

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

REVISION APPLICATION NO. 187 OF 2022

*(From the award of the Commission for Mediation & Arbitration of Dar es Salaam at Temeke
(A. Kazimoto: Mediator) Dated 6th May 2022, in Labour Dispute
No. CMA/DSM/TEM/14/2022)*

LISSON JOHN KWEBEAPPLICANT

VERSUS

HELASITA SECONDARY SCHOOLRESPONDENT

JUDGMENT

K. T. R. Mteule, J.

26th October 2022 & 28th October 2022

This application for revision emanates from the award of Labour Dispute No. CMA/DSM/TEM/14/2022 of the Commission for Mediation and Arbitration of DSM at Temeke (CMA) dated 6th May 2022. Dissatisfied with the ruling of the CMA, the applicant **LISSON JOHN KWEBE** has filed this application under the provisions of **section 94 (1) of the Employment and Labour Relations Act No. 6 [CAP 366 RE 2019]** [herein to be referred to as ELRA] read together with **Rules 24 (1), (2) (a) (b) (c) (d) (e) (f), (3) (a) (b) (c) (d) and 28 (I) (c) (d) and (2) of the Labour Court Rules, G.N. No. 106 of 2017** and any other enabling provision of the law. The applicant is praying for an order for this Court to call for the records and revise the award of the Commission for

Mediation and Arbitration at Temeke, Dar es salaam in Labour Dispute No. CMA/DSM/TEM/14/2022, and for this Court to establish that there was a reasonable ground of seeking extension of time so as to file the labour dispute. The applicant further prayed for any other orders as the court may deem fit.

The brief background of the dispute as gathered from the CMA record and from the parties' pleadings is explained hereunder. The applicant was employed by the Respondent **HELASITA SECONDARY SCHOOL (HSS)** as a Patron under fixed term contract of two years. Their relationship turned hostile on 20th January 2021 when the respondent terminated the employment with the applicant.

Being not satisfied with employer's decision, the respondent filed the Labour Dispute No. CMA/DSM/TEM/39/2021/31/2021. Later the applicant withdrew it after discovering some defects in filling CMA Form No.1. On 5th August the Applicant refiled another Labour dispute which was registered as CMA/DSM/TEM/14/2022. Following the objection raised by the respondent asserting the application to have been premature for being filed before the applicant was served with the withdrawal ruling (The ruling that allowed the withdrawal of the previous defective Labour Dispute) issued on 3rd August 2021, the labour dispute was stuck out.

After being served with the withdrawal order, on 9th August 2021 the applicant filed the impugned Labour Dispute No. CMA/DSM/TEM/14/2022 accompanied with condonation application seeking for extension of time.

The Mediator found that there was no reasonable cause for the delay hence dismissed the application. Being resentful with the ruling regarding extension of time, the respondent filed this application seeking for this court's interference by a way of revision.

The affidavit in support of this application is sworn by the applicant and on the other hand, the counter affidavit was sworn by Mr. Cyprian Wabwire Akide respondent's Principal Officer. The affidavit contained one legal issue challenging the decision of the Mediator. This said issue is whether the applicant adduced good ground to justify late filing of the impugned labour dispute.

During hearing, the applicant was represented by Mr. Arnold Peter, Advocate from Charliano Attorneys while the respondent was represented by Mr. Isihaka Yusuph from Law Domain. The hearing of the application was by oral submissions.

In his submissions, the Applicant's counsel Mr. Arnold started by explaining the withdrawal he made in the previous Labour Dispute on 3rd August 2021. He challenge the striking out order of 10th January 2022

with view that the arbitrator erred for having not considered the condonation application before striking out the application. According to him the mediator disregarded existence of an order to withdraw the matter which was issued on 3rd August 2021, the rights of the applicant to have a chance to lodge a supplementary affidavit and preliminary objection being based on facts and not the law. He added that considering the fact that withdrawal order is a part of the CMA record, the mediator should not have decided to strike out the matter on 10th January 2022 on a mere reason that the order was not appended to the application.

Mr. Arnold submitted that since the matter was struck out, the applicant decided to exhaust his remedies by filing the matter afresh on the day which followed which was on 11 January 2022, accompanied by a condonation application. According to him, the application for condonation was heard and dismissed hence this application for revision which was filed instantly. In his view no time was wasted.

