

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 43 OF 2021

BETWEEN

BUBERWA JOHN.....APPLICANT

VERSUS

VIETTEL TZ PLC.....RESPONDENT

(From the Ruling Commission for Mediation & Arbitration of DSM at Kinondoni)

(Joyce, L: Mediator) Dated 19th October 2020

in

Labour Dispute No. CMA/DSM/KIN/613/2020

JUDGEMENT

12th May 2022 & 20th May 2022

K. T. R. MTEULE, J.

This Revision application originates from the ruling of the Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/KIN/613/2020 issued by Joyce, L., the Mediator, on 19th October 2020. The Applicant herein, **Mr. BUBERWA JOHN** is praying for the orders of the Court in the following terms:-

1. That this Honorable Court may be pleased to revise and set aside the decision and order of refusal to condone time to refer labour dispute to the Commission for Mediation and Arbitration (CMA), by Hon. Lyimo Mediator, in Labour Dispute No.

CMA/DSM/KIN/613/2020 dated 19th October 2020, at Dar es Salaam.

2. That, this Honorable Court be pleased to make any other order that it consider expedient, in the circumstances, to achieve the objects of the Labour Institutions Act, No. 7 of 2004 and, or the good ends of justice.
3. Costs of this Application be provided for.

A brief sequence of facts which triggered this application are traced from the CMA record, affidavit and counter affidavit filed by the parties. The Applicant was employed by the respondent as a Service Project Manager and Content Service Officer for the yearly fixed term contract from 01st August 2019 to 31st August 2020. Their relationship turned bitter on 12th March 2020 when the Applicant was informed about the decision of the Respondent to terminate his employment. Aggrieved by the decision, the applicants filed Labour Dispute No. CMA/DSM/KIN/297/2020 which was struck out on 16th July 2020 without leave to refile for being defective.

On 29th July 2020 the Complainant in the CMA (the instant applicant) filed another Labour Dispute No. CMA/DSM/KIN/613/2020 together

with the application for condonation. On 19th October 2020 this application was dismissed on the reason that there was no good cause for the delay hence the present application.

Along with the Chamber summons, the applicant filed his affidavit in which after explaining the chronological facts leading to this application as already stated above, alleged that, after being terminated on 12th March 2020 he filed the first application on time, but the same was struck out for being defective. In the affidavit the applicant stated that the arbitrator dismissed his application on reasons of failure to account a delay of two days which according to the applicants were stated to be public holidays. In the affidavit the applicant raised the following legal issues:-

1. Whether the employee failed to adduce sufficient reasons to grant extension of time;
2. Whether the mediator failed to exercise her jurisdiction provided under the law;
3. Whether the said two days of 12th and 13th were public holidays.

The application was challenged through counter affidavit sworn by Allan Charles Sanga respondent's Legal Officer who disputed the fact that the application was struck out due to Applicant's failure to account the two days. According to the Respondent, the Applicant neglected his right to explain the delay, as he did not respond to it leaving the Commission with its hands tied.

The application was disposed of by a way of written Submissions. The Applicant appeared in person, whereas the Respondent was represented by Mr. Maige Sylevester, respondent's Legal Officer. I appreciate parties' rival submissions which will be considered in drafting this award therefore I found no need to reproduce the same. In disposing this application, the issue for determination is **whether the applicants have provided sufficient cause for this Court to revise the CMA decision.**

At the CMA, the mediator did not grant extension of time on the ground that the applicant failed to account for each day of delay. In addressing the disputed issue, I find worth to direct myself to the general principle that, it is a discretion of the Court to grant an application for extension of time upon a good cause shown (See

Tanga Cement Company vs. Jumanne D. Masangwa and Another, Civil Application No. 6 of 2001, Court of Appeal of Tanzania, (Unreported)). In this case it was held:-

"...an application for extension of time is entirely in the discretion of the Court to grant or refuse it. This unfettered discretion of the Court however has to be exercised judicially, and overriding consideration is that there must be sufficient cause for doing so. What amount to sufficient cause has not been defined? From decided cases a number of factors has been taken into account, including whether or not the application was brought promptly; the absence of any valid explanation for the delay; lack of diligence on the part of the applicant."

