

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

REVISION NO. 425 OF 2020

BETWEEN

ALLY YASSIN APPLICANT

VERSUS

GENCOM TANZANIA LIMITED RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The applicant herein was aggrieved with the decision of the Commission for Mediation and Arbitration (CMA) which refused to grant him extension of time. He has filed the present application moving the court to:

1. That, this Honorable Court be pleased to Revise and set aside the Commission for Mediation and Arbitration (CMA) Ruling delivered on 09th September, 2020, 2020 by Hon. M. Chengula – Mediator in the Labour Dispute No. CMA/DSM/ILA/191/2020 on grounds set forth in the annexed Affidavit.
2. That, this honourable Court be pleased to determine the dispute in the manner it considers appropriate and be pleased

to give any other relief it deems fit and just to grant in the circumstances.

AND TAKE NOTICE THAT the Respondent Appoints **KASSIM SAID MASIMBO** Who is trading registered name as **SIMBOZ CONSULTANT** to a Capacity of Personal Representative duly authorizes to represent the Applicants in respect of this matter before your Honourable Court.

Before this court the applicant was represented by Mr. Ally Yassin, Personal Representative and the respondent was represented by Ms. Magreth Kisoka, Learned Counsel. The application was argued by way of written submission.

The applicant's submission focused much on the main application which was not part of the impugned decision. For that reason I find no relevance to reproduce the same. On the issue at hand, Mr. Yassin stated that the applicant claims for salaries from March and November 2013, July, August and November, 2015, January, July and August 2016, January, March and August to December, 2018 and all month's salaries for the year 2019. He alleges that the applicant adduced sufficient reason at the CMA for his delay, however the Arbitrator did not consider such evidence and dismissed his application. He therefore urged the court to consider the evidence on record and grant the application.

In response, Ms. Kisoka submitted that the applicant did not account for his delay. To support her submissions, she cited numerous court decisions which will be considered in the decision. She thus urged the court to dismiss the application.

After considering the parties submissions, the CMA records as well as relevant laws, I find the court is called upon to determine whether at the CMA, the applicant adduced sufficient reason for his delay. The applicant's alleged that his delay resulted from the respondent's continued promises to pay him the claimed salaries arrears. He stated that the alleged employer's promise is reflected at annexure B2, C3 and D4. That through the mentioned exhibits, the applicant wants this court to make a finding that the parties were negotiating on the relevant payment.

I had a glance at the alleged exhibits, the employer did not made any promise whatsoever to pay the applicant the alleged salaries. Even if the court chooses to believe that the parties were still under negotiation on the payment of the alleged salary, the applicant had a duty to account on each day of the delay. Moreover, negotiation between the parties had never been a good ground for the grant of extension of time (see the case of **Leons Barongo Vs. Sayona Drinks**

where it was held that: -

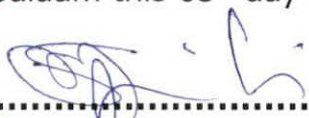
'Though the court can grant an extension, the applicant is required to adduce sufficient grounds for delay. I believe the reason that the applicant was negotiating with the respondent does not amount to sufficient ground for delay, more so, because the respondents have denied to be engaged in such negotiations'.

The applicant's claims of salaries arrears ought to have been instituted at the CMA within 60 days from the date the cause of action arose pursuant to Rule 10 (2) of the Labour Institutions (Mediation and Arbitration) Rules, [GN 64 of 2007]. As stated above, the applicant's claims originate from 2013 when the respondent is allegedly to have started defaulting. The delay is hence inordinate and the applicant has not accounted for such delay.

On those findings therefore, I find the Arbitrator was right to dismiss the applicant's application for failing to account each day of delay. I find the present application to be lacking merit and it is hereby dismissed.

Dated at Dar es Salaam this 03rd day of December, 2021.




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S.M. MAGHIMBI
JUDGE