IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 369 OF 2019

BETWEEN

EZEKIEL KIANGO.....APPLICANT

VERSUS

LAKE OIL CO. LTD.....RESPONDENT

JUDGEMENT

Date of Last Order: 08/06/2020

Date of ruling: 26/06/2020

Aboud, J.

This is an application to set aside the decision of the Commission for Mediation and Arbitration (herein referred as CMA) delivered on 27/02/2018 by Hon. Mikidadi, A. Arbitrator in Labour Dispute No. CMA/DSM/TEM/478/2017. The applicant filed this application under the provisions of Section 91 (1) (a), 91 (2) (b) (c) 94 (1) (b) (i) of the Employment and Labour Relations Act [CAP 366 RE 2019] (herein referred as the Act) Rule 24 (1), 2 (a), (b), (c), (d), (e), (f), 3 (a), (b), (c) and (d) and Rule 28 (1) (a) (b) (c), (d) and (e) of the Labour Court Rules, 2007 GN No. 106 of 2007 (herein the

Labour Court Rules). The application was filed on the following grounds:

(i) That the Arbitrator erred in law and fact for dismissing the applicant's application for condonation while in fact there were strong reasons for lateness.

(ii) That the Arbitrator erred in law and fact for declaring that the applicant had no good reasons for the lateness while there was a good reasons which prevented the applicant to institute labour dispute in time.

(iii) That the Hon. Arbitrator failed to exercise jurisdiction vested in the Commission for Mediation and Arbitration by virtue of the law.

The application is supported by the applicant affidavit. The respondent bitterly challenged the application through the counter affidavit of Innocent Emmanuel Mwaipopo, respondent's Principal Officer.

Whereas the applicant was represented by Mr. Rancy Mhaya, Learned Counsel, the respondent was represented by Mr. Herioiotu Boniface, respondent's Legal Officer. With leave of this court the matter proceeded by way of written submissions.

Briefly is on record that, on 05/02/2009 the applicant was employed by the respondent as a Deport Manager at Vijibweni, Kigamboni Area, Dar es Salaam. It was alleged that on 25/02/2013 while at work the applicant was apprehended by the police and remanded in custody for several days. He was therefore arraigned before the Court for stealing 36042 liters of diesel, the respondent's property. The applicant was suspended from work until determination of the criminal charges. On 29/11/2016 he was acquitted but his effort to get back to work bore no fruit. Therefore, the applicant decided to refer the matter to CMA on 11/08/2017. His complaint was filed with application for condonation to secure leave of the CMA to be entertained out of time. On his finding the Arbitrator dismissed the application for condonation for lack of merit. Dissatisfied by the CMA's decision the applicant filed the present application.

Arguing on the first ground Mr. Mhaya submitted that, the Honourable Arbitrator erred in law and fact by dismissing the applicant's application for condonation while there were strong reasons for lateness. That the applicant's reason for delay was because he was facing a criminal case No. 43 of 2013 pressed by the respondent.

Mr. Mhaya stated that, on 29/11/2016 the applicant was acquitted in criminal charges, but his right to work was still denied by the respondent. The Learned Counsel added that on 13/03/2017 the applicant wrote a letter to the respondent demanding payment for his salaries arrears and to allow him to go back to work, however there was no response from the respondent.

On the second ground Mr. Mhaya submitted that, the reason adduced in ground one was sufficient to grant the application for condonation but the Arbitrator proceeded to dismiss his application on the reason that, the applicant had to account on each day of his delay. Mr. Mhaya added that, the requirement for accounting for each day of delay is not a mathematical calculation, what is required is to give reason for delay depending on the circumstance of each case. To support his argument he cited the case of **Tanzania Ports Authority vs. MS. Pembe Flour Mills Ltd.**, Civ. Appl. No. 49 of 2009, CAT.

As to the last ground Mr. Mhaya submitted that, the Arbitrator failed to exercise jurisdiction vested in him under Rule 11 (3) of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of

2007 (herein Mediation and Arbitration Rules). He therefore prayed for the application to be allowed.

Responding to the Application Mr. Boniface submitted that, it is well known that disputes about unfair termination must be referred to CMA within 30 days from the date of termination as provided under Rule 10 (1) of the Mediation and Arbitration Rules. He added that Rule 11 (3) of the Mediation and Arbitration Rules provides for conditions to be met on granting the application for condonation. Mr. Boniface argued that, the applicant did not meet those conditions. He submitted that the applicant's degree of lateness was so high and unjustifiable.