In advancing legal jurisprudence, the Court of appeal developed some principles in granting extension of time. In the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010, Court of Appeal of Tanzania, at Dar es Salaam, (Unreported), the Court set the following

principles in determination of the application for extension of time:-

- i. " The applicant must account for all the period of delay;*
- ii. The delay should not be inordinate;*
- iii. The applicant must show diligence and*
- iv. reasons, such as the existence of a point of law of sufficient importance not apathy negligence or sloppiness in the prosecution of the action that he intends to take; and*
- v. If the court feels that there are other sufficient grounds such as the illegality of the decision sought to be challenged."*

From the above provision, it is apparent that for someone to be granted with extension of time (condonation), that person must comply with one or more of the principles developed in **Lyamusa's** case (supra). Further guidance on granting of extension of time is given under Rule 11 (3) of the Labour Institutions (Mediation and Arbitration) GN. No. 64 of 2007 for the purposes of the CMA.

Now the question is; did the arbitrator error in refusing the condonation? The applicant blamed the arbitrator for having failed to take note of the public holiday he alleged to have covered the alleged

uncounted 2 days. The record available reveals that the first application with **reference No. CMA/DSM/KIN/297/2020** was filed on 14th April 2020 and the same was struck out on 16th July 2020 after being defective. The last one which is sought to be revised by this Court, was filed on 29th July 2020. Since there was no leave to refile the application after the striking out of the first one, the counting of time shall start from the date when the termination took place to the date when the impugned application was filed. 30 days provided by Rule 10 of GN. 64 of 2007 for filing of an application to challenge fairness of a termination ought to have been counted from 12th March 2020 when the termination took place to 29th July 2020 when the impugned application was filed. From 12th March 2020, 30 days were expected to end on 12th April 2020. During this period, the applicant appeared to have been busy with the two applications where the last one was struck out on 17th July 2020. Until 17th July 2020, the applicant was busy with court processes.

The applicant explained on the existence of the previous applications as being the reasons of delay. This fact is obvious with no dispute taking into account the court processes which were taking place

during this time. The 12 days lapsed between the days when the previous application was struck out to the date when the impugned application was filed.

Although it is an established principle that an applicant seeking for extension of time must account each day of delay, each case must be assessed on its own circumstances. In the instant matter, the applicant was diligent in filing the first application. For a lay person who is unrepresented like the applicant, these twelve days were to be considered as the days of preparing the last or the impugned application.

Being aware of Rule 11 (3) of the **Labour Institutions (Mediation and Arbitration), GN. No. 64 of 2007** the Mediator started to compute time from 12th March 2020 when the applicant was terminated to 14th April 2020 and found that there was a delay of 2 days on the reason that the same ought to have been filed on 11th April 2020. This was one of the reasons which penalized the applicant by refusing condonation. According to **Section 60 (1) (e) and (f) of The Interpretation of Laws Act, Cap 1 R.E 2019** since 11th April 2020 was Saturday, the next two days were easter, these days

are to be considered as excluded days. For that reason, the applicant was right in filing his first application on 14th April 2020. The 2 days the arbitrator held to have been delayed, were well explained by the applicant to have fallen on public holiday hence the arbitrator should not have used them to penalize the applicant. With this explanation, the applicant filed the first application timely.

Since the period of delay was not inordinate, 12 days to prepare the subsequent application was just reasonable. The time when the applicant was busy in court is considered to be covered by the principle of technical delay (See **Fortunatus Masha v. William Shija & Another** [1997] TLR 154) which the arbitrator correctly took into account.

In such circumstance it is my considered view that the mediator erred in law by not considering the nature of delay and the degree of the lateness in determining the labour Dispute No. CMA/DSM/613/2020. For the interest of justice, I grant condonation. I hereby allow this application. CMA decision with reference No. CMA/DSM/KIN/613/2020 is hereby quashed and set aside. The applicant is allowed to file his

dispute in the CMA out of time, within 14 days from the date of this Ruling. It is so ordered.

Dated at Dar es Salaam this 20th day of May, 2022.



KATARINA REVOCATI MTEULE

JUDGE

20/05/2022

Labour Court 12.