

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

REVISION APPLICATION NO. 417 OF 2021

BETWEEN

JS ELECTROMECC LIMITED..... APPLICANT

AND

MANSWET MOSHA RESPONDENT

JUDGMENT

*Date of last Order: 13/05/2022
Date of Judgment: 16/05/2022*

B. E. K. Mganga, J.

In June 2012 applicant employed the respondent as Finance and Administration Manager. The employment relationship between the two became sour on 28th August 2020 when the respondent was terminated on ground of misconduct. He thus referred a labour dispute to the Commission of Mediation and Arbitration (CMA). on 18th December 2020 the said dispute was struck out for being incompetent. Thereafter followed several applications for condonation and on 24th September 2021, respondent was granted condonation.

Applicant was aggrieved with the ruling granting condonation to the respondent as a result she filed this application imploring the court to revise and set aside the said ruling on the ground that, the arbitrator erred to grant condonation to the respondent without considering that respondent had no good cause for the delay. The application was supported by the affidavit of Neema Msacky, applicant's Principal Officer. Respondent filed a counter affidavit opposing the application.

When the application was called for hearing, Mr. Mr. John Lingopola, Advocate, appeared and argued for the applicant while Mr. Victor Kessy, Advocate, for appeared and argued for the respondent.

Submitting in support of the application, Mr. Lingopola, criticized the arbitrator that erred to grant condonation while respondent filed the application after 7 days that were granted. He submitted that on 12th April 2021, respondent was granted leave to file the proper application within 7 days. He went on that; respondent did not file within time because filed on 18th May 2021 being 29 days out of time.

Mr. Lingopola submitted further that the arbitrator granted condonation on ground that there was technical delay but failed to consider that respondent filed the application after 29 days after the lapse of the 7 days he was granted. Counsel for the applicant insisted

that orders of the Court need to be respected as it was held in the case of ***John Mwansasu V. Republic, Criminal Review No. 8 of 2000***, CAT (unreported).

Mr. Lingopola submitted further that; respondent has stated that he failed to file the dispute within 7 days as he was waiting to be supplied with a copy of Ruling that granted him condonation. When asked as to whether the said ruling is subject to revision, Counsel for the applicant submitted that, the impugned decision is not interlocutory because it was the only application before CMA hence once concluded, rights of the parties are determined. Counsel went on that the claim by the respondent that he filed the application within time then withdrew and refiled is not correct because respondent was not granted leave to refile. He argued further that Annexure MS2 does not show that respondent was granted leave to refile.

On the other hand, Mr. Victor Kessy, Advocate for the Respondent submitted that, the application for condonation was properly granted by the arbitrator. He went on that application for condonation was granted on 12th April 2021 and the respondent filed another CMA F1 on 19th April 2021 as shown in Annexure M1 to the counter affidavit which was found to be incompetent as per the ruling of CMA dated 11th May 2021.

He further submitted that, on 12th May 2021 he wrote a letter to withdraw CMA F1 filed on 19th April 2021, and thereafter filed another CMA F1 on 18th May 2021. He argued that the new CMA F1 was filed within 7 days from the date of the CMA ruling. In summing up his submissions, he prayed that the application be dismissed because it is intended to deny respondent rights based on technicalities.

In rejoinder, Mr. Lingopola maintained that the CMA ruling was delivered on 12th April 2021 and not on 11th May 2021 and that the same was ready for collection on 11th May 2021.

Having considered the contesting submission of the parties, I find the issue to be determined is whether the arbitrator's order granting condonation was based on sufficient cause.

It is the applicant's counsel contention that, the arbitrator wrongly granted the application of condonation filed by the respondent because respondent had no sufficient cause for the delay and failed to comply with the CMA's order of refilling the dispute within Seven days. This contention was strongly resisted by respondent's counsel arguing that respondent refiled the application in compliance with the CMA order.

Having examined the records, it is undisputed fact that, after his termination on 28th August 2020, respondent timely referred the dispute

before CMA. He filed his CMA F1 on 29th September 2020, which was struck out on 18th December 2020 for being incompetent as it was not signed by the respondent. It is on record also that, on 24th December 2020, respondent filed an application for condonation to file the dispute out of time. This application was found to be incompetent and on 12th April 2021, he was ordered to refile the proper application. According to Annexure M1 to the counter affidavit, respondent filed another application for condonation together with CMA F1 on 19th April 2021. Again, this application was found to be defective as shown in the CMA ruling dated 11th May 2021. On 18th May 2021 respondent filed another application for condonation that granted on 24th September 2021.

It is my view that through these series of applications filed by respondent, he did not sleep over his right as he took actions immediately after the applications were struck out. Therefore, I am in line with the arbitrator that, there was technical delay. It is trite law that technical delay is one of the good grounds for condonation as it held in the case of ***Fortunatus Masha v William Shija & Another, [1997] TLR 154.*** In Masha's case it was held *inter-alia* 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."

In the application at hand, the CMA record shows that respondent timely referred the dispute before CMA and the delay to file his dispute was caused by technical delays as afore discussed. It is apparently clear from records that, respondent took effort and did not sleep over his right. In find no prejudice occasioned to the applicant when application for condonation filed by the respondent was granted.

For the foregoing, I dismiss the application for want of merit. I further order the parties to go back to CMA for the dispute to be heard on merit. It is so ordered.

Dated at Dar es Salaam this 16th May 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 16th May 2022 in the presence of Victor Kessy, advocate for the respondent but in absence of the applicant.



B. E. K. Mganga
JUDGE