatory conduct on his part.** But there may be other reasons, and these are all matters of degree. (Emphasis is mine).*

In our present application, at the CMA the only reason advanced by the applicant for being late was that he was making follow ups to his residence director and then to the managing director who was making promises to pay him. On his side, Mr. Majura while contesting the application for condonation submitted that the reasons advanced by the applicant of ongoing promises from his employer were not sufficient for the time to be extended.



This court do agree with Mr. Majura, learned counsel for the respondent that ongoing promises from an employer is not a sufficient reason for the enlargement of time. As it was held in the case of **Milan Cable Television Limited v. Labour Officer Arusha and Another** (Misc. Labor Application 45 of 2019) [2021] TZHC 9286 (7 December 2021) that:

*"Accordingly, I do not find the settlement arrangement to be a good cause for the delay."*

I am aware of the argument raised by Mr. Kawa that in labour matters when determining an application for condonation, the CMA needs to consider only **Rule 11 (3) of the Labour Institution (Mediation and Arbitration) Rules** (supra) to determine the degree of lateness, the reason for lateness and its prospects of succeeding with the dispute and the obtain of the relief sought. However, in our case, the applicant was late for 30 days and he did not have sufficient reasons for being late. **See Rule 10 of the Labour Institution (Mediation and Arbitration) Rules.** As it was already submitted herein above, a settlement arrangement out of court is not found to be a good cause for delay.



More to that, the applicant did not even account for all 30 days of delay as it was held in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (Unreported) cited with approval in the case of **Charles Richard Kombe t/a Building v. Evarani Mtungi & Others** (Civil Appeal No. 38 of 2012) [2017] TZCA 153 (8 March 2017) 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."*

In the circumstances, it is the finding of this court that at the CMA, the Applicant failed to show good cause for the Commission to exercise its discretion to extend time. Accordingly, the application is hereby dismissed in its entirety. The decision of the CMA in CMA/ARS/ARS/108/23 is left undisturbed. Since this is a labour matter, no order as to costs.

Ordered accordingly.

**DATED at ARUSHA** this 22<sup>nd</sup> day of November, 2023.



  
**N.R. MWASEBA**  
**JUDGE**