

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

REVISION NO. 112 OF 2020

BETWEEN

HURUKA MBONDE.....APPLICANT

VERSUS

CAMEL OIL (T) LTD.....RESPONDENT

JUDGMENT

Date of Last Order: 02/07/2021

Date of Judgment: 23/07/2021

T. N. MWENEGOHA, J.

This is revision application against the Award of Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/TEM/324/19 which was delivered on 05th February 2020 by Hon. Ngalika, E. Arbitrator. The applicant herein, is applying to this Court for the following orders: -

1. That, the Honourable Court be pleased to revise and set aside the ruling issued by Hon. Ngalika, E, Arbitrator in the Commission for Mediation and Arbitration on 05th February, 2020 in Labour Dispute dated No. CMA/DSM/TEM/324/19 make an order quashing the award given therein.

2. That, the Honourable Court may be pleased to give such further and other Orders as it deems appropriate in the circumstances.

The historical background of the dispute is that, the applicant was employed by the respondent as a Security Officer on 08/10/2008. On 08th June 2019 he was terminated from employment on the ground of misconduct namely theft. Being aggrieved with the respondent's decision on 21/06/2017 the applicant filed the matter at CMA claiming for unpaid salaries. Later on, the applicant's representative at the CMA prayed to withdraw the application on the ground that the dispute was filed by the repealed form. The prayer sought was granted by the CMA on 28/02/2019 with leave to refile the dispute under proper CMA F1 within 14 days. On 25/03/2019 the applicant refiled the dispute to the CMA but he claimed for unfair termination. The CMA struck out the applicant's claim on 06/09/2019 because the dispute about unfair termination was filed out of time. Thereafter on October, 2019 the applicant filed another dispute at the CMA praying for extension of time to file dispute of unfair termination. On 05/02/2020 the CMA dismissed the applicant's application for extension of time for lack of sufficient

reasons thereof. Aggrieved by the CMA's decision the applicant filed the present application.

The application is accompanied with Chamber Summons and is supported by Affidavit sworn by Huruka Mbonde. The Applicant's Affidavit contains three proposed legal issues for determination. The legal issues are as follows;

- i. That, the arbitrator erred in law and fact by bias evaluation of evidence and ignoring evidence without any reasons
- ii. That, Honourable Arbitrator erred in law and fact by ruling that the application was time barred while applicant had attached CMA form No. 2 for condonation.
- iii. That, the Arbitrator erred in law and fact by ignoring the reasons for delay that was adduced by the applicant during hearing.

At the hearing of the application, the applicant appeared in person whereas the Respondent was represented by Mr. Hassan Zungiza, Advocate. Hearing of the application proceeded by way of written submission.

Submitting in support of the application, it was submitted that the applicant filed the dispute on time but the same was struck out for having minor defects.

It was further submitted that in his application the applicant prayed for condonation so as to be afforded with the right of being heard in his main application. He stated that since the allegation regarding misconduct was not proven he of the view that there is a great prospect of success in his application.

Lastly Mr. Mbonde submitted that the arbitrator erred in law in his findings that the applicant did not advance a good cause on his delay while in all time the applicant was within the doors of the Commission prosecuting his application. Supporting his submission, he cited different cases including the case of **Tanzania Fish Processors Ltd v. Christopher Luhangangula**, Civil Appeal No. 161 of 1994.

He thus prayed for the application to be allowed.

Opposing the application, the respondent's Counsel submitted that the applicant claim before Commission was unpaid salaries later on the applicant opted to file labour dispute regarding unfair termination contrary to the order of Hon. Arbitrator as the same was filed on 25th March 2019 while the dispute regarding unfair termination

arose on 6th September 2019. He stated that on such delay the respondent raised preliminary objection on point of law and on 6th September, 2019 the dispute about unfair termination was struck out for being time barred.

The Counsel submitted that on October, 2019 the applicant filed an application for condonation No. CMA/DSM/TEM/324/19 the same was dismissed on 5th February 2020 as the applicant failed to adduce good cause or reason for his delay. On such basis he of the view that since the present application emanates from above CMA's ruling dated 5th February 2020, he thus prayed for the application to be dismissed.

Having gone through parties submissions, court records and relevant law I find the main issue for determination in this application **is whether the applicant has adduced sufficient reasons for the delay.**

In the applicant's submission, I have noted that, he raised other legal issues apart from the ones mentioned in his affidavit as they are quoted above. The issues raised in his written submission concern about his entitlements which is the gist of his application. In my view the issues about the applicant's entitlements cannot be determined at this stage because the same were not addressed at the CMA therefore,

I find no justifiable reason to labour much on those issues as they are irrelevant in this application.

