

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT MOROGORO SUB-REGISTRY**

**REVISION NO. 34 OF 2020**

**BETWEEN**

**TEDDY NJOVU.....APPLICANT**

**VERSUS**

**NASHERA HOTEL.....RESPONDENT**

**JUDGEMENT**

Date of Last Order: 08/07/2020

Date of Judgment: 10/07/2020

**Aboud, J.**

This is an application to revise and set aside the decision of the Commission for Mediation and Arbitration (herein referred as CMA) delivered on 10/09/2019 by Hon. Kayugwa, H. Arbitrator in Labour Dispute No. CMA/MOR/183/2018. The applicant filed this application under the provisions of Section 91 (1) (a), 91 (2) (a) and 94 (1) (b) (i) of the Employment and Labour Relations Act, 2004 [CAP 366 R.E 2019] (here forth the Act) and Rule 24 (1), 24 (2) (a), (b), (c), (d), (e), (f), 24 (3) (a), (b), (c) and (d) and Rule 28 (1) (a) of the Labour

Court Rules, GN. No. 106 of 2007 (herein after The Labour Court Rules).

At the hearing both parties were represented by Learned Counsels. Mr. Thomas Chubwa appeared for the applicant while Mr. Baraka Lweeka was for the respondent. The matter proceeded by oral submission.

Submitting in support of the application Mr. Thomas Chubwa prayed to adopt the applicant's affidavit to form part of his submission. He submitted that, the applicant was notified about none renewal of her contract on 13/09/2018 that her contract was to end on 30/09/2018. He stated that the applicant continued to work up to 30/09/2018.

Mr. Thomas Chubwa went on to submit that, on 29/10/2018 the applicant filed her complaint at the CMA within the time prescribed in law, to wit Rule 10 of the Labour Institutions (Mediation and Arbitration) Rules, GN. 64 of 2007 (herein Mediation and Arbitration Rules). The learned Counsel argued that the complaint was filed within thirty days as prescribed by the law, he therefore prayed for the CMA's ruling be revised, quashed and set aside.

Responding to the application Mr. Baraka Lweeka submitted that, it is true the applicant was notified about the end of her employment contract by the letter dated 11/09/2018, which she admitted to have received the same on 13/09/2018. He submitted that the complaint was filed at the CMA on 29/10/2018, which was about forty nine (49) days after notification of none renewal of her contract of employment. Mr. Baraka Lweeka strongly submitted that, according to Rule 10 (1) of the Mediation and Arbitration Rules the complaint is supposed to be filed within 30 days from the **date of termination** or **the date when the employer made final decision to terminate** an employee. He also added that Rule 11 (2) of the relevant Rules requires the party who intends to file a complaint outside the prescribed period to file application for condonation.

Mr. Baraka Lweeka argued that, the matter was not dismissed at the CMA as submitted by the applicant but was struck out. He stated that, the proper remedy was not to come to this Court for revision but was to file application for condonation. He therefore, prayed for the matter to be dismissed for want of merit.

In rejoinder Mr. Thomas Chubwa submitted that, the applicant after being given the notice of none renewal she continued working until 30/09/2018. He argued that, it was not proper for her to file a claim for unfair termination before her employment came to an end. He therefore submitted that, the applicant lodged a complaint for unfair termination after her employment was terminated on 30/09/2018, thus she was not out of time. He prayed for the application to be allowed.

Having gone through and considered the Court's records as well as submission by parties, I find the key issue for determination is whether the matter was timely filed at the CMA.

In the application at hand it is undisputed fact that, the parties entered into numerous contracts. The last contract entered was for one year fixed term with effect from 01/10/2017 up to 30/09/2018. On 11/09/2018 the respondent notified the applicant about non-renewal of the said contract. Now the question to be addressed is when the cause of action did arise?

The time limits for filing disputes at the CMA is provided under Rule 10 of the Mediation and Arbitration Rules which provides as follows:-

“Rule 10 (1) Disputes about the fairness of an employee’s termination of unfair termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate.

(2) All other disputes must be referred to the Commission within sixty days from the date when the dispute arose”.

I have considered the respondent’s counsel submission that the dispute arose when the applicant received notification of none renewal, with due respect to Mr. Lweeka, the contract in question was a fixed term contract and its lawful termination may be effected by agreement or automatic. This is provided for under Rule 3 (2) of the Code of Good Practice which is to the effect that:-

“Rule 3 (2) - A lawful termination of employment

under the common law shall be as follows:-

- (a) Termination of employment by agreement;
- (b) Automatic termination;
- (c) Termination of employment by the employee; or
- (d) Determination of employment by the employee;”

On the basis of the above discussion I am of the view that proper date to start running against this kind of employment contract of the parties herein was from when employment automatically came to an end as they agreed in their fixed term contract. The position would have been different if their employment contract was indeterminable or the employer decided to terminate the fixed contract prior to its expiry date. Under those situations the employee who claims for unfair termination has to follow the normal procedures of referring the dispute to the CMA within thirty days from the date when employer made a final decision to terminate or uphold the decision to terminate the employment contract. It is a

normal procedure that most of such termination follows the termination procedures as provided under Rule 8 and 13 of the Code of Good Practice read together with section 37 of the Act.

In the application at hand it is on record as reflected in CMA F1, the applicant filed the dispute on the basis of unfair termination. In the light of the provisions cited above the dispute about the fairness of the employees' termination was rightly referred at the CMA within 30 days from the date of termination of employment contract between the parties.

Under the circumstances of the matter at hand, it is my view that the dispute arose on 30/09/2018 when the fixed term contract of the applicant automatically ended. Therefore, the computation of time should have started to run from that date. Thus, the Arbitrator wrongly decided that the dispute was filed at CMA out of time.

It is worth to note that the applicant was dully notified that her contract will not be renewed and she did not raise any concern or claim about the employer's decision. She continued to work until her contract came to an end or terminated. No doubt that she complied with the employment contract that the termination of contract was on

30/09/2018 and not when was notified about none renewal of her contract.

Let me say something about Mr. Lweeka's submission that the applicant wrongly knocked the doors of this court because her complaint was not dismissed at the CMA. He contended that the remedy for the applicant after her matter was struck out at the CMA was to seek for condonation. It is true that would have been proper remedy if the decision of the CMA had no irregularities which warranted the applicant to rush to this Court under section 91 (2) (c) of the Act. Had it been that the applicant decided to file condonation, the CMA had discretion to grant her or not and she would have challenged that decision in this court if wishes so, which is unduly prolonged procedure and amount to justice delays. However, that was not proper so long the applicant was legally allowed to come here and challenge the lawfulness of the CMA decision.

In the result I find the present application has merit. The applicant has satisfied the Court to fault the Arbitrator's decision that the matter was filed at the CMA out of time without an application for condonation. CMA's ruling is hereby revised and set aside. This



matter has to be returned to continue at the CMA before another competent Arbitrator.

It is so ordered.

A handwritten signature in black ink, appearing to be 'I.D. Aboud', written over a circular stamp or seal.

I.D. Aboud

**JUDGE**

10/07/2020