

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT BUKOBA

LABOUR REVISION NO. 02 OF 2022

(Originating from Labour Dispute No. CMA/MSNY/60/2021 CMA in the Commission for Mediation and Arbitration at Bukoba)

BETWEEN

MORUO SAITORE LAIZER.....APPLICANT

AND

KAGERA SUGAR LIMITED.....RESPONDENT

JUDGMENT

Date of last orders: 15.09.2022

Date of Judgment: 30.09.2020

A.E. Mwipopo, J.

Moruo Saitore Laizer was employed by Kagera Sugar Limited in 2004 in the post of Irrigation Supervisor. From February, 2015 to March, 2016 the applicant was assigned by the respondent to manage water pipeline installation from Old Shinyanga to Mwadui Diamond mine. On 12.05.2017 the respondent terminated the applicant employment for absconding from work. The termination letter shows that the applicant has absconded from work since March, 2016 up to 12.05.2017 and during all this time the applicant was receiving monthly salary. The applicant received the termination letter on 04.05.2021. Aggrieved by the decision of the respondent to terminate his employment, the applicant referred the dispute to the

Commission for Mediation and Arbitration at Bukoba (CMA) together with application for condonation. The Commission heard both parties in the application for condonation and dismissed the application for want of merits. The applicant was not satisfied and filed the present application for revision.

The application was filed by Notice of Application and Chamber Summons supported by the affidavit sworn by Mr. Lameck Erasto, advocate for the applicant. The respondent opposed the application through notice of opposition and counter affidavit sworn by Mr. Moses Stewart Karua, advocate for the respondent. The applicant is praying in the Chamber Summons for the following orders that:

1. *This Honourable Court be pleased to call for records of the dispute registered as CMA/MSNY/60/2021 from the Commission for Mediation and Arbitration for the purpose of revising the ruling of the Commission that was delivered on 12.04.2021.*
2. *Any order(s) and relief(s) as this Honourable Court will deem fit and proper to grant.*

The applicant raised two issues for consideration by this Court which are found in paragraph 5 (a) and (b) of the affidavit as provided hereunder:-

- a. *Whether the applicant has not shown the sufficient cause for the delay in filing the referral against the unfair termination even after having perused the tendered medical report.*
- b. *Whether the trial Arbitrator was not bound to consider the illegality occasioned by the respondent when terminating the employment in prejudice to the applicant's rights.*

The counsel representing the applicant namely Mr. Lameck Erasto, advocate, said in his submission that the applicant prayer for condonation was dismissed for want of merits by the CMA. The CMA erred to dismiss the application for condonation despite the fact that applicant provided sufficient reason for condonation. The applicant employment was terminated by the respondent on 12.05.2017 and the applicant got information about the termination on 04.08.2021. The applicant got sick and as result he failed to file dispute to the CMA within time. The applicant attached medical report showing the gravity and extensity of the sickness.

Another reason provided by the applicant for condoning the labour dispute is the presence of illegalities in terminating the employment which the applicant was able to demonstrate to the CMA, but the mediator did not consider it. The application for condonation was dismissed on 20.12.2021 for failure to advance sufficient reasons for condonation. In support of the submission, the counsel for the applicant cited the case of **Josephina A. Kalalu vs. Isaac Michael Malilya**, Civil Reference No. 01 of 2020, Court of Appeal at Mwanza, (unreported), at page 11; and the case of **Deulam Valambhia vs. Permanent Secretary Ministry of Defence and Others** [1992] TLR at page 185.

In response, the counsel for the respondent namely Mr. Mosses Karua, advocate, said on the first legal issue that applicant's main reason for delay is illness and he attached medical document. In the application for condonation

shows that the applicant was sick from 2015. The medical report from Machama Christian Hospital which the applicant is relying was prepared in 2019. The said report stated that by June, 2018 the applicant health was stable and he continued with his activities. This is only exhibit available to show that the applicant was sick. There is no other exhibit or fact in the affidavit showing the reason of delay after June, 2018.

The counsel said that the CMA form filed by the applicant shows that the degree of lateness is 52 months which is more than 4 years. The parties are bound by their own pleadings. This position was stated in the case of **Sarchem International Tanzania Ltd vs. Wande Printing and Packaging Company Ltd**, Commercial Case No. 31 of 2020, High Court Commercial Division at Dar Es Salaam, (unreported) at page 6. The applicant is supposed to account for the delay for every single day for the delay apart from the medical report attached which show that he was stable on June, 2018. The applicant has never accounted for the delay from 04.08.2021 to 23.09.2021.

Rule 10 (1) of the Labour Institution (Mediation and Arbitration Guidelines) Rules, G.N. No. 64 of 2007 provides that the dispute over termination of employment has to be referred to the CMA within 30 days. The principle of granting application for extension of time was stated in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, Civil Application No. 62 of 2010,

Court of Appeal of Tanzania at Arusha, (unreported) at page 6. Rule 31 of G.N. No. 64 of 2007 provides that the CMA may condone the application to be filed out of prescribed time upon showing a good cause. The applicant failed to provide a good cause for the CMA to condone the application. In the case of **Avit Kwach vs. Serengeti Breweries Ltd**, Revision No. 176 of 2017, High Court Labour Division at Dar Es Salaam, (unreported), at page 10 this court emphasized on the need for the applicant for extension of time to account for the each day of the delay.

