

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

REVISION NO. 262 OF 2021

YOHANA T. MDEMU & 3 OTHERS APPLICANTS

VERSUS

FMJ HARDWARE LIMITED RESPONDENT

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

(Chengula, Mediator)

Dated 29th April, 2021

in

REF: CMA/DSM/ILA/778/20

JUDGEMENT

28th July & 16th August 2022

Rwizile, J

The applicants have filed this application asking this court to revise the decision of the Commission for Mediation and Arbitration (CMA).

Facts of this case can be stated that, the applicants were employed by the respondent. On 01st February, 2019, they were terminated verbally without being paid their terminal benefits. They were as well not given certificates of service despite working for the respondent for more than 4 years.

Not satisfied with termination, they referred a dispute to the CMA on 08th February, 2019 claiming benefits due to unfair termination.

Before the hearing commenced, a preliminary objection was raised by the respondent that the name of the respondent is FMJ HARDWARE LIMITED and not FMJ HARDWARE LTD. The arbitrator heard the same and finally struck out the application on 29th November, 2019 with 14 days leave to refile it.

However, the same was filed later with an application for condonation. The same was on 25th May, 2021 dismissed for failure to account for the inordinate delay. This application was therefore filed in protest.

The application was supported by the applicant's joint affidavit. Issues for revision were raised as hereunder: -

- 1. That, the mediator erred in law and fact by relying on issues which were not proposed by both applicants and the respondent during the mediation phase.*
- 2. That, Mediator erred in law for saying that the applicants are late for 326 days while in form CMA No.F 2, 326 are days since filing of the application in time, while the dispute proceeded up to the time it was struck out .*

The hearing was orally made and the respondent was represented by Agness A. Uisso learned Counsel. Mr. Yohana T. Mdemu who appeared for others submitted that they were terminated on 07th February, 2019

and they filed a dispute on 08th February, 2019. Mediation failed and the date for hearing was set on 08th April, 2019. He continued to argue that the matter was for hearing, when the objection was raised about the error of the name of the respondent. This, he added, led the dispute be struck out on 29th November, 2019.

Mr. Yohana continued to submit that the applicants rectified and refiled it. He stated that another preliminary objection was raised that the complainants were different from the former. It was lastly struck out for being out of time. He therefore prayed under section 88(4), 8(a) & (b) of The Employment and Labour Relations Act, [CAP. 366 R.E. 2019] [ELRA] the application be granted.

Challenging the application, Miss Uisso submitted that the applicants have to account for each day delayed. She stated that at the CMA, the application for condonation was heard first after the first applicant's application was struck out. She argued further, the applicants could not show cause and account for each days delayed.

It was her view that the applicants were negligent by spending over 200 days searching for a proper name of the respondent. It was argued that the CMA was therefore right.

She continued to submit that the applicants knew that they were late, that is why they filed an application for condonation in compliance to rule 11(3)(a)(b) of Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007. She stated that the applicant came after one year. In her view, the applicants had to show sufficient cause and cited cases of **Bulyanhulu Gold Mines Ltd v Emmanuel Joseph Demay and Joyce Mtaki** Revision No. 15 of 2019, High Court of Shinyanga and **Patrick John Butabile v Bakhresa Food Products Ltd**, Civil Appeal No. 61 of 2019 at page 9, Court of Appeal of Tanzania at Dar es Salaam. She prayed; the application be dismissed.

In a rejoinder, Mr. Yohana submitted that the delay was only for 13 days as the dispute was dismissed on 29th November and refiled on 13th December, 2019.

After going through the submissions of the parties, the Court has to determine *whether CMA was right to hold that the dispute was time barred.*

I have to note here that under Rule 31 of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007, the Commission may condone any failure to comply with the time frame on good cause.

