

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
REVISION APPLICATION NO. 428 OF 2019

BETWEEN

SALEHE HASSAN MJINJA.....APPLICANT

AND

KIZUKA TPDF HIGH SCHOOL.....RESPONDENT

RULING

Date of last Order: 22/06/2021

Date of Judgment: 01/07/2021

Z.A. Maruma, J.

The applicant Salehe Hassan Mjinja before this Court calls for revision of proceedings and ruling of the Commission for Mediation and Arbitration of Morogoro in Labour Dispute No. CMA/MOR/13/2019 delivered on 29th March 2019 before Arbitrator Magreth K.

The gist of this application resulted from the above ruling which rejected applicant's application for extension of time upon insufficient reasons to grant for the same. Aggrieved with the CMA's decision, the applicant preferred this application to this court.

The background of the application for extension of time was that, the applicant was employed by the respondent in 1st April 2017 as a physics and mathematics teacher. However, his employment was terminated on 30th August 2017. Aggrieved with the decision of his employer, since then the applicant started to seek guidance on

procedures to follow to challenge the decision. His efforts were fruitless till 14th November 2018 when he was properly guided on procedure to follow and where to initiate his claim that is before the Commission for Mediation and Arbitration. This was after the lapse of about 480 days.

On 15th January 2019, the applicant succeeded to initiate an application for condonation No. CMA/MOR/13/2019 seeking for an extension of time to file a claim of unfair termination of his employment. The Commission for Mediation and Arbitration in deed determined the application and through its ruling dated 29th March 2019(SH-6) came into the finding that, the reasons for delays were not sufficient to grant the prayer for extension of time as requested. The appellant being aggrieved, he preferred this application to challenge the decision of CMA.

The application was supported by an affidavit sworn by Salehe Hassan Mjinja and a counter affidavit sworn by George Chang'a Mwashiga, the headmaster of Kizuka high school. During the hearing of this application, applicant was represented himself and Mr. Vedastus Majura, represented the respondent.

With due respect to the submissions made by the applicant being a layperson, he labored much on the issues which are either pre-matured or not relevant to the application before this Court for now.

Arguing his application, the applicant submitted that, the Commission erred in law and fact in holding that he had no sufficient reason to grant his late referral and dismissing the matter. He

submitted that it is a cardinal principle that, whether to grant or to refuse an application for extension of time is entirely in the discretion of the court, but such discretion must be exercised judicially. He added that, in application for extension of time, the applicant is required to show good cause as it was held in the case of **PATSOM MATONYA VS REGISTRAR INDUSTRIAL COURT OF TANZANIA & 2 Others**. Civil Application No. 84 of 2019. He also cited more authorities provided guiding principles in consideration of application for extension of time.

The applicant also argued that, the Commission failed to consider that, the respondent instructed the applicant to comply with the rules and regulations of the school. This is in reference to the letter of an appointment on temporary terms written by Tanzania People's Defence Forces (**SH-1**). The applicant submitted that the said rules and regulations were not availed to him either before or after his employment termination on 30th August 2017. Therefore, this took much of his time making tracing the said instructions. He argued that, with no guidance from the employer, he decided to write a letter to the Chief of Personnel of Tanzania People's Defence Forces on 20th September 2018 informing him about his claim of unfair termination. However, the efforts were fruitless. Finally, the applicant wrote a letter to the Permanent Secretary of the Ministry of Defense and National Service seeking for the guidance. On 14th November 2018 he received a response letter directed him to initiate his claim before the Commission for Mediation and Arbitration, he referred to a letter (**SH-3**).

The applicant submitted that, after being aware of the procedure to follow and where to initiate his claim, again he faced another challenge on CMA's forms to initiate his claim. He submitted that on 3rd November 2018 he wrote a letter to the Commission asking for a proper Form No. 2 as the one which he was given by the officer of CMA was not correct. The letter was replied on 24th December 2018 acknowledged the errors in the forms however, the Commission directed him to use the same form No. 2 while the Commission still working on that.

The applicant managed to initiate application for extension of time before the CMA however, it was dismissed on 29th March 2019 for lack of sufficient reasons for the delays. Therefore, the applicant submitted that, the trial Arbitrator did not considered properly the grounds adduced. He prayed for this court to quash and set aside the ruling of CMA and order the CMA Morogoro to proceed to determine his late referral.

Mr. Vedastus contested applicant's arguments, he submitted that, the application before this court is in respect of revision of CMA decision dated 29/03/2019 before Mediator Magreth K. which did determine the grounds of delays and not the dispute itself. Therefore, he argued that the applicant should direct himself on the issues of delays. He pointed out that, there is no dispute of Rule 10 of the Labour Institutions (Mediation and Arbitration) Rules, GN No.7 of 2004 that, any dispute on the issue of termination is required to be initiated within 30 days and contrary to that the applicant is supposed to establish sufficient ground to file the dispute out of time. He argued that, the applicant received a termination letter on 30/8/2017,

but he filed the dispute on 15/01/2019 that was almost 480 days from the established legal time.

