IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 891 OF 2019

BETWEEN

PHILIPO KATEMBO GWANDUMI .....APPLICANT

VERSUS

TANZANIA FOREST SERVICE AGENT.....1ST RESPONDENT

PERMANENT SECRETARY, MINISTRY OF NATURAL RESOURCES AND TOURISM.....2ND RESPONDENT

JUDGMENT

Date of Last Order: 30/11/2020

Date of Judgment: 14/12/2020

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 (CMA) delivered on the 31st October, 2019, in Labour Dispute No. **CMA/DSM/ TEM/238/2019.** The applicant is seeking revision on the following grounds;

i. **Whether it was proper for the mediator to hold that there was no sufficient reason advanced by the applicant in support of the application for condonation.**

ii. **Whether delay to institute labour dispute due to ongoing negotiations between the employer and the employee to amicable resolve the dispute is justifiable.**

iii. Whether he had advanced good cause for condonation.

The application is supported by affidavit sworn by the applicant. Opposing the application the respondent filed a counter affidavit sworn by Lilian Patrick Akitanda, the respondent's Legal Officer. The applicant was represented by advocate Wilson Edward Ogunde, while the respondent was represented by Hangi M. Chang'a, State Attorney.

Briefly are the facts leading to this application. The applicant was employed by the respondent on 15th June, 1991 as Assistant Forest Officer. He worked with the respondent until 6th October, 2014 when he was terminated by the Chief Executive Officer of Tanzania Forest Services (TFS). The applicant was aggrieved with termination, he challenged the same through appeals. His second appeal was to the President of United Republic of Tanzania, where its decision was issued on 23rd October, 2017 and it upheld the decision of the Public Service Commission. On 17th May, 2019, the applicant referred the matter to the CMA where he applied for condonation. The application was dismissed upon failure to adduce sufficient reasons for the delay hence the present application for revision.

On the first ground the applicant's counsel submitted that amicable settlement of dispute is encouraged. The spirit is to maintain palatable industrial relations, referring the case of **Nyanjugu Sadick Masudi v Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO)** Rev.No. 5/2013. The applicant having been terminated on 6th October, 2014 he engaged on making several follow ups and negotiations with the respondent though the same failed thus decided

to lodge a complaint before CMA. Therefore from 6th October,2014 to 17th May,2019 has been accounted for as the parties has been attempting to amicably settle the dispute.

Concerning the 2nd issue, it was submitted that the applicant had sufficient cause for his delay. He made several follow ups but the respondent was delaying to respond within time from when the requests and application filed by the applicant. His duty was to inquire to the office of the President of United Republic of Tanzania through a letters until **18th June , 2019** when he was notified through phone to collect a letter which was addressed to him since **23rd October,2017.** The arbitrator ought to have considered those facts, though there was no documentary proof.

On the third ground, it was submitted for the respondent that, what amounts to good cause depends on circumstances of each case. The applicant has advanced good cause for the delay. Negotiations and amicable settlement of the dispute out of court were the main reason for the delay. Applicant was still exhausting the local remedies. The arbitrator ought to have acted judiciously and exercise his discretion by granting the condonation application. There is no dispute that this amounts to good cause as stated in the case of **General Guards & office Cleaner v Chaha Masuri & 29 others** Rev. No. 18/2010. Applicant counsel thus prayed for the application to be allowed.

Responding to the applicant's contentions, the respondent's counsel prayed to adopt the counter affidavit challenging the application to form

part of his submission. On the 1st ground it was submitted that, during trial at the CMA the applicant has failed to prove his allegations that he was making several follow ups for two years. That the applicant ought to know that the government works basing on papers hence he was supposed to write a letter to the President seeking for his final decision. It is the requirement of the law under Section 110,112 and115 of the Tanzania Evidence Act [Cap6 RE 2019] that he who allege must prove, therefore it was proper for the CMA to reject the application for condonation.

On the second ground it was the respondent's counsel submission that, during trial of arbitration the issue of negotiations being the reason for the delay was never raised, thus it was an afterthought. The applicant never attached any documents such as minutes taken during that negotiations. The case of **General Guards & office Cleaner v Chaha Masuri & 29 others (supra)** contains good principle of importance of amicable settlement, but he has failed to justify. Even if there was negotiation the same could not waive the requirement of the law of limitation, referring this court to the case of **Makamba Kigome & another v Ubungo Farm Implements & Another,** Civil Case No.106/2005(unreported); and Court of Appeal decision in the case of **Consolidated Holding Corporation Vs. Rajan Industries Ltd and Another**, Civil Appeal No.2/2003 where it was held that;

> "We need not be delayed in this aspect the applicable legal position is crystal clear. It is common ground that the time within which the rights may be enforced being fixed by statute, it is not open by agreement to

alter such time or waive and contract themselves out of the operation of the statute..."

