

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

REVISION NO. 160 OF 2020

BETWEEN

AGGREY MICHAEL MREMI APPLICANT

VERSUS

MINISTRY OF FINANCE AND PLANNING 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

Having been denied condonation of time, the Applicant has filed this application for revision to ask this court to revise the said of the Ruling of the Commission for Mediation and Arbitration ("CMA"). The application is lodged under the provisions of Section 91(1)(a),(2)(c), 94(1) (b)(i) of the Employment and Labour Relations Act No. 6 of 2004 read together with Rule 24(1),(2)(a),(b),(c),(d),(e) and (f), (3)(a),(b),(c), of the Labour Court Rules, 2007 (G.N. No. 106 of 2007) whereby the applicant is moving this court for the following:

1. That this Honourable Court be pleased to call for the proceedings of the Commission for Mediation and Arbitration Dar es Salaam Zone in Labour Dispute No. CMA/DSM/ILA/947/19 and revise the same and set aside the arbitration award issued by Hon. Mahiza, R.B. – Arbitrator dated 08/04/2020 on ground of the following defects:

- (a) The Ruling made by the Commission for Mediation and Arbitration is illogical and irrational for failure to give serious consideration to the grounds for condonation given by the Applicant under the special circumstances of the case;
- (b) The Commission for Mediation and Arbitration failed to consider as a whole the interrelated grounds for condonation given by the Applicant instead he only labored on accounting for each day of delay which the Applicant had in fact complied with the legal requirement;
- (c) That the Commission for Mediation and Arbitration failed to taste the grounds for condonation given by the Applicant against the provision of the law and cases cited by the Commission and both parties.

2. That the Honourable Court be pleased to made any other orders as may deem fit.

On her part, the respondent opposed the application by filing a notice of opposition pursuant to the provisions of Rule 24(1) of the Rules. The application was disposed by way of written submissions, Ms. Grace Lupondo, learned State Attorney, drew and filed the submissions on behalf of the respondent while the applicant's submissions were drawn and filed by Mr. Anthony Kiyanga, learned advocate. The submissions will be considered in due course of constructing this judgment. First it is pertinent to see the existing facts that have led to this application.

The applicant was recruited by the 1st respondent as a Driver and posted to the Millennium Challenge Account Tanzania (MCA-T) a project under the first respondent. The offer letter is dated 27/12/2007 and the acceptance by the applicant was on 02/01/2008. The contract was for three years renewable for another 2-3 years upon satisfactory performance. The salary of the applicant was to be covered by the MCA-T upon signing a contract to that effect. the applicant worked for the the MCA-T till 17/09/2013 when the tenure of the MCA-T ended and the applicant was transferred to the MCC Compact II Development with a condition that there

will be further arrangements including contract of employment, remunerations and other terms and conditions of employment. According to the applicant, these arrangements were not made and he continued to work for the MCC Compact II Development for 3 years until 31st August, 2016 without any contract or salary but on monthly allowance of Tshs. 840,000/- and in September, 2016 the MCC Compact II Development wound up its business without paying the applicant his accumulated salary. He took several steps to demand the payment in vain. He then approached the CMA with an application for condonation of time which was denied by the applicant hence this Revision on the following legal issues:

1. That, the legal issue that arise from the material facts above is whether there is a good cause for revision of the CMA proceedings and award. The applicant puts forward his grounds for revision as hereunder.

According to the applicant, the cause of action arose on 28/09/2017 when he received a letter from MCC Compact II Development that they were not responsible for his remuneration other than the allowance. The dispute was referred to the CMA on 05/04/2018. The ground of delay are that there were several correspondences between the applicant and the employer which delayed him in lodging the application at the CMA.

On their part, the respondent opposed the application on the ground that there were sufficient grounds adduced by the applicant. Ms. Lupondo submitted that looking at the Applicant's submissions at the CMA and in this Court, you will find that the grounds upon which this application is based are that; the Applicant was busy corresponding with the Government to see how his claim will be settled, there are points of law to be determined regarding the issue of payment of his allowance and also the issue of interrelated factors together with that of his chances of succeeding in his claim. That at page 2 of the Applicant's Notice of Application and in paragraph 9(a) and (b) of the Applicant's affidavit in support of this application, the Applicant mentioned and explained about a chain of correspondences done by him in connection with his claim namely **Annexure A-H** and on such ground he prays for your Court to set aside the CMA decision as a bad decision and consider that ground as a valid reason for his application for extension of time to be granted. She argued that as rightly pointed out at page 13 of the CMA Ruling; though the grant of extension of time is entirely in the Honourable Courts' discretion, Courts have to act judicially, to mean that, the Applicant must adduce sufficient cause or reason for him to be granted with the same. She supported this argument by citing the case of **Kalunga**

