

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 655 YA 2019

BETWEEN

SIMON CLIFORDAPPLICANT

AND

WATUMISHI HOUSING COMPANY.....RESPONDENT

JUDGMENT

Date of Last Order: 25/03/2021

Date of Judgment: 21/05/2021

A. E. MWIPOPO, J.

SIMON CLIFORD, the Applicant herein, has instituted this revision application against the ruling of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/ILA/143/19. The Applicant is praying for the orders of the Court in the following terms:-

- i. That this Honourable Court be pleased to grant and make revision of the ruling of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/ILA/143/19 dated 27th June, 2019 by Hon. P.P. Mahindi, Mediator.
- ii. Any other order and relief as this Honourable Court shall find it just and equitable to grant.

The background of the application in brief is that; the Applicant filed an application for condonation before the Commission for Mediation and Arbitration seeking extension of time to refer his complaints against his former employer namely Watumishi Housing Company, the Respondent herein. The application to be condoned was heard in *ex parte* following the failure of the Respondent to appear before the Commission despite having knowledge of the application. The Commission dismissed the application for condonation for the reason that the Applicant failed to adduce sufficient cause for the delay. The Applicant was not satisfied with the Commission ruling and he filed the present application for revision.

The parties to the application had legal representation. The Applicant was represented by Mr. Joachim Joliga, Personal Representative, whereas, the Respondent was represented by Mr. Lucky Titus Kaguo, Advocate. Hearing proceeded orally.

The Applicant's Representative submitted in support of the application that the Applicant adduced evidence which was sufficient to be condoned by the Commission. The Commission did not consider the evidence adduced by the Applicant as a result it reached a wrong decision. Thus, the Applicant is praying for the Court to go through the proceedings,

revise the Commission ruling and allow the Applicant to be heard by the Commission on merits.

In reply, the Respondent Counsel submitted that the Mediator decided to dismiss the application to be condoned after examination of the Applicant's evidence. The CMA Form No. 2 which is the form for condonation shows that the reason for the delay is the negotiation which were going on with the employer to settle the matter. However, the Applicant's reason for delay stated in the affidavit is different from the one submitted in Court. Thus, it is not a sufficient cause for extension of time.

The Counsel submitted that the Applicant did not explain the 10 days delayed to refer the complaint before the Commission. The explanation provided by the Applicant for the delay was in respect of two days falling on weekend but on the remaining days there is no explanation. To support the position the Counsel cited the case of **Kowe Malegeri vs. Airwing Secondary School, Revision No. 61 of 2019, High Court Labour Division, at Dar Es Salaam, (Unreported)**. For that reason the Applicant have failed to provide sufficient reason to be condoned by the Commission. Thus, he prayed for the application to be dismissed.

In rejoinder, the Applicant's Representative retaliated his submission in chief and prayed for the Court not to be tied by technical issues and to give justice to the Applicant.

From the submissions, the only issue for determination is whether the Applicant has provided sufficient reason for the Mediator to embark its discretionary powers to grant application for condonation. The Relevant provision of the law providing for the application for condonation is rule 11 of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007. The Rules provides in rule 11(3) the grounds set out in an application for condonation. The grounds to be submitted in the application includes the degree of lateness, the reasons for the lateness, its prospect of succeeding with the dispute and obtaining the relief sought against the other party and other relevant factors.

The Applicant's affidavit before the Commission shows that the reasons for the delay is that the Applicant was following for his rights to the employer from 5th December, 2018 when the breach of contract occurred until 5th February, 2019 when the Respondent paid some of the Applicant's claims. From 5th to 8th February, 2019 the Applicant made physical follow up to the Respondent requesting to be paid the remaining entitlements but the Respondent kept on promising to pay the Applicant.

That on 9th and 10th February, 2019 was weekend. From 11th February, 2019 to 20th February, 2019 the affidavit shows that the Applicant was seeking legal advice from different legal aid and on the same time he was raising finances to help him pursue his rights in the Court of the law.

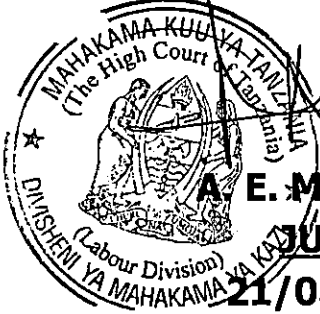
In the case of **Topical Air (TZ) Limited vs. Godson Eliona Moshi, Civil Application No. 9 of 2017, the Court of Appeal of Tanzania at Arusha**, (Unreported), the Court of Appeal set guidance on factors to be considered for good cause to extend time. These factors includes that the Applicant must account for all period of delay, the delay should not be inordinate, the applicant must show diligence and not apathy, negligence or sloppiness in prosecution of the action that he intends to take and the existence of a point of law of sufficient importance such as the illegality of the decision sought to be challenged.

The Applicant has provided explanation to some days delayed from 5th February, 2019 up to 10th February, 2019. From 11th February, 2019 up to 20th February, 2019 the Applicant averred that he was seeking legal advice from different legal aid and on the same time he was raising finances to help him pursue his rights in the Court of the law. This is a general explanation about the delay. Unfortunately, there is no evidence to show the name of the legal aid institution he was seeking advice. This means

that the Applicant failed to account for each day of delay on the respective dates as it was held in the case of **Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another, Civil Application No. 278/15 of 2016, the Court of Appeal of Tanzania, (unreported).**

In the circumstances, I agree with both the Mediator and the Respondent that the application has no basis for failure of the Applicant to account for each day of the delay.

Therefore, the application is dismissed in it's entirely for want of merits. Each part to bear its own cost.


A. E. MWIPOPO
JUDGE
21/05/2021