IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 182 OF 2021

BETWEEN

THOMAS KAVINGA ..... APPLICANT

VERSUS

TANZANIA ELECTRICK SUPPLY COMPANY LIMITED ..... RESPONDENT

JUDGMENT

S.M. MAGHIMBI, J:

The application is made under the provisions of Rules 24(1), 24(2)(b), 24(2)(c), 24(2)(d), 24(2)(e) and 24(2)(f), 24(3)(a)-(d) and Rule 28(1)(c) and 55(1)&(2) of the Labour Court Rules, G.N No. 106 of 2007 ("the Rules"). The Applicant is moving the court for an order in the following terms:-

1. This Honourable Court be pleased to call for and inspect and revise the ruling delivered on 11th May, 2018 by Hon. Abdallah, M (Mediator
2. Costs be provided for.
3. Any other order the Court deems fit and just to grant.

The application is supported by an affidavit of the applicant dated 13/05/2021. The respondent opposed the application by filing a notice of

opposition and a counter affidavit of Wemael Msuya, Principle Officer of the respondent dated 30/08/2021. The application was disposed by way of written submissions, the applicant's submissions were drawn and filed by Mr. Saulo Kusakala, learned advocate while the respondent's submissions were drawn and filed by Ms. Adelaida Masaua, learned State Attorney.

The background which leads to the current dispute is that the applicant was employed by the respondent on specific task contracts from time to time, from the year 2010. It is alleged by the applicant that on the 30th August, 2017, the respondent refused to renew the contract without giving valid reasons. The applicant was aggrieved by the said termination; however, he did not lodge any dispute until the year 2018 whereby amongst other things, he sought for an order of condonation of the period of delay. Unsatisfied by the adduced reasons for the delay, the mediator dismissed the dispute. Aggrieved by the dismissal, the applicant lodged before this court several revision applications which were struck out hence the current revision. In his Affidavit to support this application, the applicant has raised the following grounds to be determined by this Court:

1. That the mediator erred in law and fact when he arrived at a conclusion that the applicant has no good reason to be condemned.

2. That the mediator erred when he failed to consider that the applicant has overwhelming chance of success in the dispute.

The applicant prayed that this court revise and quash the proceedings and ruling of CMA and that costs are granted to him. The applicant was represented by Mr. Saulo Kusakala, learned advocate while the respondent was represented by Ms. Wemaeli Msuya, learned State Attorney.

Starting with whether sufficient reasons were adduced to justify condonation, Mr. Kusakala submitted that the applicant's reason for the delay was sickness which is a god cause for extending time. He cited the case of **Fredrick Mdimu Vs. Cultural Heritage Ltd, Revision No. 191 of 2011** where the same position was held. He then submitted that on the 31/08/2017 the respondent refused to renew the contract and the applicant started to attend the hospital on 27/09/2017 which is within the 30 days of lodging a dispute at the CMA. On the mediator's finding that the applicant was not admitted at the hospital therefore sickness was not an excuse, Mr. Kusakala argued that the non-admission of a patient does not mean that he is able to work. He further submitted that the arbitrator was not a medical expert to have determined the applicant's disease was not mentioned in the medical cheets.

In reply, Ms. Msuya submitted that the applicant misled himself on the time of delay by contending that after his contract ended he fell sick while he had no sound proof of the sickness because he was an outpatient. That the documents do not illustrate clearly when the length and reasons for the delay arose. She submitted further that the contract ended on 31/08/2017 and the applicant went to hospital on 27/09/2017 which is after a lapse of 27 days. She argued that the medical report tendered is silent on how serious were the complications or disease that the applicant suffered resulting to the delay. She pointed out that Mr. Kusakala's argument that admission of a patient is an option of a medical doctor is an indication that the applicant was not seriously sick.

Ms. Msuya submitted further that the applicant did not establish the reason for the delay from the date of the end of the contract to the date the applicant applied for condonation. Citing the case of **Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania (Civil Application 2 of 2010) [2011] TZCA 4 (03 October 2011),** she argued that the applicant is required to account for each day of delay and provide undoubted reason for the delay. She concluded that the applicant has not accounted for each day

of delay which means she failed to adduce sufficient and justifiable reasons for the delay.

Having heard the parties' submissions on whether the ground of sickness amounts to a sufficient cause for the delay, let me analyse and determine when sickness can be a ground for extending time. In this case, it is undisputed that the notice of non-renewal of the contract was issued on the 30th August, 2017. The applicant alleges to have fallen sick on the 27th September, 2017. This means the applicant's right to lodge a dispute accrued on 30th August, 2017 when he received the notice and up until the 27th when he fell sick; he had 26 days within which he could have lodged a dispute. The 26 days ought to have been explained, as to why the dispute could not be filed at the CMA. Therefore the CMA was correct to question the days before the applicant fell sick.

