IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 684 OF 2019

DANFORD EVANS OMARI.....APPLICANT

VERSUS

TAZAMA PIPELINE LIMITED..... RESPONDENT

JUDGMENT

Date of Last Order: 18/09/2020

Date of Judgment: 16/10/2020

Z. G. Muruke , J.

Applicant was employed by respondent on 15th September, 1996, and was terminated on 30th July, 2018. He referred an application for condonation at Commission for Mediation and Arbitration (CMA), for him to file dispute out of time. His application for condonation was refused for lack of sufficient cause, thus filed present revision following exparte ruling decision in which respondent was not even heard, raising following grounds.

(a) That the mediator made mistake in law and facts by introducing extraneous matter and hence reached an erroneous exparte decision.

(b) That, the mediator raised her own interest by creating corruption prone environment by not delivering exparte ruling in time without any good reasons.

(c) That the mediator erred in fact and law for delivery of exparte ruling while the respondent failed to bring proof and the applicant procedure standard proof as required by laws.

Respondent filed counter affidavit sworn by Cornelius Kariwa, respondent counsel. To accommodate un represented applicant, court ordered hearing of the revision by way of written submission. Applicant submission is fixed on failure by arbitrator to consider evidence submitted by the applicant together with information gathered in the **CMA F.2,** which clearly shows why applicant did not file dispute within time prescribed by law, referring Rule 4(12) and Rule 4(15) of GN 42/2007. Applicant requested this court to follow decision of **Alexander Chacha Vs. Tanzanite One Ltd**, Revision number 60/2013 (unreported), Revision number 15/2009 **Tanga Cement Co. Ltd and Leah Mchome (unreported),** and **Blue Financial Services Vs. Vestina Masaga**, Revision 35/2013 (unreported).

Applicant further submitted that, mediator exercising the discretion to extend the time prescribed by the law he has to consider two things **First;** she must show good cause, **Secondly;** No party is to be prejudiced. The applicant was affected by such a delay for not achieving his justice quickly because, Justice delayed is the Justice denied, and ruling delayed is the justice denied. Applicant then requested for revision application be allowed, CMA ruling to be quashed, and CMA ordered to hear the applicant out of time.

Respondent on the other hand, submitted to the point that applicant has failed to show the alluded extraneous matters taken by mediator and

how the ruling was erroneous. Mediator decided the application for condonation exparte as against the respondent. On paragraph 2 and 3 of the award mediator took on board what was sworn in affidavit in support of the application. Reason for being late to file the dispute at CMA started by applicant was respondent delay to answer applicant letter of appeal dated 1st August 2018 and the letter for his terminal benefits dated 11th December, 2018. At page 2 of CMA ruling paragraph two, applicant through his personal representative argued orally that the applicant had written a letter to the respondent claiming for his terminal benefits on 11th December, 2018 and that the letter was replied by respondent on 11th January,2019. The two paragraphs as found in mediators ruling, are from the affidavit of the applicant in support of the application and oral submission. Therefore, the issue that facts, evidence and legal information were not taken into account is baseless as submitted by applicant, insisted respondent counsel.

It was further argued for the respondent that, applicant reply to his appeal letter dated 27th November, 2018, it is when time to institute dispute at CMA started to run. Degree of lateness is 68 days in which applicant has failed to account. Applicant exhaustion of internal remedy available ended on the date his appeal was replied on 27th November, 2018, thus, there was no reason for such delay referring the case of Alysony Peter Gulman V.A to Z Textile Mills Ltd [2014] LCCD 3, Abood, J held that:

> " In my view the arbitrator correctly held as he did that there were no good reasons to allow the applicant to lodge his complaint out of time,

as the applicant failed to show good cause and sufficient reasons resulting in the delay to file his complaint."

Respondent counsel, then prayed for dismissal of revision, as applicant did not adduce sufficient cause for condonation.

Having heard both parties submission, issue before me is whether applicant adduced sufficient cause to warrant condonation at CMA. To answer the issues raised, affidavit in support of condonation at CMA is reproduced, below for clarity.

