

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

REVISION NO. 24 OF 2021

BETWEEN

JUMANNE BAKARI MEMBE APPLICANT

VERSUS

LAKE OIL LTD RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The applicant alleged to have been employed by the respondent as a Security Guard since 09/08/2008 in unspecified period contract. His employment was allegedly terminated on 05/02/2020 on what he termed as unfounded reasons. Aggrieved by the termination, the applicant referred the dispute at the Commission for Mediation and Arbitration for Temeke (CMA) where he prayed for salary of January, 2020, salary for the days worked for in February, 2020 (13 days), leave arrears, general damages of Tshs. 30,000,000/=, overtime allowance of December, 2019 and January, 2020 as well as 24 months salaries compensation. At the CMA the dispute was accompanied by the application for condonation which was dismissed by the Mediator for the applicant's failure to adduce sufficient reasons for the delay. Consequently, the above claims of the applicant were also dismissed.

Being dissatisfied by the CMA's decision, the applicant filed the present application challenging the decision on the refusal to grant condonation. The application is based on the following grounds:-

- i. That the Arbitrator erred in law and facts for failing to properly evaluate evidence adduced by the parties.
- ii. That the Arbitrator erred in law and facts for failing to consider evidence adduced by the applicant.
- iii. That the Arbitrator erred in law and facts for reaching to a ruling which is not supported by the evidence adduced during arbitration.
- iv. That the Arbitrator erred in law and facts for failing to consider evidence adduced by the applicant, the respondent had reported a similar allegation to police for legal action.
- v. That the Arbitrator erred in law and fact for failing to realize the lies presented by the applicant.
- vi. That the Arbitrator erred in law and fact by failing to summarize, evaluate and record the key issues presented by the parties.
- vii. That the Arbitrator erred in law and facts for not giving reasons for the decision as required by the law.

The application was argued by way of written submission. Before the court the applicant was represented by Mr. Michael Mgombozi,

Personal Representative. On the other hand, the respondent did not enter appearance hence the matter proceeded ex-parte.

Arguing in support of the application Mr. Mgombozi submitted that the applicant's delay was not prompted by any negligent act on his part. That the dispute about fairness of the termination was filed at the CMA within time pursuant to Rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules, GN 64 of 2007 ('GN 64/2007'). That the applicant received the termination letter on 18/02/2020 and referred the dispute at the CMA on 03/03/2020 which was within time required by the law.

Mr. Mgombozi went on to submit that the termination letter was wrote on 03/02/2020 and served to the applicant on 18/02/2020 therefore by referring the dispute at the CMA on 03/03/2020 it was with 13 days from the date of receiving the termination letter and 28 days from the date the termination letter was written. He insisted that the matter was timely filed and the extension of time sought was in respect of overtime allowances. He persuaded the court to grant the extension of time sought for the interest of justice as the delay should be counted pursuant to Rule 10 (2) of GN 64/2007. To support his submission, he several decisions of this court and the Court of Appeal including the Court of Appeal case of **The Principle Secretary, Ministry of**

Defence and National Service v. Valambhia, [1992] TLR 185. In the upshot Mr. Mgombozi urged the court to set aside the CMA's decision and grant the extension of time sought.

After considering the applicant's submissions, I find the court is called upon to determine whether the applicant adduced sufficient reason at the CMA for the grant of the condonation sought and whether it was proper for the CMA to dismiss the whole claim including that which was allegedly filed within time.

As stated above, the applicant filed the dispute of unfair termination which was accompanied by the application for condonation of time. As rightly submitted by Mr. Mgombozi, 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 arised."

It is an undisputed fact that the applicant was terminated on 03/02/2020 and the record shows that the dispute about fairness of the termination was referred to the CMA on 04/03/2020. Counting from the next date following the date of termination, to the date when the applicant referred the dispute to the CMA, it is exactly 30 days which is within the time limit required provided by the law quoted above. Therefore, the Arbitrator wrongly dismissed the applicant's claim about fairness of the termination.

Regarding the claim about overtime allowances, in the CMA F1 the applicant indicated that he was praying for the relevant allowance from December, 2019 and January, 2020. However, in the CMA F2 which is used to initiate applications for condonation the applicant stated that the degree of lateness was 3065 days. The mentioned days were also stated in his affidavit as well as submissions before the CMA. Under such circumstance it is my view that the applicant himself created a contradiction which misdirected the Arbitrator to examine the degree of lateness.

As stated above in the cited Rule 10(1) of the G.N. No. 67/2007, other disputes apart from a dispute of unfair termination are supposed to be filed within sixty days from the date the dispute arose. In the CMA

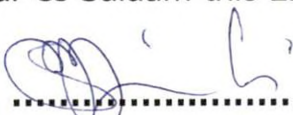
F1 the applicant indicated that he prayed for overtime allowances of December, 2019 and January, 2020. In my view the claim of December, 2019 was time barred and the applicant did not adduce any reason for the delay hence the Arbitrator was right to dismiss the same. Turning to the overtime allowances of January, 2020 in my view the same were instituted on time.

Therefore, on the basis of the above analysis, it is my view that the Arbitrator was wrong to dismiss the applicant's claim on its entirety. The dispute about fairness of termination as stated above was timely filed at the CMA as well as overtime claims of January, 2020 plus other remedies of unfair termination sought by the applicant.

In the result, since the dispute was improperly dismissed, this revisions is therefore allowed by setting aside the ruling and subsequent orders of the CMA. I order the file be remitted back to the CMA to be heard on merit on the claims which were timely instituted as listed above. It is so ordered.

Dated at Dar es Salaam this 22nd day of April, 2022.




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S.M. MAGHIMBI
JUDGE