

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
SUB - REGISTRY SHINYANGA  
AT SHINYANGA**

**LABOUR REVISION NO. 10 OF 2023**

**AMOSI MAGANGA.....APPLICANT**

**VERSUS**

**KAHAMA OIL MILLS LTD.....1<sup>st</sup> RESPONDENT**

**MHOJA NKWABI KABALO.....2<sup>nd</sup> RESPONDENT**

*[Application from the decision of the Commission for Mediation  
and Arbitration for Kahama at Kahama]*

**(Hon. Magreth . D Kiwara.)**

**dated the 31<sup>st</sup> day of May, 2023**

**in**

**CMA/SHY/KHM/15/2023**

**JUDGMENT**

*27<sup>th</sup> March & 24<sup>th</sup> May, 2024*

**MASSAM, J.:**

This labor application, has been filed by the Applicant by way of chamber summons, in terms of the provisions of sections 91(1) and 91(2) and section 94(1) (b) (i) of the Employment and Labor Relations Act, Cap 366 RE 2019, and Rule 28(1) (c) (d) and (e) and Rule 24 (1) (2) (a) (b) (c) (d) (e) and (f) and 24(3) (a) (b) (c) and (d) of the Labor Court Rules, 2007, G.N. No. 106 of 2007.

In the chamber summons, the Applicant prays for this Court to revise and set aside the decision of the Commission for Mediation and

Arbitration at Kahama in dispute No. CMA/SHY/KHM/15/2023. The application is supported by an affidavit sworn by the principal officer of the applicant, one Jackson Rashid Mnyawami, on 17<sup>th</sup> March, 2023.

Brief facts of the matter as can be gathered from the record is to the effect that, the applicant claims to have been employed by the respondents since 3<sup>rd</sup> April, 2004. The two entered into misunderstandings in the year 2022 due to claims over some entitlements. That misunderstanding, caused the applicant to be terminated on 28<sup>th</sup> April, 2022. From the termination, the applicant believes that, he has been denied his entitlements. He enlisted them as, salary arrears, leaves and compensations. As the applicant was out of time to claim for the same, he decided to file for condonation. In the condonation application, the applicant alleged sickness as a reason for his lateness to claim for the above entitlements. Upon scrutiny of the case, the presiding honorable arbitrator found that, the applicant has failed to show sufficient cause for delay and has failed to account for each day of delay. That decision aggrieved the applicant, hence, this application for revision on the sole ground that, the honorable arbitrator failed by dismissing his application for condonation, while there were reasonable grounds for granting it.

On 27<sup>th</sup> March, 2024 the matter was scheduled for hearing through written submissions. Ms. Frola Kimath represented the applicant whereas Mr. George Baalam represented the respondents.

Submitting in support of the application Ms. Frola Kimath firstly, adopted the applicant's affidavit in support of the application. As a reason for the applicant's delay to file his application in time, Ms. Frola stated that, the applicant was sick. She added that, his sickness started since 2017 and that, he later on came to get involved in accident. He said this was enough reason to be given extension of time. To bolster her assertion, she cited the case of **Peter Mabimbi vs. The Minister for Labour and Youth Development and Others, Civil Application No. 88/08/2017.**

Ms. Frola further added that, the applicant's application has been struck out for being incompetent. She said, that it was because of the mistakes committed by his former advocate. She urged this court not to punish the applicant for the mistake of the advocate.

Lastly Ms. Frola added that, the applicant's lateness to file his application was caused also by the employer. She explained the reason being that, upon termination, the employer did not explain to the applicant the rights of appeal he has.

In reply Mr. George Baalam stated that, for the dispute over unpaid salaries like this, the law requires the applicant to have filed his application within 60 days. He stated further that, the applicant claims for unpaid salaries for 18 years since when he was employed. He thus stated that, he has the duty of accounting for each day of delay over all those 18 years. In discharging that duty, Mr. Baalam stated that, the applicant gave reason that he was sick. To substantiate the same, Mr. Baalam stated that, the applicant only gave one checkup document and drug prescription document dated 29<sup>th</sup> November, 2023. To him, this was not sufficient reason for grant of extension of time.

