IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 748 OF 2019

BETWEEN

BUSHIRI YUNUS RAJAB..... APPLICANT

VERSUS

VISION CONTROL & SUPERINTENDENCE LTD..... RESPONDENT

JUDGEMENT

Date of Last Order: 04/12/2020

Date of Judgment: 24/12/2020

Aboud, J.

This is an application to set aside the decision of the Commission for Mediation and Arbitration (herein referred as CMA) delivered on 28/12/2018 by Hon. Batenga, M. Arbitrator, in Labour Dispute No. CMA/DSM/TEM/132/2019. 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) To revise decision of the Commission for Mediation and Arbitration of Temeke in Labour Dispute No. CMA/DSM/TEM/132/19 and satisfy itself on the correctness, legality and propriety decision.

(ii) To set aside the ruling of Commission for Mediation and Arbitration of Temeke in Reference No. CMA/DSM/TEM/132.

The application is supported by the applicant affidavit. The respondent bitterly challenged the application through the counter affidavit of Rukia Yusuph, respondent's Human Resource Manager.

Whereas the applicant appeared personally, the respondent was represented by Ms. Rukia Yusuph, respondent's Human Resource Manager. With leave of this court the matter proceeded by way of written submissions.

Briefly is on record that, on 01/07/2017 the applicant was employed by the respondent under yearly fixed term contract. It was alleged that the applicant terminated himself on 28/05/2018 when he

refused to receive a notice to appear before Disciplinary hearing on 30/05/2018. On 31/05/2018 the applicant decided to file the matter at CMA. CMA determine the matter in favour of the respondent. Dissatisfied with the CMA award the applicant decided to file this application for revision.

Arguing in support of the first ground Mr. Rajab submitted that the act of the respondent to terminate applicant's employment without giving the reasons for termination is unfair and contrary to Section 37 (1) of ELRA. He stated that the reason for termination was not explained to the applicant as per order issued to K.K. security of abstain the applicant to enter into the working premises contrary to employment contract.

Mr. Rajabu submitted that respondent failed to comply with Section 38 (1) of the ELRA, which guide on how to implement retrenchment exercise especially giving notice as soon as it is contemplated to the affected person.

It was further submitted that a part from having employment contract that ended on 31/12/2018, the respondent decided to end the contract on March 2018 as she opted not to pay applicant's salary

contrary to Article 22 (1) and 23 (1), (2) of the Constitution of United Republic of Tanzania of 1977.

In reply the respondent submitted that the applicant's application has no merit as the applicant failed to give reason for the CMA's award to be revised and no good reason has been adduced for the condonation to be granted.

The respondent submitted that the applicant failed to show any irregularity or incorrectness of CMA's decision so as this Court could revise the same. It was also submitted at paragraph 9 of the respondent affidavit stated that the only cause for the delay to file the matter within a time was resulted from her advocate's journey, however the applicant failed to prove for the same as no evidence was tendered including tickets of the said journey. To support her argument she cited several cases including the case of **Sophia Ashrap v. Abana Publication Ltd.**, Misc. Civil Appl. No. 76 of 2010, HC, Lab. Div. Therefore Arbitrator was right in his findings as the applicant failed to adduce good cause for the delay.

She thus prayed for the application to be dismissed.

Having carefully examined the parties' submissions, and considering CMA's records, relevant labour laws and case laws, I find the issue for determination before the Court is whether the applicant adduced good cause for the delay?

It is an established 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 number of cases. 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 Appeal 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 his delay to file his application before CMA resulted from her advocate's journey as he was travelled to Tanga as reflected at page 9 of his affidavit while in this application the applicant submitting nothing in his submission as he opted to submit about unfair termination and not this application for condonation.

It is a principle of law that the one who allege must prove this view of this court is basing on section 110 (1) of the **Evidence Act,** Cap 6 R.E 2002 which states that:-

'Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist'.

Also in the case of **East African Road Services Ltd. V. J. S. Davis & Co. Ltd.** [1965] EA 676 at 677 it was stated that:-

'He who makes an allegation must prove it. It is for the plaintiff to make out a prima facie case against the defendant'.

It is on record that the applicant became aware on 11/02/2018 that the matter was struck out because was defective, and he filed another application on 03/04/2018 as reflected at page 4 paragraph 4 and 5 of Annexure CV-3 and 4. Therefore, the applicant delayed for more than 50 days to take the appropriate action.

The relevant provision regarding 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].*

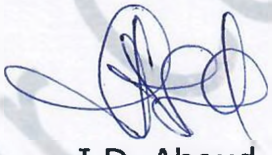
From the above rule, the applicant ought to have accounted for each day of the delay. As was discussed in the case of **Bushiri Hassan vs. Latifa Lukio Mashayo,** Civil Application No. 3 of 2007

(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'.*

In such circumstance I am of the view 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. The application is hereby dismissed.

It is so ordered.



I.D. Aboud
JUDGE
24/12/2020