IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

LABOUR REVISION NO. 780 OF 2019

BETWEEN

KARIBUEL J. MOLA ..... APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAY AUTHORITY ..... RESPONDENT

JUDGEMENT

Date of Last Order: 15/07/2020

Date of Judgement: 14/08/2020

Aboud, J.

This is an application to set aside the ruling of the Commission for Mediation and Arbitration (herein to be referred as CMA) on application for condonation issued on 09/09/2019 by Hon. Ngalika, E. Arbitrator in Labour Dispute No. CMA/DSM/TEM/329/19. The application was made under the provisions of Section 91 (1) (a) (b), 91 (2) (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), (c)

and (e) of the Labour Court Rules, 2007 GN No. 106 of 2007 (herein the Rules).

The application was supported by the applicant's affidavit. The respondent **TANZANIA ZAMBIA RAILWAY AUTHORITY** bitterly challenged the application through the counter affidavit of his Principal Officer, Mercy Chimtawi.

During hearing both parties were represented by Learned Counsels. Mr. Carlos Cathbety was for the applicant and Ms. Mercy Chimtawi appeared for the respondent. The matter was argued by way of written submission.

Arguing in support of the application the applicant submitted that, at the CMA the applicant adduced sufficient reasons for the grant of extension of time. He stated that, due to sickness and bed rest advised by the doctors and the continuous promise to pay given by the respondent he failed to file the dispute on time. He argued that the CMA was supposed to direct itself in line with the submission of the applicant by considering that the case is all about compulsory retirement benefits of the employee. He stated that, the Arbitrator was supposed to consider the issue of illegality as per Rule 11 (3) (e)

of the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64 of 2007.

Mr. Carlos Cathbety submitted that the Arbitrator failed to consider the point of illegality as stipulated in the applicant's affidavit at the CMA. He added that the Arbitrator was supposed to consider that notwithstanding the applicant's sickness he was making follow up to his former employer on the payment promise. He therefore prayed for the application to be allowed.

Responding to the application Ms. Mercy Chimtawi submitted that, the applicant failed to produce adequate medical records indicating that, he was sick throughout from 2018 and 2019, instead he only provided records indicating was haphazardly sick which does not account for each day of his delay. Ms. Mercy Chimtawi cited the case of **Ally Mohamed Mkupa vs. R**, Criminal Appl. No. 93/07 of 2019 (unreported) to support her argument. She stated that, the applicant delayed for 2 years and no sufficient reasons has been adduced for the delay. She thus, prayed for the application to be dismissed.

In rejoinder the applicant reiterated his submission in chief and urged the court to grant the application.

After going through parties' submissions, applicant's supported affidavit and counter affidavit, the relevant applicable Labour Laws and practice; I find the issue for determination is whether the applicant adduced sufficient reasons for his delay.

Limitation of time in referring disputes at the CMA is governed by Rule 10 (1) of the **Labour Institutions (Mediation and Arbitration) Rules**, 2007 (GN. 64 of 2004) (herein Mediation and Arbitration Rules) 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.
>
> (2) all other disputes must be referred to the Commission within sixty days from the date when the dispute arised."

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 instant matter the applicant's claims against the respondent are terminal benefit payments for retiree. Those claims fall under Rule 10(2) of the Mediation and Arbitration Rules. Therefore, the applicant was required to file his dispute at the CMA within 60 days. It is on record that the applicant retired on

08/01/2017 and he filed his application for extension of time at the CMA on 02/11/2018.

The applicant's reason for the delay in the present application is because he was sick and he alleged to have been engaged in negotiation with the respondent.

As for the reason of being engaged in negotiation, it has been argued in a number of cases that, the same does not constitute as a sufficient ground to grant extension of time. This was also the position in the case of **Leons Barongo Vs. Sayona Drinks Ltd** Lab. Div. Dsm. Rev. No. 182 of 2012 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".

In the matter at hand, the applicant did not tender any evidence to prove that he was negotiation his claims with the

respondents. Even if he was really engaged in negotiation with the respondent such a reason is not a ground to grant an application for extension of time as was held in the above case of Leons Barongo (supra).

Turning to the reason of sickness, the applicant tendered documents to prove that, from the date he retired to the date he referred the matter at the CMA he was attending medical treatment. I have gone through the documents tendered and 'Appendix A3' indicates that, the applicant was sick from September, 2017. Also applicant tendered other exhibits to prove he was sick up to August, 2018. The Arbitrator in his finding held that the applicant was an outpatient but he was still attending medical clinics, therefore in the situation was in the position to refer the matter at the CMA while he was sick.

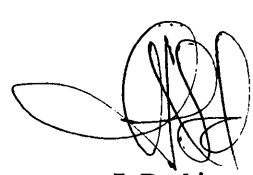
The respondent on the other side disputed this application and submitted that, the applicant did not account on each day of his delay.

I have carefully examined the record and I am of the view that, counting on each day of the delay should not be imposed as a mathematical calculation. All what is required is for the applicant to

prove before the court that, he was prevented by a serious event or act to initiate the matter at the required time. In this case, the fact that the applicant was still attending medical clinics it suffices to say he was still unhealthy. It is therefore my view that, the applicant was prevented by his health condition to file the matter timely. In the circumstances of this case it was prudent for the Arbitrator to asses if granting the application would have prejudice the respondent's right or not? The answer is no. Thus, it is my considered view the applicant deserves to be given an opportunity to be heard.

In the result I find the present application has merit. The Arbitrator's ruling on application for condonation is hereby revised; it is set aside and quashed accordingly. The applicant is granted extension of time to file the intended complaint at the CMA. The complaint is to be filed on or before 29/08/2020.

It so ordered.



I.D.Aboud

JUDGE

14/08/2020