In the present case the applicant was not diligent in referring his dispute to the CMA. The same was stated by this court in the case of **Maunzio Mian vs. Skol Building Contractors Ltd**, Revision No. 675 of 2018, High Court Labour Division at Dar Es Salaam, (unreported), at page 6; the case of **George Timothy Mwaikusa vs. National Microfinance Bank PLC**, Misc. Application No. 41 of 2020, High Court Labour Division at Dar Es Salaam, (unreported) at page 5; and the case of **John Sebastiana Cosmas and Another vs. Consolidated Tours & Hotels Investment Ltd**, Labour Revision No. 15 of 2020, High Court Labour Division at Musoma, (unreported) at page 3.

On the issue of illegality, the principle on the illegality was stated in the case of **Lyamuya Construction Company Limited**, (supra), at page 9 that such point of law must be of sufficient importance and it must also be appeal on the

face of record such as the question of jurisdiction, not one that would be discovered by a long drawn argument or process.

The termination letter which the applicant say contain illegality is not a matter of law, it is matter of evidence. The said letter could not give sufficient information to this court to make decision. The court has to find evidence and other exhibits before finding the alleged illegalities. The same was stated by this court in the case of **Leonard C. Ndeschau vs. Joseph J. Mkipanya**, Misc. Land Application No. 51 of 2021, High Court Land Division at Dar Es Salaam, (unreported), at page 13 where the court stated that for the illegality to stand it has to be clearly visible on the record. The test of illegality is not applicable in this case. Even the CMA did not see any apparent illegality in the available record.

In his rejoinder, the counsel for the applicant said the degree of lateness for 52 months stated in the CMA forms for condition was from the date of the decision to terminate the applicant to the date of referring the dispute to the CMA. The applicant stated in paragraph 6 of his affidavit before the CMA that he has to take medications daily and making constant attendance to hospitals with full knowledge of the respondent. When the applicant's condition became stable that is when he referred the dispute to the CMA. The applicant has provided the reason for the delay that it is illness. The termination letter was showing illegality on the face of record as it terminated the applicant from employment without showing that the procedure for termination was adhered.

From the submissions, the main issue for determination in this application is whether the applicant provided sufficient reason for the Commission for Mediation and Arbitration to grant application for condonation.

As a general principle, the CMA is vested with powers to grant an extension of time upon good cause shown. This is provided by Rule 31 of the Labour Institutions (Mediation and Arbitration Guidelines), Rules, G.N. No. 64 of 2007.

The rule provides as follows: -

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

Rule 11(3) of the same G.N. No. 64 of 2007, requires the applicant to set out the grounds for condonation and submit on the degree of lateness, the reasons for the lateness, its prospect of succeeding with the dispute and obtaining the relief sought against the other party and other relevant factors.

In the case of **Yusuf Same and another vs. Hadija Yusufu**, Civil Appeal No.1 of 2002, Court of Appeal of Tanzania at Dar Es Salaam (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 judiciously 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".

The same position was stated by the Court of Appeal in the case of **Topical Air (TZ) Limited vs. Godson Eliona Moshi**, Civil Application No. 9 of 2017, the Court of Appeal of Tanzania at Arusha, (unreported), at page 9 and 10, and in the cited case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (supra).

In the present case, the evidence available in record reveal that the applicant employment was terminated by the respondent on 12.05.2017 and the applicant became aware of the termination on 04.08.2021 after he received the termination letter. The applicant filed the application to be condoned on 23.09.2021. The applicant have two grounds for condonation. The first ground for the delay is illness he suffered and the second ground is the presence of illegalities in the face of record.

On the ground of illness, the applicant deposed before the CMA and before this Court that he was ill from late 2015 and he attached a letter from Machame Lutheran Hospital to support his claims. The said letter which was written on 18.10.2019 shows that the applicant was for first time treated in March, 2014 where the treatment was successfully. The letter shows that the applicant was sent to hospital by his relatives in March, 2016 and he was attached on follow up clinic until June, 2018 when his condition relatively stabilized.

Illness is good cause for the applicant to be condoned by the CMA or the Court. However, the said illness has to be the actual reason that stalled the

applicant from filing the application to be condoned in time. The position was stated by the Court in several decisions such as in the case of **Richard Mlagala and 9 Others vs. Aikael Minja**, Civil Application No. 160 of 2015, Court of Appeal of Tanzania at Dar Es Salaam, (unreported); in the case of **Fredrick Mdimu vs. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour, Division at Dar Es Salaam, (Unreported); and in **Frank Mngoma vs. Everina Yakobo**, Misc. Land Application No. 35 of 2019, High Court of Tanzania, at Tanga, (Unreported). In the case of **Shembilu Shefaya vs. Omari Ally [1992] TLR 245**, the Court of appeal stated that the applicant has to provide thorough explanation regarding the sickness. In the case of **Fredrick Mdimu vs. Cultural Heritage Ltd**, (supra), it was held that;

"Sickness is a good cause for delaying to file matters within the given time. However, the same has to be proved and not merely alleged.