I Danford Evans Omari an adult, Christian, and resident of in Dar es Salaam do hereby Solemnly Swear and State as follows:-

1. **That I am the applicant in this matter therefore conversant and competent to dispose the facts of this application.**
2. **That, the respondent in this application is a Tazama Pipelines Limited under the laws of United Republic of Tanzania.**
3. **That the applicant is natural person and address for the purpose of this matter shall be P.O. Box 16671 Dar es Salaam.**
4. **That, I was employee of the respondent between 15th September,1996 upon to 27th November 2018 before terminated by respondent unfair.**
5. **That the reason for lateness in each day is due to the respondent delayed to answer my appeal of 1st August, 2018 and letter for request of terminal benefit of 11th December, 2018.**
6. **That, it will be in the interest of justice if this application will be granted as prayed.**

VERIFICATION:

I Danford Evans Omari do hereby verify that what is stated in paragraphs 1,2,3,4,5, and 6 are true to the best of my Knowledge.

Sgd:

The above affidavit is what was sworn and verified by applicant. There is nothing more or less. Reasons for delay are in paragraph 5 above. Respondent filed counter affidavit sworn by Mr. Deogratius Msemwa head of Human Resource. In response to paragraph 5 on the reason for delay, paragraph 5 of respondent human resource officer affidavit read as follows:

> "That the content of paragraph 5 and 6 is disputed and the respondent avers that the decision of the appeal committee was delivered and served to the applicant on 27th November, 2018 and his application for condonation was filed on 4th February, 2019, which is after the expiration of 68 days. The applicant has failed to account for each day of his delay and he is put under the strict proof of accounting each day of delay."

According to the records, it is clear from the applicant own affidavit at paragraph 5, that delay was due to late reply of his later dated 1st August 2018 for his appeal and letter dated 11th December 2018 for his terminal benefit. Equally, in paragraph 4 of applicant affidavit he said he was terminated on 27th November, 2018, the fact is confirmed by respondent at paragraph 5 of counter affidavit that applicant received his reply for his appeal on 27th November, 2018. According CMA records, affidavit in support of condonation was verified, signed, and filed on 4th February, 2019, being after 68 days from 27th November, 2018 when

applicant received his outcome of his appeal. Looking at the affidavit sworn by applicant himself to support condonations, there is no counting of single day passed beyond time prescribed on filing of dispute at CMA. It is now settled principle of law that in an application for extension of time applicant is required to show sufficient cause for delay. Sufficient cause would be shown for the delay in taking the necessary steps in instituting an appeal or filing application according to the time prescribed under the specific law. However, it is to be observed that the court can only exercise its power under the law to extend time if sufficient cause is shown to explain the delay. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice.

On failure to account for each day of delay was discussed in the case of **Interchick Company Limited Vs. Mwaitende Ahobokile Civil Application No. 218 of 2016** (unreported) where it was 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."**

Legally, extension of time cannot be granted to an applicant who has failed to account for days that he has delayed, same was discussed in the case of **Vodacom Foundation Vs. Commissioner General (TRA)** Civil Application No.107/2017 (unreported) in which it was held that,

> **"..... after the withdraw, it took the applicant nine clear days to lodge the present application 02/03/2017. These nine days have also not been accounted for"**

> **..... the applicant, through her advocates has just made a general statement to the effect that she was busy seeking the certification in the Tribunal. With due respect to the Learned Counsel for the applicant, I see no sufficient explanation regarding delay in this period.**

In an extension of time, each day count and has to be counted for, as clearly enunciated by in the Court of Appeal decision in Civil application number 234 of 2015, in the case of **Dar es Salaam City Council Vs. S. Group Security Co. Ltd, Kaijage JA** held that:-

> ...But the stance which this court has consistently taken is that in an application for extension of time, the applicant has to account for every day of the delay.

Applicant affidavit is naked, on accounting of days of delay. Respondent has no duty to prove applicant delay, but rather it is applicant who is suppose to account for, in the affidavit in support of the application. I wonder how, applicant is shifting blames to the respondent. The fact that, application at CMA was determined exparte, there is no guarantee of same being allowed.

