

27/4/2010 (57)

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM**

**REVISION NO 255 OF 2008**

**ALLY MZEE MOTO - APPLICANT  
VERSUS  
TANESCO – RESPONDENT**

15/9/2009 & 27/4/2010

**Rweyemamu R. M. J.:**

**RULING**

This matter stems from a labour dispute referred to the *Commission for Mediation and Arbitration* (CMA) by the applicant/employee against the respondent/employer. According to information on the *Statutory Form No. 1*, the applicant was terminated on 1/4/2007 and on 21/2/2008 he referred the matter to the CMA as a dispute of unfair termination of employment.

In terms of the law, the referral was made out of time; consequently it was filed together with *Statutory Form No. 7*- which is an application for 'condonation' of the late referral. The facts on

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the CMA record of proceedings indicate however, that after the dispute was unsuccessfully mediated and a certificate to that effect duly issued on 15/5/2008, arbitration proceeded. In other words, the CMA processed the dispute referred out of time without condonation.

The issue of the late referral was raised *suo mottu* by the court at the hearing of this application. The applicant who appeared in person when questioned on the issue replied that he did not know if and why the application for condonation was not heard and decided. The respondent, who was represented by a legal officer one Ms Stella stated that she did not have the relevant record, but submitted that if the referral was late, the dispute ought not to have been arbitrated without deciding the application for condonation.

This court has held in a number of its decisions that where a late referral is made to the CMA, even where accompanied by the statutory Form No 7, it must be processed as prescribed under rule 29 of the Labour Institution (Mediation and Arbitration) Rules, GN 64/2007. To quote from one such decision:-



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"Disputes referred late cannot be processed unless the CMA had condoned the delay .... After receiving the respondent's (applicant) application, the CMA should have served the same on the applicant (respondent) as per rule 29 (5) then proceeded to hear and determine it under rule 29 (10) or (11). That did not happen in this case, **thus the CMA was not properly seized with jurisdiction when it processed the respondent's referral filed out of time, without condonation.** " See Peter Mrema and Michael Kusaga, LC Revision No.138/2008 and J.W. Ladwa and Peter Kimote, LC, Revision 52/2008, among others.

In this application I also hold that the CMA was not properly seized of the matter when it arbitrated the dispute filed out of time without condonation. For that reason, I dismiss this application; quash and set aside the CMA proceedings and award, and order the CMA to process the dispute afresh according to law.



**R.M. Rweyemamu**  
**JUDGE**  
**27/4/2010**