The mediator stated that the reason for dismissal of the dispute is because the applicants failed to account for each day delayed from when the dispute arose on 01st February, 2019, to the day of filing the dispute which is 16th October, 2020, at page 2 of the ruling, it was stated;

"Mgogoro ulitokea tarehe 1/2/2019, maombi yameletwa tarehe 16/10/2020 siku 577 mwaka na miezi Zaidi ya saba. Kuna siku nyingi hapo Zaidi ya 200 ambazo hazijatolewa maelezo yeyote. Uchelewaji hata wa siku moja tu unatakiwa utolewe maelezo. Ili kuruhusu maombi uchelewaji usiwe wa kupita kiwango, siku 577 ni nyingi"

Further, the mediator stated that the applicants were negligent for filing the dispute in failure to observe rule 29 of GN 64 of 2007, it was held;

"Msingi nwingine ni kuwa, kuliwepo na uzembe mkubwa, mlalamikaji alishindwa kumwelewa mwajiri wake na jina la kampuni ndipo shauri likaondolewa, pia mleta maombi alishindwa kuleta representative suit ikaondolewa na mheshimiwa Kalinga pia hawakufuata Rule 29 ya GN 64 ya mwaka 2007 kiapo hakikuwa sawa, shauri liliondolewa. Waleta maombi wamefanya uzembe mkubwa na shauri liliondolewa zaidi ya mara 3."

On the first point in dismissing the dispute, it has been found that there is only one CMAF1 dated 16th October, 2020. It shows, the application

was filed on the same day by the applicants. But going further on the records attached, there are two rulings of the same parties, one dated 29th November, 2019 which struck out the application for improperly citing the respondent's name that: -

"Respondents herein as an employer of the applicant herein too, submitted that her rival herein has failed in citing her name as registered in the office of Register of company name, where she was registered as FMJ HARDWARE LIMITED but an applicant sued her as FMJ HARDWARE LTD"

The CMA then held as follows;

"From that outset I believe I am right to strike the dispute at hand, due to an applicant herein sued the wrong entity..."

Secondly on 09th October, 2020, it struck out the dispute but with leave of 7 days to the applicants to refile it if needed to do so. This last ruling is the one impugned.

In all, there were several preliminary objections, but none of them was about time limitation. For that matter, the Court believes that the applicants were in time when filling the dispute at the CMA. Further, it is clear that the applicants were in the corridors of the CMA fighting for their rights.

In the case of **Amani Girls Home v Isack Charles Kanela**, Civil Application No. 325/08 of 2019, Court of Appeal of Tanzania at Mwanza in pages 9,10 and 11, was held that: -

"Regarding the days of delay, the applicant indicated in paragraphs 10,11 and 13 of the supporting affidavits that she was very active in the court's corridors making follow up of this matter without any sign of negligence; as a result, time was lost while in court corridors. As demonstrated herein above, it should be noted that the decision against which the applicant intends to challenge was delivered on 26th February, 2014 and her first appeal was struck out by the court on 26th March, 2016. Thereafter, she filed an application for extension of time but the same was struck out on 27th October, 2017 for being incompetent. On 13th May, 2019 her second application for extension of time was dismissed. The current application was filed on 18th July, 2019. At last, the certificate of delay was issued excluding the days from 14th May, 2019 when the applicant requested for the copy of ruling to 15th July, 2019 when she was notified that the documents were ready for collection. It is undisputed fact the instant application was filed on 18th July 2019, two days after the applicant being

notified that the ruling was ready for collection. ... However, circumstances of the current application are different as the applicant was not idle but all along has been in court corridors tirelessly pursuing the intended appeal. ... Therefore, I am satisfied and it is my finding that the applicant has been able to show good cause warranting extension of time."

As stated before, the applicants were in the corridors of the CMA, it was not proper for the arbitrator to hold that the applicants were out of time for more than 500 days.

From the forgoing findings, I find the application to have merit and it is hereby granted. The ruling of the CMA date 29th April 2021 is hereby quashed and orders set aside. The record to be remitted to the CMA to be heard on merit. As this is a labour matter, I order each party to bear own costs.




A.K. Rwizile

JUDGE

16.08.2022