

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

REVISION APPLICATION NO. 89 OF 2020

(Originating from Labour Dispute No. CMA/DSM/TEM/453/19/2016)

BETWEEN

BIZZI MOHAMED.....APPLICANT

VERSUS

SHIELD SECURITY.....RESPONDENT

EX-PARTE JUDGMENT

Date of Last Order: 09/11/2021

Date of Judgment: 10/12/2021

I. Arufani, J.

The applicant, Bizzi Mohamed filed in this court the instant application urging the court to revise, quash and set aside the proceedings and award of the Commission for Mediation and Arbitration (hereinafter referred as the Commission) in Labour Dispute No. CMA/DSM/TEM/435/2016 dated 23rd December, 2016. The Commission dismissed the application of the applicant which was seeking for condonation to enable his claims emanating from termination of his employment to be heard against the respondent out of time.

The court entertained the revision ex-parte after the respondent being dully served and failed to appear in the court to answer the application of the applicant. The applicant was allowed to argue the application by way of written submission. He prayed his affidavit supporting the application to be adopted as part of his submission and went on arguing that, the ruling of the Commission is vitiated by illegalities and irregularities.

He stated that, the witnesses testified in the matter without taking oath or making affirmation and the Mediator did not sign at the end of evidence of each witness. He argued that is contrary to Rule 19 (2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, GN. No. 67 of 2007 (hereinafter referred as GN. No. 67 of 2007) and also violated Order XX Rule 3 of the Civil Procedure Cod Cap 33 R.E 2019. To supported his argument, he referring the court to the case of the **National Bank of Commerce Ltd. V. Sabas Kessy**, Revision No. 277 of 2020 where my Learned Brother Mganga, J found that, taking evidence of witnesses without oath and failure by the Arbitrator to sign at the end of evidence of each witness are fatal irregularities which vitiate proceedings of the Commission.

After giving the submission of the applicant keen consideration and going through the record of the present application the court has found the applicant has totally misdirected himself from the matter he has brought to this court. The court has arrived to the above finding after seeing that, the matter which was heard and determined by the Commission and gave raise to instant application was an application for condonation. The procedures for seeking of condonation for documents delivered late is governed by Rule 11 of the Labour Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007 (hereinafter referred as the Rules) which states that, a party seeking of condonation is required to complete a prescribed condonation form which is required to be delivered together with the late document.

What is supposed to be stated in the condonation form is provided under subrule 3 of Rule 11 of the Rules and as per subrule 4 of Rule 11 of the Rules the application for condonation is supposed to be processed as provided under Rule 29 of the Rules. Rule 29 (4) (d) of the Rules states the application for condonation is required to be supported by an affidavit setting out the grounds for condonation where the application is filed out of time.

That being the mode upon which the application of condonation is supposed to be processed it is the view of this court that, as the affidavit supporting the application is made under oath or affirmation there is no legal requirement for the parties arguing the application to take another oath or make an affirmation at the hearing of the application as argued in the submission of the applicant. The requirement to take oath or make an affirmation as provided under Rule 25 of the GN No. 67 of 2007 is when a witness is giving evidence and not when is arguing or submitting on the evidence, he has already given in his affidavit supporting the application of condonation. In the premises the court has found the applicant has totally misdirected in his submission and all provisions of the law and the case law he has cited in his submission are not applicable in the matter.

As the applicant has prayed the court to adopt his affidavit as part of his submission the court has gone through the affidavit supporting the application. The court has found the applicant has deposed at paragraphs 4.2 and 4.3 of the affidavit that the Arbitrator failed to analyse the evidence adduced before the Commission and

dismissed his application for condonation while he was not the cause of the delay.

The court has found the cause for the applicant's delay which can be said was supposed to be analysed by the Commission to see whether there was good cause for granting his application of condonation as appearing in the record of the Commission is that, he argued he was sick. He also stated that after being terminated from his employment he left his case to his advocate and on 3rd June, 2015 he went to Kigoma as he failed to afford to stay in Dar es Salaam because of income problem. He said he came back to Dar es Salaam on 14th September, 2015 but find his advocate had not done his work and he returned to Kigoma. On 6th July, 2016 he came again to Dar es Salaam and went to another advocate at Mwembe Chai but they failed to agree on payment. At last, he went to the Legal and Human Right Centre who assisted him to initiate the dispute before the Commission.

The court has found that, although it is true that the applicant adduced his medical documents before the Commission to show he was sick but the court has found the medical documents attached in his application of condonation were issued before his employment

being terminated on 14th May, 2015. There is no any medical document annexed to his application showing after being terminated from his employment he was sick to the extent of failing to initiate his dispute before the Commission within the time prescribed by the law. The applicant was supposed to satisfy the court he was sick for the whole period of the delay to the extent of failing to initiate his dispute before the Commission within the time prescribed by the law.

The court has considered the further argument by the applicant that the advocate he engaged to assist him to initiate his dispute before the Commission failed to do that work and he managed to initiate his dispute after getting legal assistant from the Legal and Human Right Centre but find that, the delay of a period of one year and five months is too long to be accepted the applicant was looking for a person to assist him to initiate his matter before the Commission. It cannot be said the applicant exercised due diligence in pursuing for his right so that it can be said there is a good cause for granting him the condonation he was seeking before the Commission.

In the premises the court has found the honourable Mediator was right in dismissing the applicant's application for condonation as

he has not succeeded to satisfy the court he had good cause for being granted his application of condonation. Consequently, the application for revision of the award of the Commission is hereby dismissed in its entirety for being devoid of merit. It is so ordered.

Dated at Dar es Salaam this 10th day of December, 2021.

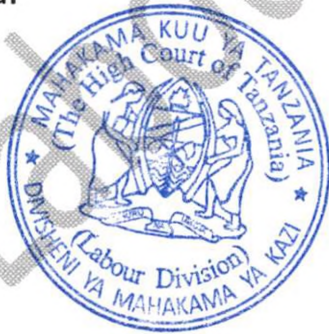


I. Arufani

JUDGE

10/12/2021

Order: Ex-parte judgment delivered today 10th day of December, 2021 in the presence of the applicant in person and in the absence of the Respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

10/12/2021