**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 113 OF 2021**

**SAUDA MUHIDIN AND 2 OTHERS ..... APPLICANT**

**VERSUS**

**PREMIUM INGREDIENTS LIMITED ..... RESPONDENT**

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

(Abdallah: Mediator)

dated 10th September, 2019

in

**REF: CMA/DSM/ILA/443/2019**

**JUDGEMENT**

19th August & 31st August, 2022

**Rwizile, J**

The applicant asked this Court to revise, quash and set aside the ruling of the Commission for Mediation and Arbitration (CMA) and to grant reliefs this Court may deem fit and just to grant.

Facts of the case albeit brief can be stated that, sometimes on 07th January, 2018 the applicants were employed by the respondent unspecified period contract with the salary of TZS 150,000.00 per month each. On 18th February, 2019, they were suspended pending investigation

for allegation of causing loss to the respondent. on 12th April, 2019 they received a termination letter dated 18th February, 2019.

Aggrieved, they filed a labour dispute applying for condonation. The matter proceeded exparte and was dismissed for want of sufficient cause. The applicants were however not satisfied with the decision of the CMA, hence this application.

The application was supported by the applicant's affidavit sworn by Sauda Muhidin, applicant's representative. The counter affidavit of Vicent Nyingi, the respondent's Country Manager opposed the application.

In the affidavit supporting this application the following grounds for the revision were raised: -

i. *That honourable mediator erred in law for delivering the contradictory ruling by holding that the condonation application filed by the application was out of time contrary to rule 10 of the Labour Institutions (Mediation and Arbitration), Rules G.N. No. 64 of 2007.*
ii. *That honourable mediator erred in law for failure to appreciate that the applicants clearly complied with the requirement of rule 11(3)(a)(b)(c)(d) and (e) of G.N. No. 64 of 2007 and the said condonation application did not prejudice the respondent in sense*

*that the respondent did not contest the application by filing the notice of opposition nor the counter affidavit.*

iii. *That honourable mediator erred in law for failure to appreciate that it was illegal to suspend the applicants and terminate the applicants on the same day, 18th February, 2019 without giving the applicants the opportunity and right to be heard before their termination.*

iv. *That honourable mediator erred in facts for failure to appreciate that the applicants had good reasons for being granted condonation application on reasons that they were terminated on 18th February, 2019 without being informed and they were informed about their termination on 12th April, 2019.*

Mr. Selemani Almasi, learned Advocates appeared for the applicant, whereas the respondent was represented by Mr. Praygod Jimmy Uiso, learned Advocate.

Mr. Almasi submitted that an application for extension of time has to be granted upon sufficient cause for delay to be shown. He supported his point by citing the case of **Lyamuya Construction Company Limited v Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported).

He stated further that the applicants' reasons for delay were because they were terminated on 18th February, 2019 and were informed about their termination on 12th April, 2019. According to him, the applicants were suspended pending investigation on the allegation of causing loss and later received a letter for termination on the same date of the suspension letter.

To him, suspension and termination were on the same day. But the CMA denied the application for condonation for not having established the reason for delay. He cemented his submission by citing the case of **Maleza Security Service Ltd v Samson Andrew** [2013] LCCD No. 03 which held that time that was delayed shall not be excluded from computation of time.

Mr. Almasi submitted that what was established in **Lyamuya Construction** (supra) was adhered to by the applicant.

The applicants, he added, had accounted for the period delayed and acted promptly after noting that they were out of time.

He continued to submit that; illegality occurred. He stated so because the applicants were suspended and terminated on the same day (18th February, 2019). They were also, he lamented, not given time to be heard contrary to article 13(6)(a) of the Constitution of the United Republic of

Tanzania. He cited the case of **The Principal Secretary, Ministry of Defence and National Service v Devram P. Valambhia** [1992] TLR 185 where it was held that illegality amounts to sufficient cause for extending time.

In reply, Mr. Uiso submitted that the law is clear on application for condonation. The applicant has to show good reasons for delay, and explain his degree of lateness. In his view, the applicant did not adduce any evidence to prove his delay. He stated that the applicants were terminated on 18th February, 2019 and filed a dispute at CMA on 24th May, 2019. He continued to argue that the applicants failed to account for each day delayed.

