IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 61 OF 2020

(Originating from Labour Dispute No. CMA/DSM/TEM/384/2018)

BETWEEN

ADAM MATYALA MAYALA & 4 OTHERS..... APPLICANTS

VERSUS

TWAYYIBAT ISLAMIYAT SEMINARY..... RESPONDENT

EX-PARTE JUDGMENT

Date of Last Order: 29/09/2021

Date of Judgment: 12/11/2021

I. Arufani, J.

The applicants herein beseeches the Court to call for record, examine, revise the proceedings and set aside the award issued by the Commission for Mediation and Arbitration (CMA) in the labour dispute No. CMA/DSM/TEM/384/2018 dated 7th September, 2019. The application is made under section 91 (1) (a), (2) (a) and (b), 91 (4) (a) and (b) and section 94 (1) (b) (i) of the Employment and Labour Relations Act, Act No. 6 of 2004, Rule 24 (1), (2) (a), (b), (c), (d), (e) and (f), 24 (3) (a), (b), (c) and (d) and 28 (1) (c), (d) and (e) of the Labour Court Rules GN. No. 106 of 2007 and any other enabling provisions of the law.

The application is supported by the affidavit affirmed by the first applicant namely Adam Matyala Mayala and it is opposed by the respondent who filed in the court the counter affidavit affirmed by Shaban Namata, Principal Officer of the respondent. As the respondent failed to appear in the court on the date when the application was coming for hearing the court ordered hearing of the application to proceed ex-parte.

When the application came for ex-parte hearing, the first applicant, Adam Matyala Mayala who is also representing other applicants in the application told the court that, all applicants were employed by the respondent in 2010. He said they worked for the respondent until 2014 when their contracts of employment were terminated. He said that, after termination of their employment, they claimed for their terminal benefits from the respondent without success.

He said they engaged in several negotiations with the respondent and 16th February, 2018 they went to BAKWATA Secretary where the respondent was ordered to pay them their terminal benefits. He said the respondent offered to pay them the

sum of Tshs. 5,900,000/= by instalment but they refused to accept the said offer after seeing it was not sufficient.

Thereafter they filed the application for condonation before the CMA and stated the reason for the delay was that, they were engaged into negotiations by the respondent but the said negotiation proved futile. He said they were prevented by the respondent's promises and not their own negligence. The CMA dismissed their application for condonation after finding the applicants were not delayed by good cause to refer their complaints to CMA. Now they are beseeching the court to revise the ruling of the CMA so that their dispute can be heard on merit.

Having carefully considered the applicants' submission, and after going through the record of the matter and the relevant laws, the court has found the issue for determination in this application are whether the applicants had adduced sufficient reason to be condoned by the CMA and secondly is what reliefs the parties are entitled.

It is a settled principle of law that sufficient reason/good cause is a pre condition for the CMA to grant extension of time. The law

under Rule 31 of Labour Institutions (Mediation and Arbitration) GN. No. 64 of 2007 provides that:-

> *"The Commission may condone any failure to comply with the time frame in these rules on good cause."*

What constitute sufficient reason or good cause has been defined by court in a number of cases. For instance, in the case of **Tanga Cement Company Ltd. vs. Jumanne Masangwa & Another,** Civil Application No. 6 of 2001, HC, Dar es Salaam (unreported) the Court of Appeal stated that:-

> *"What amount to sufficient cause had been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay, lack of diligent on part of the applicant."*

The cited position of the law was insisted by the Court of Appeal in the case of **John Mosses and Three others v. The Republic,** Criminal Appeal No. 145 of 2006, when quoting the position stated by the Court of Appeal in the case of **Elias Msonde v. Republic, Criminal Appeal No. 93 of 2005,** it held that:-

> *"We need not belabor, the fact that it is now settled law that in applications for extension of time to do an act required by law, all that is expected of 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".

It is apparent from the record of this matter that the applicants were terminated from their employment in 2014 and they filed their application for condonation before CMA on 20th June, 2018. That was almost 1470 days from the date of termination of their employment. It is undoubted that the applicant's claims of terminal benefits emanated from termination of employment. Therefore, their claims ought to be filed in the CMA within thirty days from the date of termination as provided under Rule Rule 10 (1) of GN. No. 64 of 2007 which states that:-

"Dispute 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 that the employer made a decision to terminate or uphold the decision to terminate."

The reason advanced by the applicants in the application at hand as reflected in CMA F7 are that, negotiation for compensation took too long, and they were waiting for the employer to fulfil his promise to pay their claims as agreed. From records there is no any proof to show that there was negotiation which were going on for such a long

time and which promise was made by the respondent to the applicants as alleged by the applicants.

It is a trite law that in an application for extension of time, negotiation has never been a good cause for the delay. That was stated so by this court when was determine the similar issue in the case of **Leons Barongo v. Sayona Drinks Ltd.,** Rev. No. 182 of 2012, [2013] LCCD 1 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..."***

In his submission, applicant's representative submitted that the arbitrator wrongly refused to condone them as the reason for the delay was not negotiation but the respondent's delay to fulfil his promise. The court has found the applicants misdirected themselves as both reasons were stated in their CMA F7 filed in the CMA as the reasons for their delay to refer their dispute to the Commission. That shows the applicants are denouncing what is stated in their own pleadings.

I am also of the view that waiting for the respondent's promise to pay their terminal benefits is not a good cause for the delay. After the applicants knowing they have their claims against the respondent they were required to conduct their negotiations and while wait for payment of whatever had been promised to observe the Rules of time limitation. The delay of almost 1470 is an inordinate delay which cannot be interpreted in any other way than negligence or lack of due diligence in pursuing for their alleged claims.

The court has found that, as rightly stated by the mediator in the decision of the CMA, the position of the law is very clear that, in any application for condonation the applicant is required to account for each day of the delay. That can be seeing in the case of **Daudi Haga v. Jenitha Abdan Machanju**, Civil Reference No. 19 of 2006, Court of Appeal at Tabora, (Unreported) where it was stated that:-

> *"A person seeking for an extension of time has to prove on every single day for delay to enable the court to exercise its discretionary power."*

It was also stated by the Court of Appeal of Tanzania in the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007 (unreported) 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."

Therefore, it is a duty of an applicant in an application for condonation to account for every single day of the delay to enable the Commission or the court to exercise its discretionary power to grant an order for extension of time sought from the Commission or court. In the present application it is obvious that the applicants have failed to account for each day of the delay after expiration of the prescribed time.

Consequently, the court has failed to see any merit which can make it to use its discretionary powers to fault the mediator's finding that the applicants failed to adduce good cause for their delay. In the premises the application is hereby dismissed for want of merit. Ordered accordingly.

Dated at Dar es Salaam this 12th day of November, 2021.

I. Arufani

JUDGE

12/11/2021

Court: Ex-parte judgment delivered today 12th day of November, 2021 in the presence of the first applicant in person and in the absence of the Respondent. Right of appeal is fully explained.

I. Arufani

JUDGE

12/11/2021