Mr. Boniface further submitted that, the case of **Tanzania Ports Authority** (supra) cited by the applicant requires a party to account for each day of the delay while the applicant at hand failed do so. He therefore prayed for the application to be dismissed.

In rejoinder Mr. Mhaya advocate for the applicant reiterated his submission in chief.

After evaluating parties' submissions, court record the relevant applicable Labour Laws and practice, I found the issue for

determination is, whether the applicant advanced good cause for the delay to file complaint at the CMA.

It is a settled principle of law that in an application for extension of time the applicant must adduce sufficient or good cause for the delay. He/she must prove before the court that he was prevented by sufficient ground to file his application on time.

What amounts to sufficient or good cause have been discussed in a numerous decisions. In the Court of Appeal case of **John Mosses and Three Others vs. The Republic, Criminal Appeal No. 145 of 2006** when quoting the position of that court in the case of **Elias Msonde vs. The Republic, Criminal Apeal No. 93 of 2005** it was stated that:-

> "We need not belabor, the fact that it is now settled law that in application for extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of

diligence on his part".

In the instant matter the applicant alleged that he failed to file his application before CMA on time because he was prosecuting a criminal charge before a District Court and that after being acquitted he waited for the respondent's reply to resume him to work. It is undisputed that the applicant was facing with criminal charges and he was acquitted on 29/11/2016. On 13/03/2017 he wrote a demand letter to the respondent to urge him to allow the applicant to resume his work, but no response was given to him. The applicant continued to wait for the respondent's reply until 11/08/2017 when he decided to refer the matter to CMA.

Limitation of filing disputes of unfair termination before CMA is provided under Rule 10 (1) of the **Labour Institutions (Mediation and Arbitration) Rules**, 2007 (GN 64 of 2004) which provides that:-

> "Rule 10 (1) Disputes about the fairness of an employee's termination of employment **must be referred to the Commission within thirty days from the date of termination or the**

date the employer made a final decision to terminate or uphold the decision to terminate"

[Emphasis is mine].

From the records as rightly held by the Arbitrator the applicant took almost 100 days to write a demand letter to the respondent after being acquitted. Again he waited for reply of the said demand letter for almost 137 days to when he referred the dispute to CMA. However, I do not agree with the Arbitrator's finding that the applicant was supposed to file his dispute to CMA when he was out on bail due to the reason that, the applicant was still an employee of the respondent while facing criminal charges. Therefore he could have not filed the dispute for unfair termination while he was not terminated yet.

Under circumstances of this case in my view, even if the court would take the applicant's reason of waiting for the respondent's reply to his demand letter, he ought to have accounted for each day of the delay. The delay of 137 days is too long and unjustifiable to wait for a demand letter reply. The applicant while facing criminal

charges had a clue of the respondent's intention of not taking him back to work. He submitted that the respondent stopped paying him his salaries while facing criminal charges and after being acquitted. However, he reluctantly waited for respondent's response to the demand letter.

Therefore, in my view he ought to have accounted for each day of the delay. This was also the position in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) the Court of Appeal held 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".

I have noted from the applicant's submission that, counting on each day of the delay is not a mathematical calculation, but in my considered view the circumstances of this case demand that he had to show the Court that, after writing the demand letter to the respondent he took necessary steps to demand response from

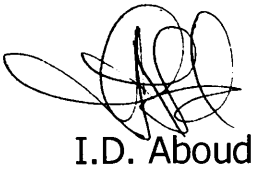
respondent. The applicant just wrote the demand letter and reluctantly waited for response for almost 137 days.

It is worth to note that limitation is there to speedy administration of justice. A party will not be allowed to institute proceeding as to when he wishes and chooses. This was also the position in the case of **Tanzania Fish Processors Ltd. vs. Christopher Luhangula,** Civil Appeal No 161/1994, CAT at Mwanza it was held that:-

> "Limitation is there to ensure that a party does not come to court as and when he chooses".

Hence on the basis of the above discussion, I have no hesitation to say that the Applicant have failed to account for each day of the delay. In the result I find the present application has no merit and the contested Arbitrator's ruling is hereby upheld.

It so ordered.



I.D. Aboud
JUDGE
26/06/2020