

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

**APPLICATION FOR REVISION NO. 91 OF 2022**

*(From the decision of the Commission for Mediation and Arbitration of DSM at Ubungo) (**Mbunda P.J: Mediator**) dated 31<sup>st</sup> Day of January 2022 in Labour Dispute No. CMA/DSM/UBG/505/2021)*

**OMAR AMIRI MAPUNDA.....APPLICANT**

**VERSUS**

**NIDA TEXTILES MILLS (T) LTD.....RESPONDENT**

**JUDGMENT**

**K. T. R. MTEULE, J**

**05<sup>th</sup> October 2022 & 24<sup>th</sup> October 2022**

In this application for revision, the applicant Omar Amir Mapunda is seeking for this court to call for the record of the CMA in Labour Dispute No. CMA/DSM/UBG/505/2021 from the Commission for Mediation and Arbitration of Dar es Salaam at Ubungo, revise and set aside the award therein dated 18<sup>th</sup> February 2022 and any other order the court deems just to grant.

As a brief background of the matter, the above named dispute was referred to the CMA vide CMA Form No 1 where the applicant is claiming for reinstatement without loss of salaries due to an alleged unfair termination of employment. According to the CMA Form No. 1,

the dispute arose on 15 May 2021 and the matter was lodged on 18<sup>th</sup> November 2021. The matter being out of time, along with it, the applicant lodged a condonation application seeking for the court to condone its late filing. The reasons advanced in the affidavit in support of condonation application in the CMA was that immediately after the termination of the employment on 15<sup>th</sup> May 2021 the applicant had to travel to Morogoro on 16<sup>th</sup> May 2021 to attend funeral of his mother who passed away on 14<sup>th</sup> May 2021, just one day before his termination. The applicant stated that he had to stay in Morogoro for 189 days causing the delay in filing the labour dispute.

In the affidavit in support of this application, the applicant reiterated the reasons advanced in the affidavit in the CMA that he stayed outside Dar es Salaam for 189 days attending the funeral of his mother hence late lodgment of the application. The affidavit raised 3 issues which alleged errors in the mediator's decision in:- firstly, framing issues while the matter was not in the arbitration stage, secondly, not recording properly the evidence adduced by the applicant and thirdly, disregarding the applicant's rights to be heard.

The application was heard by written submissions, where the applicant was represented by Mr. Jackson Mhando, P.R while the respondent was represented by Shamima Hiza Advocate for the respondent.

Arguing the Application Mr. Mhando disregarded the last ground concerning right to be heard and argued the remaining two grounds.

In his submissions Mr. Mhando averred that since there were bus tickets, and that the mediator acknowledged that the applicant travelled due to funeral, then it is obvious that the mediator did not consider the evidence on the applicant's travel.

In Mr. Mhando's view, the applicant complied with Rule 11(3)(a) & (b) of the Labour Institutions (Mediation and Arbitration) Rules, GN No. 62 of 2007 which requires an applicant to explain reasons for delay. He therefore prayed for the Court to set aside the decision of the mediator.

On the other side Ms. Shamima, Advocate objected the applicant's bereavement as reason for delay arguing that the mediator noted the evidence of tickets for going and return. She cited **Rule 11 (3) of GN. No. 64 of 2007** which set out the factors to be considered in deciding the issue of time.

She challenged the lack of explanation of what the applicant was doing within 189 days hence the reasons adduced did not meet the requirement of Rule 11(3) of GN 64 of 2007. She prayed for the Court to dismiss the application for lacking basis.

Mr. Mhando made a rejoinder in which he submitted that an account of 189 days is done since it is obvious that the applicant was outside Dar es salaam.

I have considered the submissions of both parties and the record of the CMA. It is not disputed that the applicant lodged the application out of time with condonation request which was declined by the mediator for having no sufficient reason. It is not disputed that the applicant travelled to Morogoro to attend the funeral of his beloved mother and stayed there for 189 days. The mediator found these days to constitute inordinate delay which was not properly accounted for. The applicant is challenging the mediator's findings.

I am guided by Rule 11(3) cited by the applicant. The Rule sets out the following factors to be considered in granting condonation. These factors are:-

- 1) Degree of lateness
- 2) Reason of lateness

- 3) Prospects of success
- 4) Any prejudice to the other party
- 5) Any other relevant factors

It is obvious that the degree of lateness for 189 days is by all standards inordinate. As to why the applicant stayed in Morogoro for all these days, no sufficient explanation was given by the Applicant. He did not even state why staying in Morogoro was a hindrance to filing the application timely. The applicant could come for the case and go back to proceed with what he was doing and this was not clearly shown.

In light of the principle in **LYAMUYA CONSTRUCTION COMPANY LTD VERSUS BOARD OF REGISTERED TRUSTEE OF YOUNG WOMEN S CHRISTIAN ASSOCIATION OF TANZANIA CIVIL APPLICATION NO. 2 OF 2010** which was also cited by the mediator, account of every day of delay is important factor to allow extension of time. In that case the following factors were considered:-

- (a) The applicant must account for all the period of delay*
- (b) The delay should not be inordinate*

*(c) The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*

*(d) If the court feels that there are other sufficient reasons, such as the existence of a point of law of sufficient importance; such as the illegality of the decision sought to be challenged.*

In light of the above authority, it is apparent that the applicant's delay was inordinate and that there is no sufficient account of the days as no explanation was given as to what the applicant was doing in Morogoro for all 189 days. This indicates lack of diligence on the part of the applicant. In my view, the applicant decided to sit on his right.

From the foregoing, I see no reason to fault the mediator's findings and decision. I uphold the CMA decision. This application is dismissed for want of merit.

Dated at Dar es Salaam this 24<sup>th</sup> Day of October 2022



KATARINA REVOCATI MTEULE

**JUDGE**

24/10/2022