Mr. Arnold submitted that the main reason for this revision is that during the time when the matter was being lodged in the CMA, the applicant was busy seeking for his right to be heard. According to him, his application was in the corridors of the court all the time. He stated that all orders which were issued, starting with the withdrawal order, did not

bar the applicant to refile the matter, and the second order of striking out the application did not as well bar the refiling of the application.

According to him, it is apparent that technical delay in law constitutes a reason which the Court may consider in allowing filing of a matter out of time. He supported his assertion with the case of **Edson Muganyizi Balongo & Others versus Tanzania Breweries Limited**, Revision Application No 37, High Court of Tanzania, at Arusha, (unreported). Referring to page 9 of the decision, he is of the opinion that this case emphasised distinction between real and technical delay. He submitted that according to that case, technical delay is excusable.

It was further submitted by Mr. Arnold that the existence of this matter in the corridors of the Court renders the delay to be technical and not actual. He further added that the applicant acted diligently by filing the application timely after being withdrawn and even struck out. In his view, the applicant acted promptly by filing the matter seeking for the right to be heard. He therefore prayed for the Court to condone the matter in the CMA.

Opposing the application Mr. Isihaka submitted that the Court is informed by the counsel for the applicant that this matter was lodged within time and withdrawn for correction, but nowhere the applicant justified the alleged correction. Mr. Isihaka argued that the applicant

filed a defective form No. 1 which confused the nature of dispute, on the reason that while he had a fixed term contract, in his form he filled the parts concerning unfair termination as a nature of dispute, and at the same time the relief he sought included breach of contract and unfair termination.

Mr. Isihaka referred to paragraph 3 of the respondent's counter affidavit which explained that the reason for withdrawal was the preliminary objection raised by the respondent on 5th July 2021 that the CMA Form No 1 was defective. He averred that instead of conceding to the preliminary objection, he came to inform the court that he had realised some defects. On such basis he is of the view that there was no reasonable cause for the delay in filing the matter hence the application for condonation could not succeed. He added that, **Rule 10 (1) of the Labour Institution (Mediation and Arbitration) Rules, GN No 64 of 2007** provides for timelines of filing labour dispute, that's why the applicant applied for extension of time, therefore he is duty bound to show a good cause before the CMA for the extension of time to be granted.

Regarding technical delay Mr. Isihaka submitted that the principles of technical delay can hardly been involved in an application for extension of time if no good cause is advanced. He argued that the case of **Edson**

Muganyizi do not apply in the circumstances of this case because extension of time touches jurisdiction of the CMA.

It was further argued by Mr. Isihaka that it is not true that the CMA did not consider all applicant's concern, but the CMA could only extend time upon good cause shown by the applicant. He averred that the law is clear that an applicant seeking for extension of time must account for each day of delay which the applicant has failed to do. He thus prayed for this court to uphold the decision of the CMA and dismiss the revision application, as the applicant had no valid reason to justify extension of time.

In rejoinder Mr. Arnold reiterated his submission in chief but reminded the respondent's Counsel that it is a legal right for the applicant to withdraw and refile the matter, so long as the action is allowed by the court. He argued that the type of the correction to be done is not important in the application for extension of time.

He further added that the respondent did not object that the matter has been in court corridor all the time. For that reason, he is of the view that the technical delay is still good reason to form a good cause for granting of extension of time, since all the circumstances indicate that there is no real delay by a technical delay. On such basis he considered that the case of Jackson Muganyizi is still relevant in this application.

Lastly, Mr. Arnold argued for the court to know if the reasons are valid, the CMA ought to have referred to what the applicant adduced in his submissions. He therefore submitted that it is clear that the applicant has valid reasons to seek extension of time.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, I am inclined to address one major issue as to **whether the applicant has adduced sufficient grounds for this Court to revise the CMA award** issued in Labour Dispute No. CMA/DSM/TEM/14/2022.