**and Company Advocates vs. National Bank of Commerce Limited
[2006] TLR 235.**

She then submitted that, the applicant's ground that he chose to keep on communicating and negotiating with the Government does not exonerate him from liability as the applicant does so at his own risk and the act does not fall under the prerequisite grounds for its grant. She supported this argument by citing the decision of this court in **Civil Case No. 109 of 2005, Makamba Kigome and Gregory Matheyo Vs. Ubungo Farm Impements Ltd and PSRC**, (Unreported) where it was held at page 16 that:

"Negotiations or communications between parties since 1998 did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as a defence when it comes to limitation of time.

Further that the above mentioned Court's wisdom persuaded the Court of Appeal in its decision in the case between ***Consolidated Holding Corporation versus Rajani Industries Ltd and Another, Civil Appeal No. 2 of 2003(unreported)*** a case which was quoted again with that of ***Makamba Kigome (supra)*** at page 10 in the case of ***M/S. P & O International Lts versus The Trustees of Tanzania National Parks (Tanapa), Civil Appeal No. 265 Of 2020, where*** Court of Appeal at Tanga (unreported), held that:

"it is trite that pre-court action negotiations have never been a ground for stopping the running of time"

She then resorted to her argument considering what are stated in the above quoted case alternatively and without prejudice and the fact that the last letter herein annexure H is dated 15th January, 2018 but still the applicant waited until 4th December, 2019 a period of one year and 10 months or that of one year and 6 months as submitted by the Applicant a period which is unaccounted for contrary to what the law requires

This application at hand is one of the few that the court has to go further than just the issue of delay. I must warn myself at this point that the

decision whether or not to extend time is a discretionary one and must be exercised judiciously. For that reason, higher courts on appeal (or in this case revision) must rarely interfere with the court of first instance where the application was tabled. In this case I find that urge to interfere with the decision of the CMA for reasons I shall elaborate.

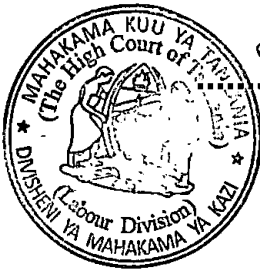
My elaboration of the reasons to vary the decision of the CMA will be best if I start with the case cited by Ms. Lupogo, that of **Makamba Kigome & Another Vs. Ubungo Farm Impements Ltd &Another** (Supra). In the said case, Ms. Lupondo moves to persuade the court to subscribe in the holding of the court that negotiations or communications between parties does not impact on limitation of time. However, much as I fully subscribe to the holding of the court in the cited case, the situations in the two cases are different. While in the cited case the plaintiff was terminated and the cause of action took place on 31/07/1998 when the plaintiff was actually terminated, the current case is not on termination. The issue for consideration is when the cause of action arose. As per the records, the project had come to an end and for the period the applicant was still seeking for clarity as to who was responsible to pay his salary arrears, therefore the cause of action should have arisen from the date that the respondent denied

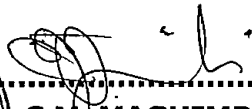
any liability on the said payment. This is found on the letter written to the applicant by the Public Service Commission which although referred the applicant to the CMA, it denied any employment of the applicant with MCC.

I have noted that at his page 12 of his unnumbered ruling, the CMA established the period of delay of one and a half years. With respect this was an erroneous determination since the applicant was in process of seeking to be paid his arrears and had not yet been turned down officially. Therefore if that is the case, then the cutoff point would have been when the letter from the Public Service Commission was issued on 15/01/2018 and the period that the applicant had lodged the previous application on the 05/04/2018 and during its existence would have been taken into consideration. It is trite law that the period within which the applicant has been in the court corridors pursuing his rights should also be taken into consideration and in this case, the CMA should have taken into consideration of that period where the applicant was communicating with the proper authority. It is also worth noting that what the applicant was doing was not negotiating with the employer but rather trying to find which person was responsible to pay him his alleged salary areas.

It is on those reasons that I have decided to interfere with the reasoning of the CMA in dismissing the application for condonation filed by the applicant. And since the Public Service Commission confirmed that the applicant should refer the dispute to the CMA, then he should be given a chance to be heard therein. This application is therefore granted by revising and setting aside the ruling of the CMA in the dispute No. CMA/DSM/ILA/947/19 and granting the applicant the condonation of time prayed. The dispute is remitted back to the CMA to proceed on merits starting with the process of mediation.

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




S.M. MAGHIMBI
JUDGE