As to the main issue at hand, the time limit for referring disputes at the CMA is governed by the provisions of Rule 10 of the Labour Institutions (Mediation and Arbitration) Guidelines Rules, G.N. No. 64 of 2007. The relevant provision provides that the dispute about the fairness of an employee's termination of employment must be referred to the CMA within thirty (30) days from the date of termination or the date that the employer made a decision to terminate or uphold the decision to terminate.

In the circumstances where a party fails to comply with the above mentioned provision, he/she has to seek for extension of time at the CMA before filing his/her complaint. The CMA have jurisdiction to condone any failure to comply with time limitation pursuant to Rule 31 of G.N. 64 of 2007 which provides as follows;

'The Commission may condone any failure to comply with the time frame in these rules on good cause.'

The grounds for seeking condonation includes the degree of lateness, the reason for lateness, prospect of succeeding with the dispute and obtaining the relief sought, any prejudice to other party

and any other relevant factor as per rule 11 (3) of the G.N. No. 64 of 2007.

The record available reveals that the applicant was terminated by his employer on 8th June, 2017. It is further revealed that, on 21/06/2017 the applicant referred the dispute at the CMA claiming for unpaid salaries, such dispute was struck out on 28/02/2019 with leave to refile the same. The applicant refiled the dispute on 25th March 2019 and he changed the cause of action from unpaid salaries to termination of employment. The refiled dispute being for unfair termination the Arbitrator struck out the same for being filed out of time. In such circumstances I fully agree with the Arbitrator that the dispute for unfair termination was filed out of time. As stated above the dispute about unfair termination is supposed to be referred at the CMA within 30 days from the date of termination. In this application the applicant was terminated on 08/06/2017 and he referred the dispute of unfair termination at the CMA on 25/03/2019. The allegation that the dispute for unfair termination was refiled pursuant to the Arbitrator's order of 28/02/2019 has no legal basis. As the record shows, the Arbitrator granted the applicant leave to refile the dispute about unpaid salaries

but on his own whims he decided to change the cause of action to unfair termination without leave of the CMA.

It is on record that when the dispute about unfair termination was struck out on 06/09/2019 the applicant filed another dispute at the CMA praying for extension of time. His application for extension of time was dismissed for lack of sufficient reasons. At the CMA the applicant stated that the reason for his delay to file the dispute about unfair termination is that he had another dispute concerning about unpaid salaries. In my view such reason does not suffice to grant an extension of time to the applicant to file his application for unfair termination. In my observation the dispute of unfair termination was filed as an afterthought, if the applicant knew that his cause of action was unfair termination, he should have notified the CMA of the same and sought leave to file the same.

I am not in disregard of the applicant's claim that he was facing Criminal Case No. 488 of 2017 regarding misconduct, however the same was finalized on 28th August 2018 but still the applicant failed to be accountable for more than seven months because he filed the dispute of unfair termination on 25th March 2019 as evidenced by CMA Form No.1 contrary to Rule 10 of G.N. No. 64 of 2007 cited above. In

the case of **Yusuf Same and another versus Hadija Yusufu**, Civil Appeal No.1 of 2002, (unreported), it was held that:-

"It is trite law that an application for extension of time is entirely in the discretion of the court to grant or refuse it. This discretion however has to be exercised judicially and the overriding consideration is that there must be sufficient cause for so doing. What amounts to "sufficient cause" has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly; the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant".

Again, in the case of **Oswald Masatu Mwizarubi V. Tanzania Fish Processors Ltd**, Civil Application No 13 of 2010 (unreported) cited with approval the case of **Ratnam v Cumarasamy and Another** (1964) 3 ALL ER 933 in which it was held that: -

"The rules of court must prima facie be obeyed, and, in order to justify a court extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time-table for the conduct of litigation."

In such circumstance of unreasonable delay by not adhering Rule 10 of Labour Institutions (Mediation and Arbitration) Guidelines Rules, G.N. No. 64 of 2007 I am of the view that the applicant allegation regarding prospects of success and he was busy at the CMA pursuing his right lacks merit.

On the basis of the above discussion, it is my view that, the applicant did not adduce sufficient reasons for his delay thus, the CMA was right to dismiss his application for condonation. In the result, I hereby upheld the CMA's ruling and dismiss this application accordingly.

It is so ordered.




T. N. MWENEGOHA

JUDGE

23/07/2021