In addressing the above issue, the ground for revision identified in the affidavit will be considered to ascertain as to whether in the CMA the applicant adduced good ground for condonation. The applicant contended that the main reason for this revision is having the matters pending in the CMA and withdrawn, and ultimately dismissed for being time barred. That the applicant was busy seeking for his right to be heard. On the other hand the respondent sustained that the act of the applicant of filing wrong claim does not warrant him extension of time.

The Law guiding timing for filing a Labour Dispute in the CMA is **Rule 10(1) (2) of G.N No.64 of 2007** 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.

(2) all other dispute must be referred to the Commission within sixty days from the date when the dispute arises"

From the above cited provision time limit in filing Labour Dispute in the CMA must be observed. It is an established principle that it is a discretion of the Court to grant an application for extension of time upon a good cause shown, [See. **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbaga V. Government of Kenya Criminal Investigation 5 Department and Another**, Civil Reference No 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)]. Again, reasonable cause or good cause has to be adduced by a party seeking extension of time to provide the relevant material in order to move the court to exercise its discretion. The good cause must be determined by reference to all the circumstances of each particular case. In the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of**

Young Women's Christian Association of Tanzania, Civil Application No. 2 of 2010, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported), the Court developed five principles in ascertaining sufficient cause for granting an application for extension of time. Among the principles include; that the applicant must account for all period of delay, the delay should not be inordinate, the applicant must show diligence and reasons such as the existence of a point of law of sufficient importance, not apathy negligence or sloppiness in the prosecution of the action that he intends to take and lastly if the court feels that there are other sufficient grounds such as the illegality of the decision sought to be challenged.

From the above authorities, for the applicant to enjoy Court's discretionary power he/she must be guided by the above-mentioned principles in seeking extension of time. The record in the instant application reveals that the applicant was terminated on 20th January 2021 as per Annexure HELA-2. After being terminated the applicant filed the first Labour Dispute at CMA on 1st February 2021 as per Annexure HELA-3 which was filed within 30 days from the date when the termination took place which is in accordance with the prescribed law. It is not disputed that the first labour Dispute was withdrawn on 3rd

August 2021 for the reason of being defective as the CMA Form No.1 was not properly filled.

It is further not disputed that on 9th August 2021 the applicant filed the impugned Labour Dispute No. CMA/DSM/TEM/14/2022 which came after the striking out of another application which faced a preliminary objection.

This indicate that the applicant has been always in court searching for a door towards court of justice to have his rights determined. This situation is what was is called in law as a technical delay.

In the case of **Fortunatus Masha v William Shija & Another** [1997] TLR 154 which held that;

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court striking out the first appeal. In these

circumstances, an extension of time ought to be granted."

The above cited authority is relevant to this application?

It is apparent that the CMA application encountered defectiveness for having CMA Form No. 1 not properly filed which led to withdrawal of the matter. Further to that after Labour Dispute No. CMA/DSM/TEM/39/2021/31/2021 being struck out on 3rd August 2021, the applicant acted promptly by filing another Labour Dispute with reference No. CMA/DSM/TEM/14/2022 on 9th August 2021 as per Annexure HELA-5. This justify that applicant's delay was not inordinate, hence fall under the ambit of some principles developed in **LYAMUYA'S CASE (supra)**. This shows that the applicant has never slept on his right having filed another application accompanied with condonation and the delay constitute technical delay.

Mr. Ishaka is of the view that technical delay cannot amount to sufficient cause to allow condonation if there are no other reasons for delay. I have considered the entire scenario and I am of the view that since the applicant took all the required actions promptly, he cannot be condemned on lack diligence. Further, the applicant's delay was not inordinate as he was always prompt in his actions. I do not agree with

Mr. Isihaka that there is no reasons explained by the applicant. In my view the applicant adduced reasonable cause for his delay.

In the result, I find sufficient causes established to explain the delay which was purely technical. In the circumstances, the Application is allowed. The decision of the CMA which dismissed the condonation application is hereby revised, quashed and set aside. Time is hereby extended to condone the late filing of the Labour Dispute No. CMA/DSM/TEM/14/2022 in the Commission for Mediation and Arbitration. The record is hereby remitted to the CMA for the matter to proceed with mediation. It is so ordered.

Dated at Dar es Salaam this 28th day of October 2022.



KATARINA REVOCATI MTEULE

JUDGE

28/10/2022