He added that, the applicant failed to establish sufficient reasons for the delay at CMA and thus why his application was rejected. The argument that the applicant was not aware of procedure to follow. Mr. Vedastus submitted that, if that was true, then that could not take a year to understand what steps to be followed. He submitted that, the applicant as a normal citizen he was supposed to know that the school he used to work is only located in the area of People's Defence Service. He further submitted that the school is registered and operating under the Tanzania automotive Technology Corporation and is operating under public corporation Act Cap No. 2057 R.E of 2002 which is not subject to military laws and regulations. The employees are also not accountable to the TPDF.

Therefore, the applicant and respondents are protected under the Employment and Labour Relations Act, No. 6 of 2004. He argued that, the applicant's argument that he was not aware of the procedure to follow is baseless, and it cannot be for that long period of one year as submitted by the applicant. He further submitted that, the applicant established that on 14/11/2018 he received a response from the Ministry of People's Defence and Service directed him where to channel his claim. It was his view that the applicant could file the dispute as early as possible but he acted on 15/01/2019 by filling his application. The time lapsed again was more than 60 days. This shows negligence on the applicant's part, and thus the CMA decision was properly determined. Therefore, the decision of CMA was properly ruled out and should be upheld.

I agree with Mr. Vedastus that the application before this court is to challenge the decision of CMA on the issues of extension of time and not the dispute itself. For the purpose of this application and to attain fair justice, this court is directed itself for the matters relevant to the issue before this Court.

Analysing, the ruling of CMA on the grounds for dismissing the application together with the arguments raised by both sides. The issue for consideration and determination is whether the reasons advanced constitute sufficient reasons to warrant the extension of time sought by the applicant.

It is an established principle in law that, sufficient reason is a pre-condition for the court to grant extension of time as provided under Rule 56 (1) of the Labour Court Rules of 2007. Moreover, I agree with the issues articulated, and the cases referred to support and contested for the reasons to be considered for granting extension of time.

There is no doubt that the length of delays was due to the lack of understanding of procedures by the applicant and where to channel his claim based on the nature of operations of the school. This is evident by the record of CMA's. Starting with the appointment letter dated 1st January 2017 (**SH-1**) which was written under the title of Tanzania People's Defence Forces. Item No. 3 of the said letter, provide directives for an employee to comply with rules and regulations of the school. A copy of those rules and regulations in force were said to be enclosed with as defined in the annexed 1st schedule of the Rules for workers of KIZUKA TPDF HIGH SCHOOL. However, the said rules and regulations under a copy of "Presently"

was never be available at the school premises and not availed to the applicant to date. Hence, no proper guidance was given to the applicant which resulted to a number of letters written by him seeking for clarification of the procedure to follow. This was the main reason for his delays.

In evaluating the series of events and steps taken by the applicant busy seeking for the guidance and procedures to follow without success. I am of the view that, these account for the delay. Likewise, to rule that the applicant was negligent to pursue his claim will be to jeopardize his rights he struggled to get for a long way since his termination. Explaining the stand above I make reference to the case of **Emmanuel R. Maira Versus The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010 (Unreported) which stated that, the court in determining the grounds for delays, it should consider the diligent acts of the applicant to pursue his cause.

Looking into the applicant's actions since he was terminated and the confusion made from letter **SH-1**, I am of the view that there are reasonable grounds for his delays. As a layperson, it was not possible for him to understand the rules and regulations without the proper guidance as the explanation given by the counsel for the respondent while presented his submissions in this Court.

Moreover, when the applicant was about to pursue his claim to CMA after obtained a proper guidance, he faced another access barrier of CMA's form to initiate his referral. This is evident by the correspondences between him and the Commission with a reference letter dated 24th December 2018, which gave a leeway for his

application before the Commission after the lapse of 60 days again. However, this ground was considered by the CMA not to be sufficient to warrant his application.

It is my view that a distinction should be drawn between actual delays and technical delays as demonstrated by series of scenarios in this application. This has been also discussed in the case of **Tanzania Revenue Authority Versus Tango Transport Company LTD**, Civil Application No.5 of 2006 CAT Arusha (Unreported). The Court held:-

'In my considered opinion if the Court denies this application it will amount to penalizing the applicant for a mistake done by the Court itself. I am aware that the applicant also ought to be blamed for not taking action promptly after being issued with documents which had problems. However, it will not be in the interest of justice to deny him his right of appeal on this basis because taking such a position would amount to give an unjust decision. I say so because the Court, through its registrar was the source of the problem, will have nothing to lose, but the applicant may end up losing substantially. Under article 107A of the Constitution of the United Republic of Tanzania, 1977 the role of the Court is to met out justice and not to deny justice to parties because of its own mistakes'.

Considered the above positions, the spirit can be applied to the application in hand. As I said earlier the confusion on procedure to follow started with the guidance provided in the letter of appointment

(SH-1) which directed the applicant to follow the rules and regulation of the school. However, the same were not availed to him to date. The absence of said guidance was a source of the applicant's delay, which he cannot be penalized with. Also, the errors on the form No. 2 which was admitted by the CMA's Commission contributed to more delay. All these account for the reasons of delay contributed by both parties.

In view of the facts and reasons stated above, this court finds the application has merit and is accordingly granted. Under rule 56 (1) of the Labour Court Rules, GN No. 106 of 2007 the extension of time is granted, the applicant to file his claim before the Commission within 14 days from the date of this ruling. It is so ordered.



Z.A. Maruma

JUDGE

08/07/2021