In the present case, the letter of termination shows that the applicant was terminated on 12.05.2017. The letter from Machame Lutheran Hospital shows that the applicant was ill from March, 2016 to June, 2018 when his condition was stabilized after attending follow up clinic. The said letter from Machame Lutheran Hospital does not show at all if the applicant was sick to the extent of not being able to refer the dispute to the CMA. The said letter shows that applicant was attending follow up clinic and it does not state at what interval the applicant was attending the clinic.

Further, the said letter from Machame Lutheran Hospital states that by June, 2018 the applicant condition was stabilized which means he was successfully treated and was able to refer the matter to the Commission. However, the applicant deposed in the affidavit that he was not served with termination letter until on 04.08.2021. This is the date when the applicant became aware of his termination. This means that by the time the applicant became aware of the termination letter, he was not sick.

The applicant filed application for condonation in the CMA on 23.09.2021. The Rule 10(1) of G.N. No. 64 of 2007 provides for time limitation of 30 days for referring the dispute about fairness of termination to the CMA. The rule reads as follows:-

"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."

Counting from 04.08.2021 when applicant became aware of his termination from employment to 23.09.2021 when he filed the application to be condoned, the applicant delayed to file the application for 19 days.

The law is settled law that in the application for extension of time the applicant is supposed to account for each and every day of the delay. In the case of **Tanzania Ports Authority vs. Pembe Flour Mills Ltd, Civil Application No. 49 of 2009**, the Court of Appeal of Tanzania at Dar es Salaam, held inter alia

that, the applicant was duty bound in law to account for the delay of filing the application for extension of time. Since the delays were not accounted for, the Court of Appeal dismissed the application.

In the case of **Vodacom Foundation vs. Commissioner General (TRA)**, Civil Application No. 107/20 of 2017, Court of Appeal of Tanzania at Dar Es Salaam, (unreported), it was held at page 9 of that:-

"The delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."

Similar position was stated in the case of **Azizi Mohamed vs. Republic**, Criminal Application No. 84/07 of 2019, Court of Appeal of Tanzania at Mtwara, (Unreported), where it was held that;

Assuming there was any valid reason for the delay, has the applicant accounted for each day of delay? I have already held that the delay was, by any standard inordinate but that does not necessarily preclude the Court from exercising its discretion if the applicant succeeds in accounting for each day of the delay.

In the present application, the applicant have failed to account for each day of the delay from 04.08.2021 the day he became aware that his employment was terminated by the respondent to 23.09.2021 when the applicant filed the application for condonation in the CMA. The 30 days time limitation for filing dispute of termination of employment to the commission expired on 03.09.2021.

The time delayed is almost 20 days and there is no explanation for this time delayed.

The applicant's second ground for the revision is the presence of illegality in the decision of the employer to terminate him. The applicant's counsel submitted that the said illegality is that in the letter of termination the applicant did not follow procedures for termination. Admittedly, illegality is sufficient reason for extension of time as it was held in **Permanent Secretary Ministry of Defence and National Service vs. Devlam Valambhia** [1992] TLR.185 at page 189. The issue of illegality is not a reason constituting delay in filing an appeal, but rather a legal mistake which ought to be corrected by an appellate court for purposes of putting right and rectify the position of the law as it was held in the case of **Stade Mwaseba vs. Edward Mwakatundu**, Misc. Land Application No. 19 of 2019, High Court, at Mbeya, (Unreported). The illegality which is sufficient cause is the one which is apparent on the face of record, that need not to be discovered by long drawn argument as it was held in **Efrasia Mfugile vs. Andrew J. Ndimbo and Another, Civil Application No. 38/10 of 2017, Court of Appeal of Tanzania, at Iringa**, (unreported). The same position was stated in the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (supra).

In this application, the alleged illegality stated by the counsel for the applicant is that the respondent did not follow procedures for termination. The

counsel said that the said illegality is found in the termination letter. Although I agree that failure to follow procedure for termination is irregularity, the said irregularity is not in the face of record. The reason is that termination of employment is the matter of evidence. Parties have to adduce evidence in order for the CMA or Court to determine if the termination was fair in substance and in procedure. Letter of termination by itself alone could not prove the fairness of the procedure for termination.

Under rule 13 (10) of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007, the employer is supposed to give reason for termination to the employee. The letter of termination is the notice informing the employee of the decision of the employer to terminate employee's contract. The letter of termination need to provide the reason for termination and not to state the procedure for termination. Thus, there is no point of illegality on the face of record to warrant the interference of the appellate Court.

Therefore, the application is dismissed in its entirety for want of merits. As this is a labour matter, each party to bear his own cost. It is so ordered accordingly.



A. E. Mwipopo

JUDGE

30/09/2020

Court: The judgment was delivered today in the presence of the counsel for the applicant and the counsel for the respondent.



A handwritten signature in black ink, appearing to read "A. E. Mwipopo", is written over a horizontal line.

A. E. Mwipopo

JUDGE

30/09/2020