

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

**REVISION NO. 427 OF 2021**

**BETWEEN**

**JOHN BARTON SIMCHIMBA ..... APPLICANT**

**VERSUS**

**KENYA KAZI SECURITY (T) LTD ..... RESPONDENT**

**JUDGEMENT**

**S. M. MAGHIMBI, J.**

The applicant filed the present application to challenge the award of the Commission for Mediation and Arbitration for Kinondoni ("CMA") in Labour Dispute No. CMA/DSM/KIN/131/21 dated 15/10/2021. At the CMA, the applicant prayed for condonation to file claims of medical care. His application for condonation was dismissed at the CMA for his failure to adduce sufficient cause for delay. Dissatisfied by the CMA's decision, the applicant filed the present application raising the following issue: -

- i. Whether the Mediator was legally correct for failure to consider the grounds and evidence adduced before her as the reason for delay to file the dispute within the prescribed limits.

The application proceeded by way of written submissions. Before the court the applicant appeared in person, unrepresented whereas Mr. Hassan Mwemba, Learned Counsel was for the respondent.

I appreciate the comprehensive submissions of both parties which shall be taken on board in due course of constructing this judgement. As per the records, the applicant's reason for the delay was that he was sick and getting medical treatment at Muhimbili National hospital. The records indicate that the applicant intends to claim medical treatment following an accident in form of an electric shock occurred on 20/02/2017. The applicant deponed in his affidavit that from the date of the incident, he was hospitalized at Muhimbili National Hospital. He stated that on 18/04/2017 the respondent instructed him that he should be treated under the Workers Compensation Fund ("WCF") and that on 12/09/2018 the WCF instructed the respondent that he is not concerned with the applicant's treatment. Therefore, from 18/04/2017 to the date when the applicant filed the application at the CMA on 27/05/2021; the respondent had abandoned the applicant's treatment.

In the referral form (CMA F1) the applicant indicated that he prayed for medical care refund. On the other hand, the time limit for filing disputes at the CMA is governed by Rule 10 (1) of GN 64/2007 which provides as follows: -

*"Rule 10 (1) Disputes about the fairness of a employee's termination of employment must 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.*

*(2) all other disputes must be referred to the Commission within sixty days from the date when the dispute arise."*

In the instant matter, since the applicant's dispute was on payment of medical care it is crystal clear his claim falls under Rule 10(2) of the Code. Thus, the applicant was supposed to file his dispute within 60 days from the date of the incident on 20/02/2017. As stated above, the applicant alleges that he was instructed by the respondent to seek medical care from WCF though there is no any evidence on record to prove such fact. Even if the court would believe such fact, the applicant also alleges that on 18/04/2017 the workers compensation fund instructed him that they are not responsible for his medical treatment. Thus, the applicant was bound to adduce sufficient reasons for the delay from 18/04/2017 to the date he filed this application at the CMA on 27/05/2021.

It has been decided in a range of decisions that the powers to grant condonation is basically the discretion of the court and the powers

to do so has to be done judiciously and upon sufficient cause being shown. What amounts to sufficient cause has been defined in numerous decisions including the case of **Arisony Gilman v. A to Textile Mills Ltd, Labour Division, Arusha, Revision No. 06/2013** (unreported)

*"What amounts to sufficient cause has been defined from decided cases, a number of factors has to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for the delay, lack of diligence on part of the applicant."*

As alluded earlier, the reason for the delay in this application was attendance of medical treatments at Muhimbili National hospital. At the CMA the applicant attached a medical report from the mentioned hospital to prove that he had been treated therefrom. The first medical report is of 27/07/2017 and the second one is of 10/07/2018. There is no any evidence of the alleged sick or treatment whatsoever from 10/07/2018 to the date the applicant filed the application at the CMA. Therefore, as rightly found by the Arbitrator, the applicant failed to adduce sufficient reason for his delay.

In the result, since the applicant has not advanced sufficient reason for the grant of extension of time sought, I find the present application has no merit and is dismissed accordingly.

Dated at Dar es Salaam this 14<sup>th</sup> day of July, 2022.



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**S.M. MAGHIMBI**  
**JUDGE**