He stated further that, the applicants alleged that they were served with termination letters on 12th April, 2019 but still failed to account from 18th February, 2019 to 24th May, 2019 when they filed a dispute at CMA. To support his point, he cited the case of **Philipo Katembo Gwandumi v Tanzania Forest Services Agent and Permanent Secretary Ministry of Natural Resources and Tourism**, High Court at Dar es Salaam, Revision No. 891 of 2019.

Mr. Uiso submitted further that, the applicants failed to account for more of 67 days and did not give good reasons for delay. In his view, the law of limitation is there to ensure parties do not come to Court when they choose to do so. Thus, he held the view, parties were bound to abide by rule 10(1) of Mediation and Arbitration Rules, G.N. No. 64 of 2007. He then prayed for the application to be dismissed. In a rejoinder, Mr. Almasi reiterated his submission in chief.

After perusal of submissions by both parties, I find it appropriate to determine *if there were no sufficient reason to grant condonation to the applicants.*

The law is clear under rule 10(1) of G.N. No. 64 of 2007 that, the dispute about a fairness termination of employment has to be referred to the Commission within thirty days from the date of termination or the date that the employer made a final decision to terminate or uphold the decision to terminate. For late filing, the applicant is to file a labour dispute with an application for condonation. This has been provided for under Rule 11 of G.N. No. 64 of 2007.

In application for condonation, one has to state sufficient reason for delay and also to account for each day delayed as governed by rule 31 of the

Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007 that: -

> *The Commission may condone any failure to comply with the time frame in these rules on good cause."*

In the case of **Wambura N.J. Waryuba v The Principal Secretary Ministry for Finance and Another**, Civil Application No. 320/01 of 2020, it was held: -

> *"... it is essential to reiterate here that the Court's power for extending time... is both wide-ranging and discretionary but it is exercisable judiciously upon cause being shown."*

And also, in the case of **Juma Nassir Mtubwa v Namera Group of Industries Ltd**, Revision No. 251 of 2019, High Court at Dar es Salaam (unreported) that: -

> *"It is a principle of law that, in any application for extension of time the applicant must account on each day of his delay. The reason that, in whole 68 months he was waiting for his employer to call him back after production increase cannot stand as a good cause for condonation. It is apparently showing lack of diligence and seriousness on his part."*

The applicants stated before the CMA, they were suspended on 12th April, 2019 until when they were called to be served with termination letters. According to them, after termination, there was a promise by the respondent that after being terminated, they will be paid their dues. As the matter was held exparte at CMA, the respondent had no chance to testify. But in going through evidence tendered as exhibit 1, which are suspension letters and Notice of Termination, it is evidenced that suspension letter was served to the applicants on 18th February, 2019 and termination letter was served to them on 12th April, 2019. It is evident further that the application at CMA was filed on 31st May, 2019.

As the law of filling dispute at CMA requires, the applicants were late to file their dispute from the day they received their termination letters, for 49 days. They stated that they were waiting for the employer (respondent) to pay their dues.

The applicants also have stated another reason to be illegality. They stated that the employer's decision is tainted with illegality. That the date they were given suspension letters is the same day the termination letters were issued. In the case of **Lyamuya Construction Company Ltd v Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 02 of 2010. The court laid down principles warranting to extension of time. It was held that: -

1. *The delay should not be inordinate*

2. *The applicant should show diligence and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take;*

3. *If the Court feels that there are other sufficient reasons such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged.*

Going through evidence tendered, which are both exhibit D1, it is clear to me that the letters were issued in the same day, that is suspension and termination. It is clearly seen from the above that the two documents tendered raise an indicator that parties needed a hearing.

That being the case, I consider the applicants to have delayed to file their application, but delay was not inordinate. Therefore, the application has merit. The CMA ruling dismissing the application for condonation is quashed and orders therefrom set aside. It is ordered that the matter should be remitted to CMA for the hearing of the application on its merit. As this is the labour matter, no order as to costs.

**A. K. Rwizile**

**JUDGE**

**31.08.2022**