

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

REVISION NO. 175 OF 2021

FESTO SAMWEL MKUBO APPLICANT

VERSUS

TURU SECURITY GUARD LIMITED RESPONDENT

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

(Lemwely: Mediator)

dated 09th September, 2018

in

REF: CMA/DSM/ILA/R.161/18

JUDGEMENT

15th August & 01st September, 2022

Rwizile, J

FESTO SAMWEL MKUBO asked this Court to revise and set aside the decision of the Commission for Mediation and Arbitration (CMA).

It was alleged that the applicant was the employee of the respondent between 12th November, 2013 to 10th April, 2017. His termination occurred on 01st April, 2017. He was not satisfied by termination, he then

filed an application at CMA out of time. His application was dismissed. He was not satisfied, hence this application.

The application is supported by the applicant's affidavit raising the following grounds;

- i. That the main ground of the ruling by hon. Lemwely, D is before traveling to Arusha on the 10th day of April 2017, there were 9 days between 1/4/2017 and 10/4/2017 would been used by the applicant to file his application.*
- ii. This actually is wrong as we would say, the plain and clear meaning of the ELRA, is that, the limitation of 30 days begins to run against the applicant after the decision (termination letter) served on the applicant, because it is not open to the victim (the applicant) to know if he is aggrieved with the decision/termination letter unless it is served to the applicant.*
- iii. The mediator, did not consider properly both, the degree of lateness and the prospects of succeeding with the dispute and obtaining the relief sought against the other party contrary to the requirement of law.*

Both parties were represented. Mr. Thomas Vedastus, Personal Representative appeared for the applicant, whereas the respondent was represented by Mr. Castro Rweikiza, learned Advocate.

Mr. Thomas submitted that the applicant was late to file a labour dispute at CMA because he had a sick mother. When it was filed, the application was dismissed for being filed by using outdated forms on 29th January, 2018. Another application was filed and denied for failure to account for 9 days from 01st to 09th April, 2017. He argued further that, the applicant was given a termination letter on 10th April, 2017 which was dated 01st April, 2017 against section 19 of the Law of Limitation Act. In his view the applicant was not out of time, he could not have accounted for the delay.

In reply, Mr. Castro submitted that the applicant failed to show reasons for delay and also could not account for days delayed. He stated that the applicant was terminated on 01st April, 2017 according to the pleadings. He strongly stated that from 01st April, 2021 to 10th April, 2021 was out of the city. He came back to Dar es Salaam on 29th April, 2017 and filed the application on 11th May, 2017. For him, it is 10 days from the alleged day, he failed to account for 19 days.

It was further said, there is no record to show or prove the termination letter was backdated. Mr. Castro was clear that, the applicant had admitted to have been in delay of one day, which as well, it must be accounted for. To support his point, he cited cases of **Joseph Paul Kyauka Njau and Catherine Paul Kyauka Njau v Emanuel Paul Kyauka Njau and Hiacintha Paul Kyauka Njau**, Civil Application No. 7/05/2016, Court of Appeal of Tanzania at Arusha and **Khatibu Mwinyi and Another v Liberty Industries (T) Ltd**, Revision No. 459 of 2019, High Court at Dar es Salaam. He finalized by praying for the application to be dismissed.

In a rejoinder, Mr. Thomas submitted that there is no evidence to show the letter was served on the day specified and that the issue is the right to be heard. He prayed, the application to be granted.

After perusal of submissions by both parties, I have to determine *whether the applicant demonstrated sufficient course for delay before the CMA, to be granted a condonation.*

I have to say here that under rule 10(1) of Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007, the dispute about fairness of 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.

Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007 provides that in an application for condonation, the applicant has to state sufficient reason for delay and also to account for each day delayed.

The applicant stated that he got his termination letter on 10th April, 2017 which was dated 01st April, 2017. He stated that on the same day, he got news that his mother was sick, he went to Arusha to attend her until on 29th April, 2017 when he returned to Dar es Salaam. On 30th April, 2017, he went to the CMA and was told how to file an application. He filed it on 11th May, 2017. The application was dismissed on 29th January, 2018 for being filed in the out-dated form. He then filed another application on 01st February, 2018 of which he was not granted condonation.

In going through CMA records, evidence presented. One of the pieces of evidence being termination a letter dated 01st April, 2017, and the second being return bus tickets showing the applicant travelled to Arusha. There was no evidence proving his mother was sick. The tickets only show, the

applicant travelled to Arusha. The reasons for travelling were only stated, without proof.

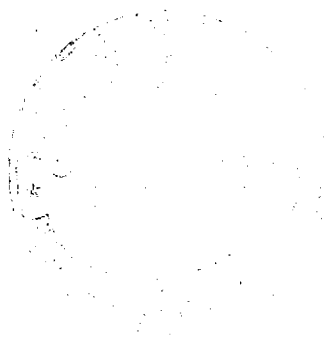
From the termination date on 01st April, 2017 to the date the applicant filed the first application time had already elapsed.

The ticket shows, he came back to DSM on 29th April, 2017 and the application was filed on 11th May, 2017. There was a delay of at least 30 days.

In the case of **Daudi Haga v Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal of Tabora, (unreported) it was held that:

"A person seeking for an extension of time had to prove on every single day for delay to enable the Court to exercise its discretionary power."

From the foregoing, this court finds, this application to have no merit. It is therefore dismissed with no order as to costs.




A.K. Rwizile

JUDGE
01.09.2022