

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT MOROGORO

REVISION NO. 59 OF 2020

STEPHANO MLUGE.....APPLICANT

VERSUS

21ST CENTURY TEXTILES LIMITED.....RESPONDENT

JUDGMENT

Date of Last Order 27/11/2020

Date of Judgment: 01/12/2020

Z.G.Muruke, J.

Applicant filed an application for condonation at Commission for Mediation and Arbitration (CMA) having delayed to file his dispute. Upon hearing CMA dismissed his application for lack of sufficient cause. Being dissatisfied by the ruling, he filed present revision, raising two grounds. In totality applicant requested court to see to it that he had adduced sufficient cause at CMA to be able to be heard on merits.

Respondent filed counter affidavit to resist the revision, on account of failure by the applicant to adduce sufficient cause for extension of time at CMA. On the date set for hearing, applicant was being represented by Mr. Hamisi Salum, personal representative of applicant own choice, while, Advocate Adam Mwambene represented respondent.

In support of the application it was submitted that sufficient cause existed for CMA to extend time. Applicant stayed at Police Custody for 15 days. He was terminated on account of criminal offence (theft). Applicant was arrested and taken to court where he stayed in remand for 7 (seven) days while looking for sureties. Later he had family problems that necessitated to shift his family from Morogoro City Center to Mgeta – Morogoro Vijijini. Criminal case ended on 26/05/2017, after being dismissed for want of prosecution. Then, applicant started to pursue his case at CMA, that was dismissed for want of merit. CMA erred because:- applicant was harassed in the cause of termination. He stayed in custody, his family was embarrassed, as a result, he was not normal sociologically. What applicant faced, he could not file dispute within time, thus pray for this revision to be allowed for the applicant to challenge his termination by respondent.

Respondent on the other hand submitted that, Respondent object the revision of CMA ruling dated 10th January, 2018 where CMA dismissed application for condonation on the following reasons; applicant at CMA failed to show sufficient cause and failed to account for delay of each of delay of delay.

At CMA arbitrator was guided by Labour Institution and Arbitration Rule 31 of GN 64/2007 which provides that, Commission may condon any failure to comply with the time frame in this rules on good cause. At paragraph 3.4 of affidavit applicant started sociological reasons being cause of delay. This is not good cause either, as was held in the case of

Naibu S. Balozi Vs. Daiken Tanzania Limited Misc Labour Application No. 18/2012 is Labour Court Digest 2013 page 25 it was held that;

“the claim that applicant was mentally, physically and sociologically affected cannot stand as ground for extension of time.”

At paragraph 4.1 of applicant affidavit said, arbitrator dealt with technicalities, that is not sufficient cause as was said in the case of **Leons Barongo Vs. Sayona Drinks Limited** Rev No. 182/2012, Labour Court Case Digest 2013 Case No. 29 page 45, it was held that extension of time is not a technique matter. It was further submitted by respondent counsel that, applicant failed to account each day of the delay at CMA, citing Misc Civil Application number 851/2016 Dar es Salaam District Registry **Carlos Albert Kobe Vs. Yusta William Kanoti** to support his argument where court held that, **Equally there is no any account of each day passed in terms of making a follow-up of the said copies at Mkuranga District Court.** In totality respondent counsel prayed for dismissal of the application for lack of merits. In rejoinder applicant representative insisted that, delay was also caused by pending criminal case No. 243/2017 at Nunge Primary Court, Morogoro, as the outcome of the same had an impact on the case to be filed.

Having heard both parties submission, gone through court records issue before me is whether, applicant adduced sufficient cause for condonation at CMA.

Rule 31 of GN 64/2007, provides that commission may condone any failure to comply with time frame in this rules on good cause. From the

records, applicant filed application at CMA after elapse of 94 days since terminated from his employment.

The main reason stated by applicant is that he was arrested and kept at Police custody for 15 days before taken to court. He further said in court he was granted bail, but stayed for 7 days in custody for lack of surities. With due respect, as correctly submitted by respondent counsel Mr. Mwambene, there is no any evidence attached in the affidavit to support such averments. Worse enough, is not said **one**, when applicant taken to court, **two**, when granted bail but lacked scarcities, and **three**, when released on bail. All these facts need to be corroborated with evidence attached to the affidavit in support for condonation at CMA, for each day of delay to be counted.

Applicant also, said cause of delay was pending criminal case number 243 of 2017 at Nunge Primary court, as it counted for his intended case to be filed at CMA. From the records, criminal case against applicant was dismissed on 26th May, 2017. Applicant filed application for condonation at CMA on 14th June, 2017. There is no accounting of days passed from 26th May, 2017, to 14th June, 2017. In extension of time each day passed beyond prescribed time courts and has to be committed for. All the above short falls, proves that how applicant has failed to account of each day of the delay as required by the law. Applicant has failed to account for 94 days of his delay.

The application is liable to be dismissed for want of sufficient cause for the delay and for the failure by the applicants to account for each day of the delay. Time limitation is very serious and can only be departed from and extended where there are good reasons. The court should not grant the same even at the risk of injustice and hardship to the applicant. This was so held in **Meis Industries Limited and two others Vs. Twiga Bankcorp, Misc Commercial Case No. 243 of 2015** where the court quoted with approval the case of Daphne Parry Vs. Murray Alexander Carson [1963] 1 EA 546 and held:

"Though the court should not doubt give a liberal interpretation to the words 'sufficient cause' its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away of sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant."

Respondent counsel Adam Mwambene correctly submitted that:- applicant has not counted for each day of delay, applicant representative was not diligent enough, by not providing sufficient reasons for delay. I correctly hold so. Indeed, it is my view that applicant case does not only demonstrate lack of seriousness and diligence, but also gross negligence on the part of the applicant himself in handling his case. In the case of **William Shija Vs. Fortunatus Masha 1997 TLR 213** the Court of Appeal held that negligence on the part of the counsel who caused the delay cannot constitute sufficient reason.

In Misc. Civil reference No. 14 of 1998 between Alison Xerox Sila Vs. Tanzania Harbours Authority, Court of Appeal (unreported) held that:

"Lapses, inaction or negligence on the part of the applicant seeking extension of time, does not constitute sufficient cause to warrant extension of time under Section 14 (1) of the Law of Limitation Act Cap 89 RE 2002."

Again, the Court of Appeal in the case of **Dr. Ally Shabhay Vs. Tanga Bohora Jamaat [1997] TLR 305** had this to say:

"Those who came to court must not show unnecessary delay in doing so. They must show great diligence".

Unfortunately it is the acts and omission of the applicant that has delayed the wheels of justice. Respondent should not be unfairly treated because of applicant own negligence. To permit the applicant, another application would neither be just, expeditious, economical, nor in the interests of justice.

To the best of my understanding, the relief that the applicant is seeking is equitable in nature. Therefore, this court should **consider also the clean hands Doctrine** in determining the merit of the applicant's flawed applications. The clean hands Doctrine **precludes a party who is seeking equitable relief from taking advantages of his/her own wrongs**. This was the holding of this court in the case of Jane Chabruma.

Applicant has failed to account for delay to file dispute at Commission for Mediation and Arbitration (CMA) for 94 days, thus, arbitrator was right

to dismiss application for condonation. In this court, revision lacks merits, thus, dismissed.



Z.G. Muruke

JUDGE

01/12/2020

Judgment delivered in the presence of Hamisi Salum, applicant personal representative and Advocate Adam Mwambene for respondent.



Z.G. Muruke

JUDGE

01/12/2020