In rejoinder Ms. Frola raised new issues that, the respondent's submission was filed out of time so it should not be acted upon and secondly, she stated that, as the court ordered amended applicant's application be filed, the respondent did not file his amended counter affidavit. Ms. Frola thirdly raised that; the respondent's notice of opposition bears wrong citation. On account of the issue of extension of time, Ms. Frola reiterated her submissions in chief.

I have keenly gone through the entire pleadings, submissions and the authorities cited by both parties to the case. I have also taken into consideration the rival issues between parties. The issue to determine by this court is whether the said application has a merit.

In determining the same this court finds out that the applicant's rejoinder submissions show that, the applicant's counsel has risen three new issues. The same are, **one**, respondent has filed his reply submissions out of prescribed filing schedule, **two**, as the applicant had prayed and filed amended affidavit, the respondent too ought to have filed amended counter affidavit which he did not do it, **three**, the respondent's notice of opposition bears wrong citation of the law.

As alluded earlier, all these issues have been raised by the applicant by the time of filling the applicant's rejoinder submissions. The issues of wrong citation and non-filing of amended counter affidavit, existed even before hearing of this application commenced. Thus, the applicant's counsel had a chance to raise them before hearing took off or else, she could have submitted it in her submissions in chief. It thus appears that, the counsel for the applicant has risen these issues at the rejoinder submissions purposely to hinder reply by the respondents. As an officer of the court, she ought not to have done this because by doing so, the respondents got no chance to reply on these issues, if at this time I endeavor into ruling on the same, it will be tantamount to denying the respondents their right to be heard. I will not enter into that trap; I thus abandon them.

As for the issue of respondent's filing reply submissions out of time, going through it, the same shows that, it has been filed on 14<sup>th</sup> March, 2024. This respondent's filing date, shows to have contravened the court's order on the written submissions filing schedule as of 27<sup>th</sup> March, 2024.

Though the respondents ought to be heard on this point of filing their written submissions out of time, but for sake of time saving, I find it proper to first determine, without referring to the respondents' reply submissions, the issue as to whether the applicant's application is meritorious.

It is not in dispute that, under rule 10(2) of the Labor Institutions (Mediation and Arbitration) Rules G.N No. 64 of 2007 provides for time limit of 60 days to file a dispute over salary areas like this.

Further, it is not in dispute that, at CMA the applicant advanced only one ground of sickness as reason for extension of time. The applicant's testimony is to the effect that, he was employed on 3<sup>rd</sup> April, 2004 and that, he claims for salary areas for 216 months. The claim which he firstly lodged at the CMA in the year 2022.

I am aware that, sickness has always been a sufficient reason for extension of time, see, **Peter Mabimbi** (supra). The issue is, whether the applicant has managed to firstly, prove that he was sick by

tendering medical reports and secondly, to prove that sickness had covered the whole period of delay. This is because, for extension of time application to be granted, the applicant must account for all days of delay. See, **Wambele Mtumwa Shahame v. Mohamed Hamis, Civil Application No. 138 of 2016, Court of Appeal at Dar es Salaam.**

As the applicant's claims for 216 salary arrears, this shows that, the applicant's claims arose since when he was employed in the year 2004. This means that, the applicant is duty bound to account for delay over all the delayed 18 years.

The testimony of the applicant at CMA shows that, he delayed to file his claim over salary areas because he was sick. His testimony shows that, he became sick on 2016 and 2017 followed by a motorcycle accident which he got it in the later years. With this kind of testimony, even when we take that the applicant managed to prove that he was sick from 2016 to 2022 when he first lodged his application for condonation yet, there remains a good number of years from 2004 to 2015 which the applicant has failed to account for. The applicant's testimony at the CMA said nothing as to his lateness to file his claims in the years between 2004 and 2015.

For a grant of extension of time, the applicant was required to account for all days of delay. The applicant should not think that, sickness that was contacted at a later stage would also be a reason for explaining lateness on the period before he contacted sickness. It follows therefore that; every delay must have its reason to cover.

As the applicant has failed to account for all days of delay, I find it that, there is no point to fault the trial arbitrator, thus. This application for revision fails and I proceed to dismiss the same forthwith. No order to the costs.

It is so ordered.

**DATED at SHINYANGA** this 24<sup>th</sup> day of May, 2024.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

**R.B Massam**  
**JUDGE**  
**24/05/2024**