IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 849 OF 2018

BETWEEN

ALLY MUSSA MWAMBAPA & 7 OTHERS ..... APPLICANT

VERSUS

TANZANIA BREWARIES LIMITED..... RESPONDENTS

JUDGEMENT

Date of Last Order: 05/06/2020

Date of Judgment: 12/06/2020

Z. G. Muruke , J.

This is an application for revision to set aside the ruling of the Commission for Mediation and Arbitration Dar es Salaam (herein after referred to as the CMA) which was delivered on the 19th June , 2012 by Honourable H.Makundi- Mediator in Labour Dispute No. **CMA/DSM/ILA/R.799/11.** The applicant is seeking revision on the following grounds;

i. That honourable mediator erred in law and fact in failing to consider the evidence adduced by the applicant which proved existence of valid/ good reasons to grant condonation out of time to allow the hearing of the applicants Complaint on merit.

ii. That the honourable mediator erred in law and failing to exercise its discretion judiciously to grant extension of time /condonation to the applicant.

iii. That the honourable mediator erred in law and fact in failing to consider the degree of lateness, reasons of lateness. Prospects of success in dispute referred by the applicant.

iv. That, the honourable mediator misdirected herself in failing to address the requirements of Rules 10,31,and 29 of the Labour Institution (Mediation and Arbitration) Rules,2007

v. That the honourable mediator misdirected herself in dismissing the applicant's application.

The application is supported by a sworn affidavit of Ally Mussa Mwambata one of the applicants. Opposing the application the respondent filed a counter affidavit sworn by Huruma Ntahena, the applicant's Principal Officer. The applicant was represented by advocates Elisaria Jastiel Mosha, while the respondent was represented by Advocate Rahim Mbwambo.

Briefly are the facts led to this application. The applicants were employed by the respondent on various dates and positions. They worked with the respondents until 30th October, 2009 when they were retrenched. That upon that voluntary agreement between the respondent and the Committee of the Union of Industrial and commercial workers, the employees who were disputing the retrenchment package were supposed to consult the management within 7 days of which the applicant did not comply. On 14th September, 2010 the applicants filed Miscellaneous Application No.82/2010 which was dismissed for want of jurisdiction.

The applicants approached the CMA's door and filed an application for condonation so they could be heard their complaint on merit. The application was dismissed for lack of merit on 19th June, 2012. The applicants filed the present application.

Submitting on the application, the Mr. Mosha insisted that, Upon retrenchment of the applicants on 30th October, 2009, they were under paid their retrenchment package. According to Clause 3.7 of the agreement they were supposed to refer the claim of any error regarding payment **within 7 days.** The applicants failed to do so as soon after the retrenchment they were scattered as some vacated to up countries. That the duration of 7 days was unrealistic and unreasonably short. After retrenchment the applicants diligently tried to settle the matter out of court until the respondent made the final decision not to pay them, referring Exhibit AMM3.

It was further submitted that the applicants pursued their rights by filing Miscellaneous Application No. 82/2010 which was dismissed on 11th November, 2011 for want of jurisdiction. They promptly filed the application for condonation before CMA where the mediator failed to consider their evidence and dismissed their application. The applicants Counsel further contended that, the mediator did not take into consideration the adduced reasons for the delay as the law requires. That there was serious illegalities on clause 4.2 of the retrenchment agreement, there was no negligence on part of the applicant and there were great

chance of success if the complaint was heard on merit and failed to consider that there were discussions and negotiations between the parties.

The applicants counsel stated that the applicants had sufficient reasons to be condoned, referring the case of case **Joseph Paul Kyauka ans Another v Emmanuel Paul Kyauka Njau and Another**, Civil Application No.143/2018 CAT(Unreported). It was argued that , the ruling is full of illegalities as the mediator discussed on the issue of withdrawal of the scheme and reached to conclusion that it will a wastage of time at the time she was composing her ruling without inviting the parties to address on it , referring the case of M/S Darsh Industries Ltd v Mount Meru Millers Ltd. Applicant counsel prayed to this court to invoke the overriding principal, citing the case of **Charles Clement Leonard Kusudya and Anothert,** Civil Application No. 477/3 of 2018 and prayed for the grant of extension of time in the interest of justice.

In response to the applicants' averments, the respondent Counsel averred that the applicants failed to adhere to the principles governing extension of time as prescribed in various cases. The applicant has failed to account on 12 months delay from 30th October, 2009 the retrenchment date to 14th September 2010 when they knocked the Court's door for the 1st time. Also no explanation of the 19 days delay from the date the said application was dismissed at the High Court to the date they filed application for condonation before CMA. He referred numerous cases including the cases of **Wambele Mtumwa Shahame v Mohamed Hamis** Civil Application No. 8/07/2016.

