

IN THE HIGH COURT OF TANZANIA

AT DAR-ES- SALAAM

LABOUR REVISION NO. 132 OF 2021

*Arising from the Commission for Mediation and Arbitration of Dar es Salaam, Temeke in
Labour Dispute No. CMA/DSM/TEM/398/2020 of 3rd Day of February 2021*

JOHN NICHOLAUS KIMWAGA.....APPLICANT

VERSUS

LAKE OIL LTD.....RESPONDENT

JUDGMENT

K. R. Mteule, J

17TH August 2022 & 1 September 2022

This is an Application for revision seeking for this Court to call for and examine and revise an award of the Commission for Mediation and Arbitration dated on 3rd day of February 2021 in Labour Dispute No CMA/DSM/TEM/398/2020 for the purpose of determining the correctness, legality or propriety of its decision and propriety of the award therein. This Application is supported by the affidavit of John Nicholas Kimwaga, the Applicant which is trying to disclose good reasons for extension of time.

The Applicant was employed by the Respondent. On what the Applicant claimed to be unfair termination, the Labour Dispute No CMA/DSM/TEM/398/2020 was filed in the CMA accompanied with

application for condonation. In support of the prayer for condonation, the applicant adduced the reasons that the respondent had some promises which were never fulfilled, and that the applicant was still sick attending to hospital hence failed to refer the dispute within time. His application for condonation was dismissed for Applicant's failure to account each day of delay.

It was on this background this application for revision has been preferred seeking for the court to set aside the ruling of CMA and to grant the prayers in the chamber summons. The grounds advanced for the revisions are as paraphrased hereunder: -

1. Whether the mediator was correct to disregard the Applicant's reasons for the delay.
2. Whether the Mediator was proper to decide the labour dispute No. CMA/DSM/TEM/398/2020 instead of labour dispute No. CMA/DSM/TEM/426/2020.
3. Whether the Mediator was correct in law and in fact by failure to evaluate the evidence tendered by the applicant.

The Respondent was duly served with the Notice of Application and filed a Notice of opposition with a counter affidavit which was disputing all the material facts of the affidavit. However, despite of being served, the

Respondent never appeared in court hence the court allowed hearing of the matter ex-parte by a way of written submission.

The Applicant's submissions were drawn and filed by Sadock George Mkunzi, the Applicant's persona representative. During the submission, Mr. Mkunzi abandoned grounds number 2 and proceeded to submit on ground number 1 and ground number 3.

On ground number one as to whether the mediator was correct to disregard the Applicant's reasons for the delay, Mr. Sadock stated that the applicant testified that he was sick according to the injury he encountered which caused him permanent incapacity and that he tendered medical certificate to prove it. According to Sadock, the applicant's reasons were sufficient to warrant condonation but the mediator disregarded. He quoted the words of the arbitrator stating at pg 3 of his ruling

"Hivyo ninaamini sababu ya ugonjwa ilivo msababisha mlalamikaji kushindwa kufungua mgogoro ndani ya muda inatakiwa kuonyesha kuanzia tarehe alipofukuzwa kazi na siyo siku za nyuma kabla ya kuachishwa kazi".

In Sadock's view this reason which cannot be considered as a reason to dismiss the application for condonation.

Mr. Sadock blamed the arbitrator for having disregarded the illness which caused permanent incapacity to the Applicant. He cited the case of Mwana Mohamed vs. Ilala Municipal Council, Misc, Land Case Application No. 12 of 2020, High Court Land Division, Kalunde J at page 5 which referred to the case of Uganda of Kibuuka vs. Uganda Catholic Lawyers Society & 2 Others (Misc. Application No. 696 of 2018) [2019] UGHCCD 72 (11 April 2019) quoting the following words:- ,

"A party could have been feeling unwell and opted to rest and or took simple medication to feel better. It is not a requirement of the law that whenever a person is ill he/she must produce medical documents in proof of sickness or illness.... Under Order 19 rule 3 of the Civil Procedure Rules, in applications like the present one an affidavit may contain evidence of this nature to prove sickness or illness."

Guided by the above words Mr. Sadock is of the view that the applicant's medical report supported by his affidavit is enough to demonstrate the applicant's illness of which the court should consider.

With regards ground No. 3 asserting the Mediator's failure to evaluate the evidence tendered by the applicant, Mr. Sadock is of the view that if the mediator could have properly analysed the evidence and documents tendered, he could have known that the applicant had good reasons and

he could grant extension of time as prayed, failure of which rendered illegality of which he prayed for this Court to correct.

Mr. Sadock raised an issue of illegality. However, it was not one of the grounds or legal issues stated in the affidavit. This being the case, I did not see the reason to dwell on it.

From the Applicant's submission, the issue before this court is whether it was proper for the arbitrator to deny condonation to the Applicant. Whether illness constitute a reason for such condonation is not an issue. In the CMA, the Arbitrator was of the view that there was no sufficient explanation that the illness could cover an account of all the days of delay.

I have explored the whole scenario of the matter in the CMA. The Applicant produced medical reports which indicated that he was under rehabilitation to regain ambulating function. This was supported by the sworn statement of the Applicant that he sustained permanent injury and incapacity.

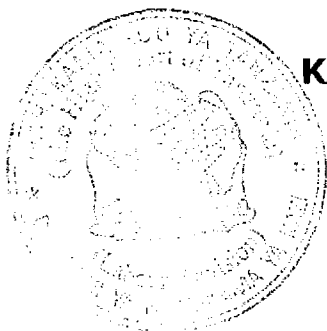
It is an established principle that illness is a good cause to grant extension of time. (See **Christina Alphonse Tomas (as Administratrix of the late Didas Kasele) versus Saamoja**

Masinjiga, CAT-Civil Application No. 1 of 2004; John David Kashekya versus The Attorney General, CAT-Civil Application No. 1 of 2012 (unreported); and Richard Mlagala & 9 Others v. Aikael Minja & 3 Others, CAT- Civil Application No. 160 of 2015 (unreported)).

From the medial history, it appears that the applicant had a continuous incapacity which kept him on rehabilitation to regain ambulating function. This means he was unable to walk. In my view, this kind of illness needed to be considered by the arbitrator as a reason to extend the time. I therefore differ with the arbitrators finding and find the Application with merit.

Consequently, the Application is allowed. The arbitrator's decision in Labour Dispute No. CMA/DSM/TEM/398/2020 is hereby set aside and replaced with an order to grant extension of time to the Applicant for the determination the labour dispute out of time.

Dated at Dar es Salaam this 1st September 2022



KATARINA REVOCATI MTEULE

JUDGE

01/09/2022