The above notwithstanding, according to the medical records that were filed at the CMA, there is nowhere that shows that the applicant was sick for more than three months and he could not lodge the application on time. In the case of **Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 03 of 2007**, (unreported) where the Court held that:

"...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing period within which certain steps have to be taken."

Having the above principle which I fully subscribe to, in mind, it was the duty of the applicant to account for the delay from 30/08/2017 to the 18/12/2017 and not to come up with a medical sheet of one visit to the hospital and expect to convince the court to extend time on the ground of sickness. In conclusion, the applicant has failed to account for the delay of more than three months in lodging his dispute.

The second ground was that the mediator erred when he failed to consider that the applicant has overwhelming chance of success in the dispute. It was Mr. Kusakala's submission that the respondent refused to renew the contract which was renewed several times without giving reasons, which is against Section 41(3) of the Employment and Labor Relations Act, Cap. 366 R.E 2019 which requires notice stating reasons for termination. He argued that since the respondent had expectation of renewal, then the termination was unfair. His conclusion was that the applicant has good chances of success and the application should be granted.

In reply, Ms. Msuya submitted that the chances of success by the applicant are very slim as there was no unfair termination given the nature of employment which was specific task. She supported her submissions by citing the case of **Asanterabi Mkonyi vs TANESCO (Civil Appeal 53 of 2019) [2022] TZCA 96 (07 March 2022);** where the Court of Appeal determined that:

"What is relevant to the present matter is section 36 (a) (iii) above to which we have deliberately supplied emphasis. This provision sanctions the application of the concept of unfair termination to employment on a fixed term contract in case of failure to renew such a contract on the same or similar terms only if it is established that there was a reasonable expectation of renewal. Certainly, where such expectation does not exist the concept will not apply. It is noteworthy that this limitation is restated by rule 3 (3) of Employment and Labour Relations (Code of Good Practice) Rules, 2007"

She then argued that the applicant was employed as a specific task employee and prior expiration of his last contract was notified to him, that there would not be further renewal hence no expectation of renewal. She

concluded that the termination was fair, praying that the application be dismissed.

I have noted that both parties have submitted on the substance of what would have been the substance of the dispute at the CMA. In cases where the applicant alleges chances of success as a justification of delay, the court has to be cautious and in many cases, the court has disregarded the ground for fear of getting into the merits of the intended matter before time is extended. In the case of **Registered Trustees of Kanisa La Pentekoste Mbeya Vs. Lamsom Sikazwe & Others (Civil Application 191 of 2019) [2019] TZCA 516 (06 December 2019);** while determining the issue of chances of success as a factor for extending time, the Court of Appeal cited with approval the case of **Tanzania Posts &Telecommunications Corporation v. M/s H. S. Henritta Supplies(1997) TLR 141** and held that:

> *"Perhaps it is appropriate at this juncture to state that the practice of this Court has been to disregard a claim about chances of success of an intended appeal. For instance, in the case of* ***Tanzania Posts &Telecommunications Corporation v. M/s H. S. Henritta Supplies (1997) TLR 141***

at page 144, where the issue of the intended appeal having overwhelming chances of success arose, Lubuva, J.A. (as he then was) stated as follows:

> *" It is however relevant a t this juncture, to reflect that this Court has on numerous occasions taken the view that the chances of success of an intended appeal though a relevant factor in certain situations, it can only meaningfully be assessed later on appeal after hearing arguments from both sides."*

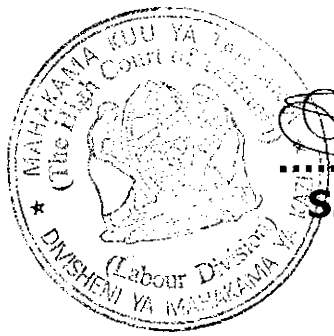
The Court of Appeal further held that:

> *"For me, the contention that the applicant's intended appeal has great chances of success cannot stand since it cannot be assessed at this stage. After all, there is no material before me to enable me to ascertain the chances of the intended appeal succeeding if such appeal was to be filed and heard by this Court. Hence, I do not see any reason for me to speculate on whether or not there are chances of success in the intended appeal by the applicant. This ground, therefore, does not constitute good cause in the circumstances."*

On my part, I am not even an inch away from the holding of the Court of Appeal in the cited case. Whether or not the applicant has chances of success is not a matter to be determined at this stage, after all, in labor disputes, expectation of renewal is more on reasoning of the arbitrator or Judge rather than a matter of strict evidence. The law prescribes several grounds to be considered before it is established that the employee had expectation of renewal, the grounds are based on reasoning rather than law or procedure. Therefore at this juncture, chances of success cannot be a good ground for extension of time.

On the above determination, it is conclusive that the applicant has failed to adduce sufficient reasons to move this court to exercise its discretion to extend time. The application is hereby dismissed.

Dated at Dar-es-Salaam this 15th day of August, 2022.



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S. M. MAGHIMBI
JUDGE