

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

REVISION NO. 18 OF 2022

SUSANTA JAGDISHI CHANDRA DAS APPLICANT

VERSUS

WILD AFRICA LIMITED T/A

MANYARA WILDLIFE SAFARI CAMP RESPONDENT

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

dated 17th December, 2021

in

REF: CMA/DSM/ILA/343/2021

JUDGEMENT

28th August & 07th September, 2022

Rwizile, J

The applicant asked this Court to call for records of Commission for Mediation and Arbitration (CMA), and revise the ruling dated 17th December, 2021

Briefly, facts of the cases can be stated, that the applicant was employed by the respondent in a fixed term contract of two years. He was working as a camp manager with the salary of USD 2,000.00

The contract was renewed by default from 31st December, 2019 to 30th December, 2021. Following the eruption of covid 19, in March, 2020 the applicant was not paid his salaries until in July, 2020.

On 25th July, 2020, the applicant was forced to take leave with the promise from the respondent of being paid his salaries through his Indian bank account. The applicant had hopes of being paid because his employment contract was still subsisting. The promise was never fulfilled.

On 24th August, 2021 the applicant filed a labour dispute at CMA for condoning late application. The decision was not in his favour. The applicant on that reason preferred this application. The application is supported by the applicant's affidavit advancing the following grounds for revision;

- i. That, the honourable mediator grossly erred both in law and facts in holding that there was no good cause shown for the delay, while it had noted with concern, that the employment relationship went sour following the pendency of global pandemic of covid 19, that had direct bearing and impact upon individuals, families and nations following strict restrictions that were imposed in efforts to combat the same.*
- ii. That, the mediator grossly misdirected herself in holding that there was negotiation between the parties herein which would not have prevented applicant to prefer the dispute to the commission, while payment of salaries is not subject to negotiations but rather it is contractual obligation of the employer of which applicant was only*

demanding that it may be implemented as long as the employment contact was not terminated.

iii. That the mediator grossly erred both in law and facts in that she failed to appreciate the fact that, an employee's salary goes to the root and basis of the Pendency of the employment contract, which ought to be considered in the light of the rights to work as a human right.

Mr. Mrindoko, learned Advocates appeared for the applicant, whereas the respondent was represented by Mr. Shalom Samwel Msakyi, learned Advocate.

Mr. Mrindoko submitted that the applicant had his reason for delay which the CMA had to consider. He stated that the applicant was in India due to corona in 2020 and there was a lockdown. For that matter, he stated that the applicant could not travel from India to Tanzania to file his application in time.

He continued to argue that as the affidavit stated, the applicant was not paid salaries because of the promises from the respondent. In his view the applicant had no alternative to come to Tanzania to file a dispute. For him that was a proper reason for the delay. He then prayed for the application to be granted.

Mr. Shalom, in reply submitted that rule 31 of the Labour Institutions (Mediation and Arbitration Guidelines) G.N. No. 67 of 2007 allows the CMA to extend time if there were reasons to do so. According to Mr. Msaki, covid 19, has been pleaded as the reason but it has not been proved that the applicant was prevented by it. He added, there is no evidence to prove that the applicant was really in India. After all, he said, the applicant was not prevented from filing his application on line.

Mr. Shaloom strongly submitted that at CMA, it was proved that the applicant terminated his employment contract and handed over the office on 25th July, 2020. In his view, filing a dispute at CMA on 27th September, 2021, did not provide any account for delay and so referred the case of **Karibu Textile Mills Limited v Commissioner General, Tanzania Revenue Authority**, Civil Reference No. 21 of 2017, Court of Appeal of Tanzania at Dar es Salaam.

Mr. Shalom submitted that there was no negotiation between the parties which forced promises. That, it was his argument, is not a reason for extension of time. To support his point, he cited the case of **Messi Rogers Kimei v Motel Sea View**, Labour Division No. 14 of 2013. He then prayed for the application to be dismissed.

In a rejoinder, Mr. Mrindoko submitted that electronic filing does not apply at CMA. That the handing over was due to leave and not termination. He then reiterated what he has submitted in his submission in chief.

After perusal of submissions of both parties, CMA proceeding and exhibits the Court finds one issue to determine which is *whether CMA was right to hold that there was no sufficient reason for condonation.*

The law allows disputes or late referrals to be preceded by application for extension of time as under Rule 11 of G.N. No. 64 of 2007. But in doing so, the applicant has to state sufficient reason for delay and account for each day delayed. This is the position under rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007.

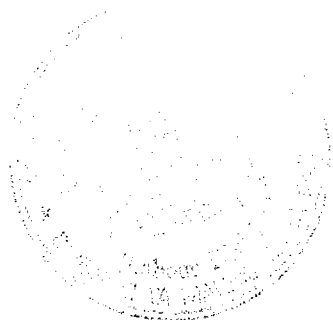
Upon going through the records, I have found nothing that would suggest, there were promises of the applicant to be paid his salaries.

As well, there is no evidence to prove that the applicant was in India. There is no doubt that Covid-19 took the world by its arms in the given period. The applicant was therefore to prove that he left the country for leave and was stuck in India. He ought to show atleast the date he left and came back.

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) where it was held that: -

"It is 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."

Further, based on CMAF1, the applicant stated that the dispute arose on 07th June 2021. But in applying for condonation, he states a degree of lateness as 11 months, while the application was filed on 24th August, 2021. I think the applicant did not only make self-confusion, he also confused the Commission or attempted to do so. since, it is the duty of the applicant to prove he had good reasons for delay. I hesitate to hold, that the duty was fully discharged. This court, like the CMA, finds no merit in this application. It deserves a dismissal, as I hereby do. No order as to costs.





A.K. Rwizile

JUDGE

07.09.2022