

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

REVISION NO. 134 OF 2020

(Originating from Labour Dispute No. CMA/DSM/ILA/969/19)

BETWEEN

EMMANUEL SABUNI APPLICANT

VERSUS

DIAMOND MOTORS LIMITED 1ST RESPONDENT

TIANE AUTOMOTIVE LIMITED 2ND RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J

The applicant was late in referring his dispute to the Commission for Mediation and Arbitration for Ilala ("CMA") and in his CMA Form No. 1; he referred a Labor Dispute No. CMA/DSM/ILA/969/19 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 hence this Revision referred 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 honorable Court be pleased to call for records, revise and set aside the whole award of the CMA on dispute no dated No. CMA/DSM/ILA/969/19 dated 21st February 2020 by Hon. Amos, A (Mediator). On the grounds set forth on the attached affidavit in support of this application.
2. That this Honorable Court be pleased to determine the dispute in the manner it considers appropriate.
3. That this honorable court be pleased to give any other relief it deems fit and just to grant.

The brief background of the dispute is that the Applicant was an employee of the 1st Respondent holding the position of Sales Executive. The applicant voluntarily resigned from his employment with the 1st Respondent after sending his resignation notice via e-mail on 26th July 2019 at 19:43 hours, the 1st respondent did not accept the resignation and asked for a meeting which never took

place. The respondent's reply was on 30th July, 2019. It was not until the 13th December 2019, that the applicant lodged the dispute at the CMA seeking for, amongst other things, a condonation of time. The ground of delay adduced by the applicant was that he was nursing his sick wife and that he was arrested on 07th September, 2019, the grounds which did not convince the CMA hence the dismissal of the application leading to this revision.

Before this Court, although the applicant was represented by Mr. Kheri Kusekwa and Mr. Boniventura Dunda, both learned advocates, the applicants submissions were drawn and filed by the applicant in person. The 1st respondent was represented by Mr. Yiga Joseph who also drew and filed the submissions.

Having considered the records of this application including the records of the dispute, the parties' submissions for and against the application, the following are my findings. It is trite law that in application for extension of time, what the applicant needs to adduce is sufficient grounds for the delay for each day of delay. Rule 11(3) of GN No. 64/2007 provides:-

11(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, one is that he was arrested and was required to report to police subsequent thereto, and two is that he was nursing his sick wife. It is now to see whether these are sufficient grounds to justify the delay.

The applicant submitted that his wife was under bed rest at home while the medical doctor attended her. He attached several medical chits to the affidavit. For this reason, he argued that he could not find time to file a dispute nor hearing anything of the meeting. In reply, Mr. Yiga argued that a delay for 104 day requires more explanation than just saying '*I was nursing my wife who was put on bed rest at home due to health complications*'. That this

explanation would have been a little plausible if it was the Applicant himself who was sick but taking care of the sick cannot suffice as rightly found by the Honorable Chairman. Further that it is incomprehensible that for five (5) months the Applicant was only at home looking after his wife who had been given a bed rest and therefore he could not find any time to fill CMA Form No. 1 and lodge his claim at the CMA, if at all he thought he had a valid claim to make against the Respondents.

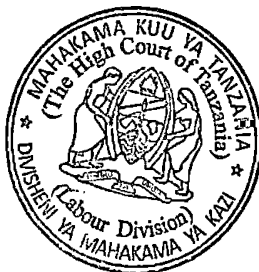
On my part I have also considered the reason for the delay as adduced by the applicant and as held by the CMA, and as argued by the respondent, it is not convincing. It is not very practicable to imagine that owing to his wife's sickness, the applicant did not leave her bedside even for a minute (that is by taking the literal meaning of what the applicant is trying to say). He was in 24/7 watch hence he could not even pick a call and instruct an advocate to lodge the dispute. Even for any reasonable man this explanation is not plausible.

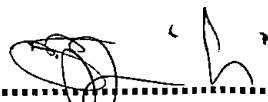
It is well established that in granting the application for extension of time, the courts have to consider several factors

including the reason for delay, the length of delay and the steps by the applicant to ensure that the delay is not inordinate. In this application, all I can gather is that after the applicant tendered resignation, he continued with his life and after 104 days is when he decided to knock the doors of the CMA at his convenience. Unfortunately, a date waits for no man and the computation of the period of limitation got out of his hands because he has no plausible explanation to account for the delay.

That being the case, I see no reason to interfere with the findings of the CMA that the applicant failed to adduce sufficient grounds to warrant the Mediator to exercise its discretionary power to extend time. The dismissal was the right cause to be taken which I hereby uphold. This application is therefore dismissed.

Dated at Dar es Salaam this 28th day of February, 2022.




S.M. MAGHIMBI
JUDGE