

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION NO. 741 OF 2019

BETWEEN
GABRIEL SONGOLA MHINA..... APPLICANT
VERSUS
SGA SECURITY (T) LTD RESPONDENT

JUDGMENT

Date of Last Order: 21/04/2021

Date of Judgment: 11/06/2021

Z.G.Muruke, J.

GABRIEL SONGOLA MHINA, (the applicant) was employed by the respondent as a Security guard from 27th July,2016, until 25th February,2019 when terminated. He referred the dispute before the Commission of Mediation and Arbitration (CMA), where the application was dismissed for being time barred on 13th August,2019. Aggrieved with the decision the applicant filed this application challenging the same on ground that;

'That the decision had been procured with material irregularities as the mediator failed to record properly the applicant's evidence which leads to the delay. The previous matter was refused by the clerk of the commission and it was before the hearing stage.'

The application was supported by the affidavit of applicant, same was challenged by the counter affidavit of Anthony Kalinga, respondent legal administrative officer. The matter was disposed by

way of written submission. The applicant was served by Jackson Mhando his Personal representative, while Anthony Kalinga, legal officer was for the respondent.

On the ground of revision, Mr. Muhando submitted that, the applicant's first referral form having been signed by the respondent on 19th March, 2019, he timely presented the form to the CMA for filing, however CMA clerk found it to be a repealed form. The applicant was directed to file a proper CMA F1, made under Regulation 34 (1) of the Employment and Labour Relations (General) Regulations, GN.47 of 2017. After eight (8) days he filed his proper application together with an application for condonation. Applicant representative further stated that, the delay of eight days was caused by the former applicant's representative hence applicant cannot be punished by the errors made by his representative, referring the case of **Ghania J. Kimambi v. Shedrack Ruben Ngámbi**, Misc Appl. No. 682/2018. Applicant's representative prayed for this court to consider the principle of natural justice and grant orders sought in the application so that the parties can be heard on merits.

In response, the respondent's representative argued that, the mediator properly analysed the evidence of both parties to arrive to a decision that the applicant had no justifiable cause for his delay. The applicant has neither proved on the improperly filled forms even if that was the case, the law is very clear that ignorance of law has no excuse. The applicant ought to have prayed for amendment or withdrawal with leave to refile the proper form as the law requires.

Further Mr. Kalinga submitted that; the applicant had failed to account on each day of the delay as required by the law, citing several cases including the case of **Joseph Paul v. Security Group (T) Ltd**, Rev. No. 291/2010, thus prayed for dismissal of the application.

In his rejoinder, the applicant's representative reiterated their submission in chief. Having considered both parties' submissions, records and the laws applicable, the issue for determination is whether the applicant had good cause for condonation.

The applicant alleged that the dismissed application is the second one after the first application was rejected before being filed. The form filed by the applicant for initiating his claims (CMAF1) was not proper as the same was repealed. The applicant was directed by the clerk to file a proper CMA F1 made under Regulation 34 (1) of the Employment and Labour Relations (General) Regulations, GN.47 of 2017. He filed the proper CMA F1 together with the application for condonation. The respondent contended that the applicant has not adduced sufficient cause for his delay and there is no any proof that the application was improperly filed before.

It is true that the time limit for referring disputes about the fairness of an employee's termination of employment, must be referred to the CMA within thirty days from the date that the employer made a final decision to terminate or uphold the decision to terminate, in terms of Rule 10 (1) (2) of GN 64. Any application filed out of time prescribed, the applicant must adduce good cause for his delay and he must account on each day of his delay. The CMA has power to condon any application which is time barred, upon good cause, this is provided

under Rule 31 of Labour Institution (Mediation and Arbitration) Rules, GN.64/2007 which *provides that:*

'The commission may condon and failure to comply with the time frame in these rules on good cause.'

Also Rule 11(3) of the same GN provides that:

3. *An application for condonation shall set out the grounds for seeking condonation and shall include the referring party's submissions on the following-*

- a) *The degree of lateness;*
- b) *The reasons for lateness;*
- c) *Its prospects of succeeding with the dispute and obtaining the reliefs sought against other party;*
- d) *Any prejudice to the other party; and*
- e) *Any other relevant factor.*

There are various court decisions which clarified on what amounts to good cause. In the case of **Attorney General v Tanzania Ports Authority & Another**, Civil Application No. 87 of 2016 it was stated;

"Good cause includes whether the application has been brought promptly, in absence of any invalid explanation for the delay and negligence on the part of the applicant."


[Emphasis is mine]

On records, it is apparent that the application was filed on 2nd April, 2019 being 38 days from the date of termination. The reason advanced by the applicant for his delay was that, he was misdirected by his representative as he advised him to initiate his claims by CMA F1 on

GN.65 and the same was not accepted by the CMA clerk. I have keenly gone through the records, I have come across CMA F1 made under GN. 65, that was signed by the respondent on 19th March, 2019. This means that the applicant was processing his referral though he used the repealed form. However, with that form, I have no hesitation to say that, the applicant did not slept over his right. He cannot be punished with an error made by his representative who directed him to initiate his claims on a repealed form.

It is crystal clear that, what the applicant is seeking is the right to be heard on the matter on merits. He, intend to challenge the respondent's decision of terminating him on merits. The decision of CMA if not challenged will affect his fundamental rights and be paid, once claim is proved.

On consideration of natural justice specifically the right to be heard, I hereby quash the dismissal order and condone the application. I remit back the file to the CMA for the parties to be heard on merit by another arbitrator. CMA file to be returned within 30 days from the date of this Judgment. Ordered accordingly.



Z. G. Muruke

JUDGE

11/06/2021

Judgment delivered in the presence of applicant in person and Hamisi Milanzi respondent's, Personal representative.



Z. G. Muruke

JUDGE

11/06/2021

Labour Court TZ.