In regard to the third ground, counsel for the respondent submitted that, it is a discretion of the court to grant or decline the application for extension of time. The applicant is required to show good cause for the delay. In the case of **Julius Francis Kessy & 2 others v Tanzania Commissioner for Science and Technology,** Civil Appeal no.59/2017 provides for factors to be considered in exercise of discretion to grant extension of time, and case of **Lyamuya Construction Company Ltd v Board of Registered Trustee of Young Women Christian Association of Tanzania,** Civil Application No.2/2010. He further argued that in the case at hand, there was no any material that CMA could exercise its jurisdiction to condon the applicant. He insisted the prayer for dismissal of the application.

In rejoinder, the applicant counsel reiterated their submission in chief. He further added that it is the position of Section 32A of the Public Service Act, RE 2002, as amended by Act No.3/2016 which provides that, for a public servant before preferring any dispute if at all he is aggrieved, he should prefer such dispute before the public service committee, then to the president of United Republic of Tanzania and after being aggrieved with his decision, he referred the dispute to the CMA. The said law does not provide for referring a dispute to the High Court for judicial Review. The applicant managed to exhaust all remedies as found by the arbitrator. He insisted on the relief stated in submission in chief.

Having carefully gone through the parties submissions, records from CMA to this court, and relevant laws, this court is to determine; "Whether the applicant had sufficient cause to justify the grant of condonation."

A number of cases has discussed on what amounts to sufficient or good cause, that includes 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 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 **Blue Line Enterprises Ltd v East African Development Bank,** Misc. Application No. 135 of 1995, (unreported)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."

Court of appeal in the case of **Tanzania Fish Processors Ltd v Christopher Luhangula,** Civil Appeal No 161/1994, CAT at Mwanza 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".

In the present matter, the applicant was terminated on 6th October, 2014, and thereafter he appealed to the Public Service Commission who confirmed his termination. He then decided to lodge his second appeal to the President of United Republic of Tanzania, who, on 23rd October 2017 confirmed his termination having upheld the decision of the Public Service Commission. The applicant knocked the CMA doors on 17th May, 2019. The reasons adduced by the applicant are that they were trying to settle the matter through negotiation with the respondent and the respondent's delayed to reply his application while he was making follow up of the outcome of his appeal.

I went through the records and found as stated by the respondent counsel, that negotiation was not among the reasons stated by the applicant before CMA to justify his delay. Again on records, I did not came across any proof that the parties were engaged in negotiation in any way. There are various court decision which decided that negotiation is not a good cause for delay. In the case of **Leons Barongo Vs. Sayona Drinks Ltd,** 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]

Also in the case of **Makamba Kigome & another v Ubungo Farm Implements & Another** as cited by the respondent counsel (supra) it was held that;

> "Negotiations or communications of the parties since 1998 did not impact on limitation of time. An intending litigant however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by the law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as a defense when it come for limitation of time."

Again on record it is undisputed that the applicant appealed to the Commission for Public Service, and to the President where his decision was delivered **23rd October, 2017**, and the applicant referred the matter to the CMA on **17th May,2019**. The applicant alleged that he made several correspondences inquiring of his fate and he made reference to a letter referred in the letter of President's decision on his appeal. He alleged that the said decision was communicated to him on **18th June, 2019** after a phone call from the President's office. There is no proof that the applicant received President's decision on the said date. And if that is the case then, why on **17th May, 2019** he referred the matter to the CMA prior the president's decision. How did he know that the said decision confirmed his

termination? Again, the applicant stated that he made several follow ups to the President's office but were fruitless. Despite of the applicant's letter dated **3rd July,2017** that was responded on 2nd Agost,2017 by the President's office as it is clearly divulged on the President's decision dated **23rd October,2017**, there is no proof that the applicant pursued of his appeal until when he alleged to have received the decision. This court is of the view that, failure by the applicant to prove that he was not reluctant after he received the letter on **2nd Agost,2017**, draws the inference that he slept over his right.

It is also a tenet 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 applicant delayed for about 17 months from the date of the president's decision. This court join hands with the arbitrator's finding that the applicant has no justifiable reasons for such delay. In the case of **Tanzania Fish Processors**, Civil Appeal No 161/1994, CAT at Mwanza held that; limitation is there to ensure that a party does not come to court when he chooses as the applicant did in this application.

On basis of the above discussion, I have no hesitation to hold that the applicant had no sufficient cause for delay and has 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 merits and it is hereby dismissed.

Z. G . Muruke

JUDGE

14/12/2020

Judgment delivered in the presence of Evelius Mwendwa, State Attorney for the respondents and in the presence of applicant in person.

Z. G . Muruke

JUDGE

14/12/2020