

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 363 OF 2020

BETWEEN

RAMADHANI ATHUMANI BOFU & ANOTHER..... APPLICANT

VERSUS

LAKE CEMENT LIMITED..... RESPONDENT

JUDGMENT

Last order: 15/11/2021

Date of judgment: 18/11/2021

B.E.K. Mganga, J

Aggrieved by the ruling of the Commission for Mediation and Arbitration (hereinafter referred to as CMA) delivered on 20th July, 2020 which refused to condone the application, applicants has filed this application under the provisions of Section 91(1)(a) and (b)(i), (2)(a), (b), (c) and (4) of the Employment and Labour Relations Act, [Cap 366 R.E 2019], Rule 24(1), (2)(a), (b), (c), (d), (e), (f), (3)(a), (b), (c), (d), 55(1)(2) and 28(l)(c) of the Labour Court Rules, GN No. 106 of 2007 praying for Orders that:-

- i) *That this Honorable Court be pleased to call for the records of the proceedings in the Commission for Mediation and Arbitration in*

Labour Dispute No. CMA/DSM/TEM/570/19, revise and set aside the ruling dated 20th July 2020 delivered by Hon. Ngalika.

- ii) That upon revising the CMA proceedings, decision and the ruling thereof, this Honorable Court be pleased to set aside the said ruling which has been delivered in favour of the respondent.*
- iii) That any other order this Honorable Court may deem just and fit to grant.*

The application is supported by applicant's affidavit. Opposing the application, the counter affidavit of Amina Hamadi Siwa respondent's Human Resources Officer was filed.

On the date of hearing, applicants appeared in person while Mr. Pascal Mshanga, Advocate, appeared for the respondent.

Arguing the application, Mr. Ramadhani submitted that they were arrested and detained at police on 1st November 2019 and this was well known by the respondent. He stated that thereafter they were charged for economic offence as a result they were not granted bail. Due to that arrest and detention in remand prison, they delayed filing the application relating to their dispute. He submitted that they stated this ground in their application for condonation but the same was rejected by the arbitrator. On that basis, they prayed for the application to be granted so that the matter can be heard on merits on determination of fairness of their termination.

Opposing the application, counsel for the respondent submitted that applicants had no good reason for delay and that the right to be heard was observed as the parties were afforded right with the right of arguing the same by way of written submissions. Bolstering his submission, he cited the case of ***Cosmas Construction Co. Ltd v. Arrow Garment Ltd*** [1992] TLR 127 CAT.

In this application there is no doubt that the applicant knocked the doors of CMA late as stipulated for under Rule 10(1) of which provides that: -

"10(1) Disputes about the fairness of an employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date the employer made a final decision to terminate or uphold the decision to terminate"

Having knowledge on such delay, applicants filed an application for condonation. For condonation to be granted at CMA, one who wish for the same has to adduce good cause for delay. In the application at hand, it is undisputed that applicants were arrested on 1st November 2020 the day disciplinary hearing was conducted and they were not granted bail.

This Court has been called to exercise its power and the same has to be done judiciously as it was held by the Court of Appeal in case of

Zaidi Baraka and 2 others v. Exim Bank (T) Limited, Misc. Commercial cause No. 300 of 2015, CAT (unreported) and **MZA RTC Trading Company Limited v. Export Trading Company limited, Civil Application No. 12 of 2015** (unreported). In the **MZA RTC** case, the Court of Appeal held: -

*"An application for extension of time for the doing of any act authorized ...is on exercise in judicial discretion... judicial discretion is the exercise of judgment by a judge or court **based on what is fair, under the circumstances and guided by the rules and principles of law ..."***

In the case of **Regional Manager, Tanroads Kagera v. Ruaha Concrete Company Ltd, Civil Application No. 96 of 2007, CAT** (unreported) the Court of Appeal held that in determination of an application for extension of time, the court has to satisfy as to whether the applicant has established some material amounting sufficient cause or good cause as to why the sought application is to be granted. In the case of **Lyamuya Construction Company Limited v. Board of Registered Trustees of Young Women's Christian Association of Tanzania, Civil Application No.2 of 2010** (Unreported) the Court of Appeal held that in application for extension of time, applicant has to account for all period of delay, the delay should not be inordinate, applicant must show diligence and not apathy, negligence or sloppiness

in prosecution of the action that he intends to take and that the court can consider illegality of the decision sought to be challenged.

The question before me is whether applicant has met conditions stated in ***Regional Manager, Tanroads Kagera*** (supra), and ***Lyamuya's case, supra***.

At CMA, applicants filed CMA F.2 and joint affidavit of Ramadhan Athuman Mbofu and Joseph Chilongola stating that they were terminated on 1st November 2019 and that on the same date, shortly after disciplinary hearing, they were arrested by police and sent to Kigamboni police station where they stayed in custody. That, later on, they were charged in Economic Crime Case No. 3 of 2019 and remanded at Keko Remand Prison as they did not manage to get out on bail. Nothing was countered by the respondent to the effect that applicants were not arrested and detained. All matters deponed to by applicants as cause of delay were not countered by the respondent but were merely noted meaning that they were correct. In such situation, they were not contradicted. Affidavit and counter affidavit being substitute of oral, I have found that there is no evidence to contradict evidence of the applicants as to the cause of delay to file the dispute at CMA. In fact, in paragraph 5 of the counter affidavit of Amina Hamadi Siwa that was

filed at CMA, the deponent stated that contents of paragraph 3 of the affidavit are known to the applicants. In the said paragraph 3 of the joint affidavit, applicants stated that they were taken by policemen on the disciplinary hearing immediately after the said disciplinary hearing. Respondent noted also paragraph 4 of the affidavit wherein applicants stated that, they were taken to Kigamboni police Station and kept in custody thereafter sent to Keko remand prison as they were not granted bail. This was the cause for delay of referring the dispute at CMA within time as it was not countered by the respondent. Applicants attached a charge sheet showing that they were facing economic crime case No.3 of 2019. With this strong evidence, it is my view, that the arbitrator wrongly dismissed application for condonation filed by the applicants. Applicants delayed referring the dispute to CMA for 19 days. In my view, taking into consideration circumstances of the application as deposed to by the applicants, that is not inordinate delay contrary to what counsel for respondent wants the court to believe. Whatever the case, as pointed out herein above, there is no evidence to contradict the joint affidavit by the applicants.

That said and done, I hereby set aside the ruling that dismissed application for condonation by applicant and grant condonation. Parties are directed to go back to CMA for the dispute to be heard on merit.

It is so ordered.



B.E.K. Mganga

JUDGE

18/11/202

Labour Court - TZ.