Last is what has been un-necessarily dramatized by the applicant, that mediator adjournment of ruling for eleven days created room for corruption. This is serious allegations that lack evidence. Mediators, and or Arbitrators are officers that dispense justice. One cannot just throw anything he/she wish, simply because decision reached did not please him/her. It is my conviction that **parties to labour dispute should not turn mediator/arbitrator as punching bag, simply because their decision was not in their favour.** Allegations of corruption to

mediator/arbitrator or any court officer if any, supposed to be taken to relevant authority ie Prevention and Combating of Corruption Bureau (PCCB) in that matter, who have the authority and relevant expertise of the same. But not to be brought by way of ground of revision or and by way of submission without even smell of the corruption let alone evidence. **Applicant delay to file dispute at CMA cannot act as automatic emergency on the part of the mediator/arbitrator and respondent. Whoever claims any rights before CMA or court of law, has to file claims within time otherwise will be blamed for his delay. Parties cannot sleep on their rights and later heap complains the way applicant did**.

The manner in which applicant conducted himself in terms of affidavit in support for condonation at CMA and also affidavit in support of revision, before this court, demonstrate negligence. There was no reasons at all, let alone sufficient reasons. Thus present application is frivolous and or vexatious and more so it is abuse of court process that necessitate costs to be awarded to the respondent.

According to Section 50(6) of the Labour Institutions Act No. 7 of 2004 as amended by Section 19(b) of the written laws (Miscellaneous Amendment) Act No. 3 of 2010 and Rule 51 of the GN No. 106 of 2007 and Section 88(9) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 34 of the GN No. 64 of 2007 Labour disputes are free of costs, interests and fees, however, costs are only allowed where there is the proof of frivolous and/or vexatious proceedings. Issue of costs in labour cases was also discussed in the case of Tanzania Breweries Limited Vs.

Nancy Maronie, Labour Dispute no. 182 of 2015 (unreported) where it was held that, ***whether the dispute or application is before the Commission for Mediation and Arbitration or in the High Court of Tanzania, cost is awarded only where there is an existence of frivolous and/or vexatious proceedings.***

Honourable Vallensi Wambali, Acting Director Arbitration Department in the Commission for Mediation and Arbitration (CMA) in his recent paper titled IS COST FREE THE SOURCE OF DELAY IN HANDLING LABOUR DISPUTE: LAW AND PRACTICE IN TANZANIA, at page 3 paragraph 2 he said. ***The law is designed to make sure that in making decisions on costs orders the CMA and LC seek to strike a balance between on one hand, not unduly discouraging employees, employers, unions and employers association from approaching the Commission for Mediation and Arbitration(CMA) and Labour Court (LC) to have their disputes dealt with and on the other hand not allowing those parties to being frivolous and vexatious case.***

Court of Appeal granted costs upon withdraw of the notice of appeal in a matter originated from labour dispute in **Civil Application No. 600/08 of 2017 Stanbic Bank Tanzania Limited Vs. Bryson Mushi,** for clarity order is reflected below.

> *Upon the applicant lodging in Court a notice of withdrawal of the application on 22/05/2020 and non –appearance while duly notified to appear, Mr. Steven Emanuel Makwega, Learned Advocate, who appeared for the respondent, had no objection to the prayer to withdraw the application but he pressed for costs.*
>
> *We indeed, agree with Mr. Makwega that the applicant lodged the aforesaid notice for withdrawal of the application in terms of Rule 58(1)*

and (2) of the Tanzania Court of Appeal Rules, 2019 (the rules). We accordingly grant the applicant's prayer we mark the application withdrawn under Rule 58(3) of the Rules. The respondent to have costs of the case.

The above Court of Appeal decision is based on withdraw of notice, only, but costs was granted. In the case at hand, applicant has filed frivolous and vexatious application as demonstrated by his two affidavit at CMA in support of condonation and at this court in support of the revision.

Applicant own fault dragged respondent in to dispute without justifiable cause. In the up short revision application dismissed for lack of sufficient cause, with costs, for being frivolous and or vexatious and abuse of court process.

Z.G.Muruke
JUDGE
16/10/2020

Judgment delivered in the absence of applicant and in the presence of Advocate Flavian John holding brief of Advocate Frank Kilian for respondent.

Z.G.Muruke
JUDGE
16/10/2020