

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

**REVISION NO. 781 OF 2019**

**BETWEEN**

**OLAFSSON SEQUEIRA.....APPLICANT**

**VERSUS**

**POWER AND NETWORK BACKUP LTD..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 10/02/2020*

*Date of Judgment: 10/03/2021*

**Z. G. Muruke, J.**

On 28<sup>th</sup> August, 2017 applicant was employed by the respondent as Network integration specialist for a term of two years contract, which was to expire on 28<sup>th</sup> August, 2019. According to the terms of employment contract, he was entitled to remuneration of Tanzania shillings Four Million Nine Hundred, seventy – one thousand, Nine hundred and Ninety –two (Tshs. 4,971,992/=), per month, call allowance of Tanzania Shillings One Hundred Thousand (Tshs. 100,000/=), Airtime allowance of Tanzania shillings one hundred and sixty thousand (Tshs. 160,000/=) and Bonus.

From the date he commenced his employment, and contract to the terms of the contract and the labour laws, respondent was unfairly paying him less salary to what he was entitled and agreed under the contract, and

was also not paid call allowances, airtime allowances and bonus as per the contract.

That often applicant engaged with the respondent as his employer requesting payment of full salary and allowances as he was having hard time to meet his needs, in which at all times the respondent promised to pay him but did not do that until, contract was running to an end.

After been informed the respondent is not intending to renew contract, he went to National Social Security Fund (NSSF) to follow his contributions to help him and his family before living the country. It was found out that the respondent never remitted contributions to NSSF despite deducting the same from his salary. Applicant was not aware that the respondent was not remitting his contributions to NSSF until sometimes on June, 2019 when he made follow-ups to collect the same before living the country and found out that, the respondent never remitted the same.

That after seen the respondent was determined to deprive him of his legal rights on 7<sup>th</sup> August, 2019 he filed an application for condonation at CMA praying for leave to refer his complaints for breach of contract and unfair labour practices out of time, that ended being dismissed.

Now applicant is challenging, the ruling of the Commission for Mediation and Arbitration at Dar es Salaam ("CMA") delivered on 13<sup>th</sup> September, 2019 by Hon. Abdallah, Mediator, dismissing the applicant's application for condonation to refer his dispute out of time, raising following,

Legal issues for determination:-

- (a) Whether the mediator erred in law and fact, for failing to observe that the breach of contract was continuous and therefore not all the claims were out of time.
- (b) Whether the mediator erred in law and fact, in dismissing the whole suit as time barred while the same involves different cause of action within different time limit.
- (c) Whether the mediator erred in law and fact in holding that, the applicant failed to show sufficient reasons for the delay while the applicant explained how he was in many times engaged with the respondent for payment of his salaries and the respondent promised to pay but did not pay.
- (d) Whether the mediator erred in law and fact in failing to observe the circumstances that made the applicant to delay and injustice that the applicant was subjected in.

Respondent filed counter affidavit to challenge revision sworn by Mr. Zepharia Derema, Human Resource Consultant. Hearing was by way of written submissions. Both parties submitted along lines their affidavits.

From the records applicants struggle is for him to be heard on merits. It is principle of the law that where a court has been moved, to hear the parties, the court is duty bound to hear the applicants and the respondent in reply. Failure to hear a party is an error which goes to the root of the matter and is fatal. Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without being**

afforded a chance of being heard. The right to be heard is a valued right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

To the best of my understanding, **the Principles** of natural justice should always be dispensed by the court, that is both parties must be heard on the application before a final decision. Failing which there is miscarriage of justice as it is wrong for the judge to impose an order on the parties and such order cannot be allowed to stand. **Implicit** in the concept of fair adjudication lie cardinal principles namely that no man shall be condemned unheard. Principles of natural justice must be observed by the court save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgment against the defendant without giving him an opportunity of being heard. **Every judicial or quasi-judicial tribunal must apply the fundamental principles of natural justice and natural justice will not allow a person to be jeopardized in his person or pocket without giving him an opportunity of appearing and putting forward his case.** The issue of denial of the right to a hearing is a point of law which underlines the proceedings the effect of which is to render a proceeding a nullity.

**In the case of Ridge Vs. Baldwin** [1963] 2 All ER 66, it was insisted that the consequence of the failure to observe the rules of natural justice is to render the decision void and not voidable. Officials of the court must comply with the rules of natural justice when exercising judicial

functions. Right to be heard was insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174.

In determining an application for extension of time, there are guiding established principles to be considered by the court, to ensure justice is done and a party is not unfairly denied the right to be heard. In the case of **Thomas Ngawaiya Vs. Attorney General and 3 Others**, Civil Case No. 177 of 2013; High Court of Tanzania at Dar es Salaam (unreported) at page 10 that,

*"However, in determining the question of limitation, two principles must be considered, in the first place, the court must look at the whole suite framed including the reliefs sought and see if the suit combines more than one claim based on different causes of action as one of them may be found to be time barred while the other may not. In such circumstances, it is not proper to dismiss the whole suit as time barred."*

The other principle is the principle of continuing breach of contract. This principle is enshrined under Section 7 of the Law of Limitation Act Cap 89 R.E of 2019 that;

*"Where there is a continuing breach of contract or a continuing wrong independent of contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be, continues."*

This principle was discussed in the case of **Thomas Ngawaiya Vs. The Attorney General and 3 others** in that, where an action for breach of contract is repeatedly in every month, a fresh period of limitation

being to run afresh at every moment of the time the breach of contract continues.

The delay to refer his complaints to CMA was highly contributed by the respondent who was promising to pay full salary and other entitlements but in vain. Also was caused by the circumstances of his employment as a foreigner. He had to trust the respondent who was his employer, could resolve his claims. But also, his NSSF contributions came into his attention when he visited NSSF and found out the respondent never remitted the same.

From the facts of the case, pleadings and arguments by both counsel, it is crystal clear that, there is dispute of an unpaid salaries, allowances and respondent failure to remit N.S.S.F contribution. There are issues of same of claim claimed to be out of time others not. The above raised issue cannot be determined if applicant will not be given right to be heard.

This court in the case of **Bakari Salehe, & 232 others, Vs. Tanzania Cigarette Company Rev.No. 525/2019** on issue of mixed claims held that:

There are serious issue mixed together in this matter, that need to be seriously determined on merits by CMA. There are some applicants who were not in all the application filed. The only remedy is to hear both of them, and in cause each one rights will be divulged. Justice demand, case to be heard on merits at the CMA. Thus ruling subject of this revision is quashed and set aside. Case to proceed at the stage reached by another arbitrator.

Equally in this case there are mixed claims, that need to be heard as evidence is required. Thus, ruling of CMA dated 13<sup>th</sup> September, 2019 is quashed and set aside. Applicant to file dispute at CMA within 45 days from today. Revision application allowed.



Z.G.Muruke

**JUDGE**

10/03/2020

Judgment delivered in presence of Beatrice Soka, Advocate for the applicant and Nicholas Kashililika for the respondent.



Z.G.Muruke

**JUDGE**

10 /03/2020

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