IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LABOUR DIVISION)

AT DAR ES SALAAM

REVISION NO. 873 OF 2019

BETWEEN

MASIJA MACHUNDE..... APPLICANT

VERSUS

ALAF LIMITED ..... RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

At the Commission for Mediation and Arbitration ("the CMA"), the applicant was a complainant in Labor Dispute No. CMA/DSM/TEM/60/19/74/19 ("The Dispute"), complaining about unfair termination by the respondent herein ("the employer"). The dispute was unsuccessfully mediated and a certificate of non-settlement (Form No. CMA F.6 under Regulation 34(1) of G.N. No. 67/2007) was issued on 04/03/2019. Subsequently on the 15/04/2019, a notice to refer a dispute to arbitration (Form No. CMA F.8 under Regulation 34(1) of G.N. No. 67/2007) was filled and presented for filing at the CMA on 17/04/2019. It is this form No. 8 that is a subject of this revision.

At the CMA, during the arbitration proceedings, the respondent raised an objection that the said reference to mediation (Form No. CMA F.8) was filed out of the prescribed time. He termed the time as 30 days. The CMA sustained the objection and dismissed the dispute for being time barred hence the current revision whereby the applicant was not satisfied with the decision of the CMA and has lodge the current revision on the following grounds:

1. That, the honorable arbitrator immensely misconceived by holding that, the application to refer dispute to Arbitration stage by the applicant was out of time
2. That, the Arbitrator failed to interpret the word reasonable time in legal perspective, while the law itself is silent on this matter
3. That, this affidavit is sworn in support of the prayers sought in the chamber summons and notice of application and in the best interest of justice the applicant's application being granted
4. That, should this application not granted the applicant is likely to suffer irreparable loss since the applicant had suffered a lot due to his employment service being terminated without justifiable reasons including his length of service of almost ten years with the respondent.

In his notice of application as well as the Chamber Summons he prayed for this court to call for records, revise and set aside the ruling of the CMA and thereafter determine the matter in the manner it considers appropriate and give any other relief considered just to be granted. In this court, the applicant appeared in person and unrepresented while the respondent was represented by Mr. Noel D. Kassanga, learned advocate. The application was disposed by way of written submissions. I have much appreciated the rich submissions that were filed by both parties, however, I will not reproduce those submissions and instead, they will be taken on board in due construction of this judgment.

I have gone through the records of the application and the parties submissions therein, it is undisputable fact that Section 86(7)(b)(i)and (ii) of the Employment and Labour Relations Act ("the Act") is silent on the time within which a party may refer the Complaint to arbitration or to the labour court after the mediation is marked to have failed and the CMA issuing a certificate of non-settlement. At this point, it is the wisdom of the court to determine the reasonable time within which such dispute may be referred because it cannot be left open for a party to make such reference at a time he or she pleases.

According to the applicant, who referred the court to the case of **MIC (T) Limited Vs. Onesmo Kiyeng, Revision No. 31/2019,** the time prescribed is not immediately after the mediation fails. However, the issue remains how reasonable is a reasonable time to refer a dispute to mediation. This took me back to the purpose of why the Employment and Labor Relations Act and the Labor Institutions Act were enacted. The purpose of the repealing of the previous law and enactment of these new laws was to ensure that a fair and rapid settlement of labour disputes is laid out by establishing specialised labour dispute settlement bodies. The law also outlined the procedures for settlement of the labour disputes. The key word in all the new law is **rapid** or in other words expedited mode of settlement of disputes. Therefore while determining what time should be reasonable time in the context of speedier disposal of dispute, I will have to agree with the holding with my Sister Judge, Honorable Rweyemamu (as she then was) in the case **of Dr. Noordin Jella Vs. Mzumbe University, Complaint No.47 of 2008** High Court of Tanzania Labour Division (Unreported) where she held at paragraph 1 of page 6 of the judgement:

"Basing on the above facts, I agree with the Counsel for the respondent that after failure of mediation, a referral to arbitration or

the court must be made within a reasonable time and that such reasonable time must be 30 days. My conclusion regarding the number of days is inspired by the time schedules under the Act as indicated above. If an appeal against an employer's action to terminate must be made with 30 days, it is not in accord with reason to believe that, where the CMA has failed to mediate a termination dispute, a longer period would be provided..."

As I have indicated above, the new laws were enacted to enhance social economic development by establishing specialized tribunals to deal with labor matters so that they can be dealt with efficiently but in an expedited manner. Therefore the reason of Hon. Rweyemamu J, is but with no doubt correct that it may be absurd if an appeal against an employer's action to terminate the employee is mandatorily required to be made within 30 days and then where the CMA has failed to mediate a termination dispute, a longer period would be provided. That would make nosense at all.

However, much as I totally agree with the reasoning in the cited case and the basis upon which the CMA made its decision. But before I proceed to make a decision on the issue, I have again gone back and ask myself, if the law is silent and we are to determine that the time to refer a dispute to mediation is

30 days, then it would mean that if the mediation failed and certificate of non-settlement was issued on 04/03/2019 and the applicant referred the dispute to mediation on 15/04/2019, counting the 04/03/2019 out, then the applicant lodged the form to refer the dispute to arbitration within 42 days of the date of the decision which will make him only 12 days late of the 30 days that we are trying to establish by principle of precedent. The question now is, should the 12 days be long a time to bar the applicant from having his right determined? What if the applicant was actually unfairly terminated? Would 12 days make him loose his right for good?

As we are making all these calculations, we should bear in mind that no mandatory time to refer the dispute was prescribed by the law. It is just a matter of precedent that we are relying on hence the rule of reason must be applied at all times. It is for this reason that I find that much as I agree with the holding of my Sister Judge Hon. Rweyemamu (as she then was), I find it only fair that the applicant's right should not be buried because he was late for 12 days of the time that is not even prescribed by the law. Reasonable is 30 days I agree, but reasonable is also affording a party right to heard regardless of the twelve days added to what would be the reasonable time to

refer a matter to arbitration. Let his right be determined on evidence, not to be barred by 12 days.

It is on those findings that I allow this revision by setting aside the ruling of the tribunal that dismissed the dispute. The dispute is restored back to the records of the CMA and the CMA file is remitted back to proceed with arbitration according to the law. It shall however be assigned to another arbitrator and not Hon. Kokusiima, L who first heard and determined the dispute.

Dated at Dar-es-salaam this 30th day of September, 2021

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S.M. MAGHIMBI
JUDGE