

THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION APPLICATION NO. 278 OF 2021

*(Originating from Ruling of Hon. Mahindi, P.P, Arbitrator, in Labour dispute No.
CMA/DSM/KIN/89/766/2020 dated 17th May 2021)*

BETWEEN

STANDARD CHARTERED BANK(T) LIMITED APPLICANT

AND

MKINGWA STEPHEN MKINGWA.....RESPONDENT

EX PARTE JUDGMENT

*Date of last Order: 20/04/2022
Date of Judgment: 13/05/2022*

B. E. K. Mganga, J.

On 22nd August 2016, applicant employed the respondent as a Head – Credit Risk Control, the positions which he served until 23rd August 2020 when the position was declared redundant. The respondent felt resentful with the termination, he thus knocked the CMA’s doors on 21st October 2020 claiming to have been unfairly terminated. The application was proceeded by the application for condonation. Upon determination of the application for condonation, the arbitrator found that the respondent had sufficient cause for the delay and granted condoned. Aggrieved with the ruling granting condonation to the respondent,

applicant filed the present application seeking for revision of the said ruling. The application was supported by the affidavit of Cornelius Kasiwa Kariya, whereas in contesting the application, respondent filed his counter.

By consent of the parties, the application was argued by way of written submissions. However, it is only the applicant who filed their written submission. The respondent did not file his reply submissions despite of being served with the applicant's submission hence this *ex parte* judgement.

Submitting in support of the application, Mr. Killina argued that applicant contested the application for condonation before CMA as he stated that there was no discussion about the payment mode after termination. Argued further that, even if it was there, it cannot be a sufficient cause for the delay. He argued also that respondent was supposed to have filed his application within thirty days from the date of termination as per Rule 10 (1) and Rule 11(3) of the Labour Institutions (Mediation and Arbitration) Rules GN. No. 64/2007. Mr. Kilina submitted further that the law does not provide for a room of negotiation by aggrieved party after termination. The only evidence attached by the respondent as support of his reason for delay was the email

correspondence by which he was making inquiry on the status of his loan with bank after termination. He strongly argued that reason is incapable of showing what caused the respondent from timely lodging the dispute. To support his submission, he referred the court to the cases of ***Salome Mussa Lyamba v. K.K. Security (T) Ltd, Revision No. 278/2010*** and ***Leons Barongo v. Sayona Drink Ltd, Revision No. 182 of 2012.***

It was further submitted on behalf of the applicant that, respondent failed to account for each day of the delay. He submitted that annexure S, namely the email correspondence shows that the last conversation between the respondent and the applicant was on 25th September 2020, and that the dispute was referred before CMA on 20th October 2020. He argued further that respondent failed to account for 25 days of his delay. Mr. Kilian concluded that respondent had no sufficient cause for the delay and prayed for the application be granted.

Having examined the applicant's submission, the issue to be determined is whether the respondent had sufficient cause to suffice condonation before CMA?

It was the arbitrator's finding that respondent had sufficient reason for the delay. The finding which was vehemently contested by

the applicant that there was no sufficient reason for the grant of condonation. The reason for the delay as advanced by the respondents before CMA was negotiation which were conducted between him, and the applicant regarding procedures and retrenchment package. To support his application at CMA, respondent filed email correspondence (annexure S1).

I have examined the CMA record and it is apparent that, respondent was terminated on 23rd August 2020, and referred the dispute before CMA on 21st October 2020 being a delay of 59 days. Annexure S1 which was filed by the respondent to substantiate his delay shows that, on 15th September 2020 he wrote an email to the applicant on his acknowledgement of his debt and payment undertakings. Applicant responded to the said email on 25th September 2020. From the said emails' correspondences, respondent was asking for a lenience way to settle his debt after his termination of employment on 23rd August 2020. The said email had nothing to do with what he stated in his CMA F2, that the reason for his delay was ongoing discussion with the applicant regarding the procedure and retrenchment package. It is my view that, the same does not constitute a good reason for the grant of condonation. The reason for that finding is that respondent was

aggrieved with retrenchment basing on reason and procedure for his retrenchment which took effect on 23rd August 2020. From the date of his termination, he did not act diligently to pursue his right of challenging his termination. More so as I have pointed out, the said email had nothing to do with settlement of the dispute between the parties. In other words, what was stated by the respondent in his application for condonation was untrue. In my view, before granting condonation, the arbitrators was duty bound to examine evidence of the parties carefully and not to rush to the conclusion that there was sufficient cause for the delay.

Even if we take it that there were negotiations between the parties of which evidence is wanting, it is a settled position of law that, negotiations with the employer have never been a good cause for extension of time. There are various court decisions on that regard including the case of Court of Appeal in ***MS/P & O International v. The Trustees of Tanzania National Parks (TANAPA), Civil Appeal No. 265/2020*** CAT (Unreported) wherein the Court of Appeal held that;

"It is a trite law that pre court actions, negotiations have never been a ground for stopping the running of time"

In line with the position of the Court of Appeal in the case of **MS/P & O International**, (supra) the operation of the law of limitation cannot be stopped by the parties' act of settling their matter out of court. I thus find that respondent's reason of negotiations with the applicant cannot stand to be a good cause for condonation. The respondent ought to have timely referred the dispute before CMA and continue to make follow up on settlement of the said debt. To show that the respondent was not diligent enough in complying with the law of limitation, even after the response from the applicant on 25th September 2020 as per annexure S1, still he delayed for about 27 days prior deciding to file the dispute of unfair termination before CMA. Under those circumstances, I find that the respondent had no sufficient cause for his delay. The arbitrator ought to have dismissed the application for want of sufficient cause.

I am of that opinion because it is the requirement of the law that in any application for extension of time, applicant must account for each day of the delay give reasons for the delay. Otherwise, there would be no meaning of having the laws prescribing time within which the step to be taken. This was also emphasized in the case of ***Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 192/20 of 2016***, CAT

(unreported). In the application at hand, respondent delayed for about 59 days and failed to account for each day of the delay as required by law.

It is a trite law that an application for extension of time is the discretion of the court and that the said discretionary power must be exercised judiciously. Based on the circumstances of this application, I find that the arbitrator failed to exercise her powers judiciously in extending time because the respondent had no sufficient reasons for the delay to deserve the grant of condonation. Consequently, I find the application with merit. The CMA's ruling is hereby quashed and set aside.

Dated at Dar es Salaam this 13th May 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 13th May 2022 in Chambers in the presence of Michael Kariwa, Advocate for the applicant but in the absence of the respondent.



B. E. K. Mganga
JUDGE