

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

REVISION NO. 47 OF 2022

TANZANIA ZAMBIA RAILWAY AUTHORITY.....1st APPLICANT
ATTORNEY GENERAL2nd APPLICANT

VERSUS

PETER REUBEN MASENGARESPONDENT

(From the decision of the Commission for Mediation and Arbitration at Temeke)

(Ngalika: Mediator)

dated 14th January, 2022

in

REF: CMA/DSM/TMK/170/2021

RULING

29th April & 19th May 2022

Rwizile, J

This court is asked to call for the records in Labour Dispute No. CMA/DSM/TMK/170/2021 decided by the Commission for Mediation and Arbitration (CMA) and revise the same.

Facts of this case can be stated as hereunder, that the respondent lodged a complaint and an application for condonation in the CMA alleging that he was under paid his retirement benefit. The application for condonation was granted and the matter proceeded with mediation. The applicants

were aggrieved by granting of condonation and hence this application. The application was supported by the affidavit of Beatrice Nyangoma Mutembei, Senior Legal Officer of the first applicant which raised the legal issues for revision as hereunder: -

- 1. Whether the CMA was legally proper to grant the application for condonation.*
- 2. Whether the respondent's reasons were sufficient to move the mediator to grant the application for condonation.*
- 3. Whether the CMA properly analysed the parties' arguments in the impugned ruling.*

Both parties were represented. Mr. Elias Mwendwa, State Attorney represented the applicants whereas Mr. Paschal Temba, Personal Representative represented the respondent.

At the hearing, the court was in doubt if granting an application for condonation was not an interlocutory order which is not subjected of revision at this stage. The parties were therefore asked to address the court on the propriety of this application.

Mr. Mwendwa submitted that the application is competent. It does not arise from the interlocutory order as the application for condonation is a complete application. He submitted that the rights of the parties were

determined fully and conclusively. He supported this position by the case of **Tanzania Posts Corporation v Germian Mwandu**, Civil Appeal No. 474 of 2020 and prayed for the application be heard on merit.

Mr. Temba a personal representative for respondent submitted that, this application is based on interlocutory order. He argued that the CMA upon hearing an application for condonation found there were sufficient reasons for delay and so condoned it. Mr. Temba stated further that, after a ruling, the dispute was scheduled for hearing on 27th January 2022 at 11:00hrs. In his view that meant the main dispute is still pending.

He stated that CMA form No. 1 itemised the nature of dispute to be retirement package, salary compensation, pension compensation and inflation compensation. These claims are yet to be decided by the Commission, he added. He therefore asked this court to hold that an application for condonation did not finally determine the dispute. He too, cited the same case of **Tanzania Posts Corporation v Germian Mwandu (supra)** at page 13 and 19 where it is provided that applications of this nature are not appealable. He then prayed for the application to be dismissed.

To re-join, Mr. Mwendwa submitted that the claims before the CMA in CMAF1 are advanced in a separate application. The same he argued,

should not be mixed up with the application for condonation. He insisted that the application for condonation was heard and finally determined and prayed for the application to be heard.

when dealing with the application, I find the relevant provision is Rule 50 of the Labour Court Rules, G.N. No. 106 of 2007, which provides as follows: -

No appeals, review or revision shall lie on interlocutory or incidental decisions or orders, unless such decisions have the effect of finally determined the dispute.

At law therefore, it is as clear as crystal, an interlocutory order is not subject of appeal or revision. The point to determined is whether, an application granting condonation is an interlocutory order.

According to **Black's Law Dictionary**, 10th Ed, at page 938, the term has been defined to mean, *interim or temporary; not constituting a final resolution of the whole controversy*. This definition is in line with the decision of the Court of Appeal, in the case of **Tanzania Posts Corporation v Germian Mwandu (supra)** at page 10 – 11, it was stated as: -

"In our view, what the above definitions entail, is that the orders that do not completely dispose of all issues of law and fact that were presented to the court are interlocutory decisions or orders... Such orders, under the law of this Country are not appealable to this Court..."

In clear terms, the court at page 13 of the judgement had this to say in respect of what was named as the *nature of the order test*,

*"...The test requires answers to more or less two questions... **one**, what were the remedies that were sought... and **two**, were all such rights or remedies conclusively determined...if the answer to question two is that everything at the High Court was finally and conclusively wound up, the decree in revision will be a final decree and the bar at section 5(2)(d) at the AJA will not apply..."*

The record has it that in CMAF.1 the respondent has a dispute with the applicants. The same are not centred on whether or not the respondent had reason for delay. The dispute is about rights upon termination of his employment. In actual sense, his claiming for dues not paid upon retirement. The claims are still pending. The CMA ruling at page 1 was vehement about it;

"Huu ni uamuzi wa maombi ya kutaka shauri lisikilizwe nje ya muda uliowasilishwa na mleta maombi ambapo katika kesi ya msingi analalamikia malipo ya stahiki zake baada ya kustaafu..."

The mediator specifically stated that there is a dispute pending before the CMA. It is therefore clear to me, that an application filed out of time cannot be heard unless, the CMA is satisfied that there are sufficient reasons for delay. That did not in any way determine the rights of the parties. It is therefore not true that application for condonation is suit that stands alone. To be able to appreciate that, one needs to apply Rule 11(2) of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007 which states: -

"A party shall apply for condonation, by completing and delivering the prescribed condonation form when delivering the late document or application to the commission."

This provision proves that the application for condonation goes together with the main application as termed here (the late document or application). For that matter this is clear that the main application was not yet determined. This has been proved by the CMA records which shows that the matter has been pending at mediation stage waiting for this application to be determined. I am therefore bound to hold, that an order

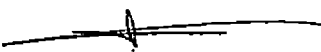
condoning a late application is interlocutory and so not appealable or in this case not subject of revision. To hold otherwise, it is as good as reading rule 50 of the of Labour Court rules, upside down.

Having so held, the remedy to the application of this nature was provided by the Court of Appeal in the case of Generator **Logic v Eli Mukuta**, Civil Appeal No. 272 of 2019, Court of Appeal of Tanzania, it was stated: -

"We need not say more. It is our conclusion that the appeal attempts to challenge an interlocutory decision of the High Court against the dictates of Section 5(2)(d) of the AJA. It is therefore improperly before us so we strike it out, ..."

Based on the foregoing analysis, this application has no merit, it is hereby dismissed. Since this is a labour matter, I order for each party to bear own costs.





A.K. Rwizile

JUDGE

19.05.2022