

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

REVISION NO. 358 OF 2020

BETWEEN

MAGOTI MUSIBA MASOTA..... APPLICANT

VERSUS

**CHINA CIVIL ENGINEERING CONSTRUCTION
CORPORATION (CEECC).....RESPONDENT**

JUDGMENT

S.M. MAGHIMBI, J:

The applicant's effort to move the Commission for Mediation and Arbitration for Ubungo ("CMA") to grant condonation of time proved futile when the said application was dismissed. He had referred a Labor Dispute No. CMA/DSM/UBG/28/2020 in which amongst other reliefs, he prayed for condonation of time to refer the dispute. The CMA was not convinced by his reasons for the delay and eventually dismissed the dispute. Aggrieved by the decision, the applicant has preferred this Revision under the provisions of Section 94(1)(a) & (b) and (2)(a) (b) and (c) and 94(1)(b)(i) of the Employment and Labour Relations Act of 2004 and Rules 24(1),(2)(a),(b),(c),(d) and (f) and 3(a)(b)(c) and (d) of the Labour

Court Rules GN No. 106 of 2007. In his Chamber Summons as well as the notice of application, the applicant is moving the court for the following:

1. That this Honourable Court be pleased to call for and examine the record and proceedings of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/UBG/28/2020 with a view to satisfy itself to its legality, propriety and correctness of the ruling thereof delivered on 23rd July, 2020;
2. That upon examining the said record of proceedings, the Honourable Court be pleased to set aside the Ruling of the Commission (Hon. Kazimoto, A), dated 23rd July, 2020 on the following grounds namely;
 - (a) That the Arbitrator erred in law and fact by holding that the Applicant did not adduce good cause for the delay;
 - (b) The Arbitrator erred in law and fact for solely relying on single ground for the delay whilst disregarding other vital grounds for delay adduced by the Applicant as supported by higher Courts' decisions in extension of time

- (c) The Arbitrator erred in law and fact for failing to properly evaluate the evidence adduced by the Applicant in support of reason for delay; and
- (d) Any other order(s) that the Honourable Court may deem fit and just to grant.

The brief background of the dispute is that the Applicant was an employee of the Respondent as a carpenter. The employment relationship lasted from 27th May, 2018 to the 27th September, 2019 when the applicant was terminated by the respondent, a termination which the applicant alleges to be unfair. For some reasons which did not convince the CMA, the applicant delayed in lodging the dispute to the CMA, the dispute was subsequently dismissed upon the applicant's failure to convince the CMA on grounds for condonation hence this revision on the following grounds:

1. That the Arbitrator erred in law and fact by holding that the Applicant did not adduce good cause for the delay;
2. The Arbitrator erred in law and fact for solely relying on a single ground for the delay whilst disregarding other vital grounds for delay adduced by the Applicant a supported by higher Court's decisions in extension of time

3. That the Arbitrator erred in law and fact for failing to properly evaluate the evidence adduced by the Applicant in support of reason for delay;

The application was disposed by written submissions, the applicant's submissions were drawn and filed by Mr. Felix Mtunzi, learned advocate while the respondent's submissions were drawn and filed by Mr. John Remmy, learned advocate.

I have noted that at the CMA as well as here in this revision, the applicant attributes his delay to what he termed to as "sickness and seeking legal advice". On the ground of sickness, the applicant alleged that he fell sick due to nature of work he was engaged with at the respondent company. He was sick between October and December 2019 and attended Temeke Hospital, he attached annexure MM-6 to the affidavit to prove this.

On the issue of "seeking legal advice", the applicant submitted that legal practitioners are expensive as only few people can afford and him being a poor person and financially incapable, it was hard for him to get a lawyer who could help until he found a TLS in December, 2019.

The respondent's argument was that the medical records show that the applicant was attended as an outpatient and he could not establish how this treatment prevented him from approaching the CMA. On the issue of seeking legal advice, the respondent argued that the Act allows a party to appear in person as the word "may" was used in the clauses providing for representation of the applicant. That according to the annex MM-7 to the applicants affidavit, a letter dated 14/02/2020, it did not say whether the applicant was told to wait for lawyers to come back from vacation.

On my part I will base my findings on the provisions of Rule 11(3) of GN No. 64/2007 which requires that for condonation of time to be granted, what the applicant needs to adduce is sufficient grounds for the delay for each day of delay. The rule provides:

(3) An application for condonation shall set out the grounds for seeking condonation and shall include the referring party's submissions on the following: -

(a) the degree of lateness;

(b) the reasons for the lateness;

(c) its prospects of succeeding with the dispute and obtaining the relief sought against the other party;

(d) any prejudice to the other party; and


(e) any other relevant factors

In this application the applicant had two reasons for the delay, sickness and seeking legal advice. The applicant alleged to have been sick between September and December, 2019. Just for the sake of argument let us assume that the applicant was actually sick until December (something which I don't find to be a convincing reason for the delay), the applicant still had another period for making an explanation. The period is between December 2019 when he alleged to have found the TLS and March 2020 when he lodged the dispute at the CMA. The only explanation there is was a letter from TLS (MM-7) a letter which, as correctly argued by Mr. Remmy, is not clear as to when the applicant approached the TLS to seek legal advice. Proper would have been an affidavit from the TLS explaining when the applicant first approached them to seek for legal advice and when he was so granted, not a mere, ambiguous on time approached, reply from TLS. That said, it appears to me that the applicant's move was an afterthought and not a person who was serious to pursue his rights.

On those findings, I see no reason to fault the reasoning in the ruling of the CMA and its final verdict. The application before me lacks merits and it is hereby dismissed.

Dated at Dar es Salaam this 21st day of March, 2022.





S.M. MAGHIMBI
JUDGE