It was further argued that, the alleged presence of positive expectation of the process of negotiation between the applicants and management of the respondent was not established nor proved. The attached evidence for negotiation is for only one applicant and even if it was for all, that cannot stand to prove the presence of out of court settlement . The law is very clear that negotiation or communication between the parties has not impact on limitation of time, refereeing the case of **Makamba Kigome v Ubungo Farm Implements Limited**, Civil Case No. 109/2005

Regarding to illegality the respondent counsel argued that, the applicant has blindly alleged the illegality in the impugned rulling , but failed to establish the same both in submissions in chief and the affidavit . That it is a principle of law that , for the court to be moved to extend time basing on illegality in the decision, the alleged illegality must be apparent on the face of records, such as the question of jurisdiction not one that would be discovered by a long drawn argument or process as stated in the case **of Finca (T)Ltd v Boniphace Mwalukisa** Civil Application No. 589/12 of 2018 , and in the case of **Lyamuya Constuctiin Company Ltd v Boad of Registred Trustee of Young Women Christian Association of Tanzania** , Civil Application No 2/2010. He thus prayed for dismissal of the application.

Having gone through the parties submissions and the affidavits, this court has the following issue for determination;

"*Whether the applicant had sufficient cause to justify the grant of condonation.*" What amounts to sufficient or good cause have been discussed in a number of cases including 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** where Mandia J.A held 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".

Also in the case of **Tanzania Fish Processors Ltd Vs Christopher Luhangula,** Civil Appeal No 161/1994, CAT at Mwanza it was held that:-

> "the question of limitation of time is fundamental issue involving jurisdiction...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of Justice. Limitation is there to ensure that a party does not come to court as and when he chooses"

Again in the case of **Blue Line Enterprises Ltd Vs East African Development Bank,** Misc. Application No. 135 of 1995, the Court held that:-

> "...it is trite law that extension of time must be for sufficient cause and that extension of time cannot be claimed as of right, that the

power to grant this concession is discretionary, which discretion is to be exercised judicially, upon sufficient cause being shown which has to be objectively assessed by Court."

In the case at hand the applicants were retrenched on 30th October,2009. And they knocked the CMA doors on 28th November, 2011, which is about twenty five (25) months delay. The reasons adduced by the applicants are that they were diligently trying to settle the matter through negotiation with the respondent until the respondent's final declaration that he will not pay them they referred **Exhibit AMM3**. They initiated the Miscelleneous Labour Application No. 82/2010 at the High Court Labour Division which took almost a year to its finality as it was dismissed on 11th November, 2011 for want of jurisdiction.

I have gone through clause 3.7 of the Agreement, and find that the respondents were supposed to refer the complaint regarding any defect in the retrenchment package within seven (7) days from the day they were retrenched , of which the applicants failed to do claiming among other reason that they already had vacated to their places of domiciled. Again it is crystal clear that exhibit AMM3 was addressed to one applicant as a reply to his claim which was also referred to the respondent out of seven (7) days stated in the clause 3.7 of the Retrenchment Agreement. The same does not show that it was meant to all the applicants as they claim.

From records there is no any proof to show that there was negotiation process between them. Since the respondent denied that there was no negotiation conducted between them after paying the

retrenchment package. Then that reason lacks merit as found in the case of **Leons Barongo Vs. Sayona Drinks Ltd,** , Lab. Div. Dsm. Rev. No. 182 of 2012 , where it was held that:-

> *"Though the court can grant an extension, the applicant is required to adduce sufficient grounds for delay. I believe the* ***reason that the applicant was negotiating with the respondent does not amount to sufficient ground for delay, more so, because the respondents have denied to be engaged in such negotiations".***
>
> [Emphasis is mine]

Further applicants contention that they were pursuing their right at the High Court, has no legal stance, since, the matter was referred to the High Court on 14th September, 2010 the duration of almost 12 months from the retrenchment. The fact that the agreement was very clear that the claims shall be submitted **within 7 days**, and the applicants received the impugned package hence aware of the defects in payment. I wonder how they decided to vacate to upcountry without submitting their claim to the respondent as agreed. There is no proof that they notified TUICO that they were under paid.

Regarding the illegality of the impugned ruling, I find the applicants arguments regarding the same, with no basis as the same will not justify the presence of sufficient reasons for condonation. It is also a trite principle of law that in application for extension of time a party should account for each day of delay, this is the position in numerous decision

including the case of **Bushiri Hassan Vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007(unreported) the Court of Appeal held that; I quote;

> "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."

In this application the applicants delayed for 12 months from the retrenchment to the time they approached the High Court and no justifiable reasons advanced for such delay. As held in the case of **Tanzania Fish Processors**, Civil Appeal No 161/1994, CAT at Mwanza, limitation is there to ensure that a party does not come to court when he chooses, as the applicants did in the present application.

On the basis of the above discussion, I have no hesitation to say that the Applicants have failed to account for each day of the delay. I find no need to fault the arbitrator's decision, I thus up hold the same. In the result, the present application has no merit and it is hereby dismissed. It so ordered.

Z. G . Muruke

JUDGE

12/06/2020

Judgment delivered in the presence of Mr. Abdallah Kazungu holding brief of Mr. Elisaria Mosha for the applicant and in the absence of respondent.

Z. G . Muruke

JUDGE

12/06/2020