

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

REVISION APPLICATION NO. 61 OF 2019

KOWE MALEGERI.....APPLICANT

VERSUS

AIRWING SECONDARY SCHOOL..... RESPONDENT

JUDGMENT

Date of last Order: 08/06/2020

Date of Judgment: 15/07/2020

Z.G.Muruke, J

Applicant was employed by the respondent on 10th March, 2005. On 20th June, 2018, he was suspended from employment pending delivery of his original form four certificates. On 22nd June, 2018 applicant wrote a letter to the respondent to inquire his suspension while he had already no reply and his two months' salary being withheld. He then filed dispute on 2nd November, 2018, by filing an application for condonation. CMA refused applicant application for lack of sufficient cause. Aggrieved, applicant filed present revision, raising two grounds namely:-

- (a) That, arbitrator was un reasonably biased, by holding that there were no justifiable grounds for granting condonation irrespective of the adduced evidences that my delay to refer the matter to the commission (CMA) was due to the positive response by the respondents that he wishes to settle the matter amicably.

- (b) That arbitrator was unreasonably biased by holding that I was terminated on 20/06/2018 while there was no such action of termination instead I got suspended on such a date until when I will bring the original academic certificates to the respondents office.

On the date set for hearing Farid Farouk represented applicant, while Avitus Rugakingira represented respondent. Hearing was by way of written submission. Applicant submission apart from the history of the case, it is centered on how applicant and respondent tried settlement at different times.

In essence applicant said, "the delay to refer the matter to the Commission (CMA) was due to the positive response by the respondent that she wishes to settle the matter amicably. Whereby every time when the applicant was approaching the respondent's office to know the destiny, the respondent used to tell the applicant to calm down since the verification exercise is still on progress, he will be notified after its completion. And since the respondent was the applicant's employer, the applicant used to trust her words, and believe that this matter will be settled immediately. Hence this shows the reasonable ground to delay referring the matter to the commission."

In support applicant cited the case of **Monarch Investment Ltd Vs. Stephen Kogal**, Misc. Labour Application No. 17 of 2004, Nyerere, J where it was held that;

"It is now settled that, in application for extension of time all that is expected of the applicant is to show that he was prevented by sufficient or reasonable cause or good cause, and that, the delay was

not caused or contributed by dilatory conduct or lack of diligence on his part.”

Applicant counsel insisted that, good reason existed following respondent positive response to settle the matter.

On the second ground it was argued that, there was no action of termination. Instead applicant got suspended on a such a date until when he will bring the original academic certificates to the respondent’s office. The act of respondent prolonging verification procedure unnecessarily and banning the applicant to continue with his teaching duties and withholding salaries contrary to section 27 of employment and labour relations code of good practice GN 42 of 2007 which require an employer to continue paying the salary of suspended employee in full remuneration pending further action. In other way, that amounted to constructive termination. And that is what made the applicant to take legal action after it went for a long period unresolved. Applicant then prayed for revision to be allowed.

Respondent counsel on the other hand, responded to ground one that, reason of delay was because of negotiation, is not good enough to grant extension. Equally negotiations did not prevent applicant from filing case at CMA. More so, it is not reason beyond the control of the applicant, referring case of **Leons Barongo Vs. Sayona Drinks Ltd** Revision No. 182 of 2012, High Court of Tanzania Labour Division Dar es Salaam. In which Wambura, J held that:-

“ Now the question of time is a fundamental issue involving jurisdiction. Though the court can grant an extension, the applicant is required to adduce sufficient grounds for the delay. I believe that reason that the

applicant was negotiating with the respondent does not amount to sufficient ground for the delay. The delay to file the case at CMA was due to lack of diligence on the part of the applicant because, applicant had ample time to negotiate with his advocate without referring the matter to CMA.

In totality applicant has failed to account for every day of delay in terms of the case of Elfazi **Nyatega & 3 Others Vs. Caspian Mining Ltd** Civil Application NO. 44 of 2017 Court of Appeal of Tanzania held that.

“The position of this court has consciously been to the effect that in an application for extension of time, the applicant has to account for every day of the delay.”

Respondent counsel pressed to this court to dismiss applicant application. Having gone through court records and submission by both parties, issue for determination is whether, applicant has adduced sufficient cause to warrant condonation at CMA. Accordingly to affidavit of Kowe Malegeri in support of an application for condonation, at paragraph 8 and 9 reasons are stated as follows:-

- (8) That the act of the respondent to withhold my salaries of two months, alerted me that this may amount to constructive termination, hence I took the decision to come before this honourable Commission for Mediation and Arbitration to look for justice.
- (9) That, it is in the interest of justice that the application for condonation be allowed.
- (10) That, I make this affidavit in support of application for condonation.

The above three paragraphs of applicant affidavit at CMA, are the reasons adduced by applicant to support condonation. From the above there is no accounting of each day passed beyond prescribed time. Not only accounting, but even the days were not articulated. To this court, in any application for extension of time, each day counts and it has to be counted for. More so, in deciding whether or not to allow an application to extend time, the court, tribunal, commission, considers, whether there is sufficient reasons not only for the delay but also sufficient reasons for extending the time during which to entertain the Revision Appeal, application as the case may be. Reason that delay was caused by intended settlement out of court advanced by the applicant is not reason in the eyes of the law.

Thus, I totally subscribe to honourable Wambura decision, in the case of Leons Barogo (supra), cited by respondent counsel that, applicant negotiation with respondent cannot amount to sufficient cause to extend time. In totality there was no reasons in the eyes of the law, let alone sufficient reason, to justify condonation at CMA. Thus, arbitrator was correct to refuse an application for condonation.

On the second issue raised by applicant also lacks merits. Accordingly to the applicant affidavit and submission, he himself termed it constructive termination following suspension until original form IV certificates are submitted. There is nothing like biasness. There is nothing on the records to prove biasness or anything of that nature. More so, the major issue before this court is whether arbitrator erred by not allowing condonation at CMA.

In totality revision application lacks merits. Accordingly dismissed.



Z. G. Muruke

JUDGE

15/07/2020

Judgment delivered in the presence of applicant in person and Avitus Rugakingira advocate, for the respondent.



Z. G. Muruke

JUDGE

15/07/2020