

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

MISCELLANEOUS APPLICATION NO. 450 OF 2022

CHARLES N. NKWABI APPLICANT

VERSUS

TANZANIA ZAMBIA RAILWAY AUTHORITY (TAZARA) 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

Date of last Order: 15/02/2023
Date of Ruling: 28/02/2023

B. E. K. Mganga, J.

Brief facts of this application are that, on 25th October 2021, Charles N. Nkwabi, the applicant, filed before the Commission for Mediation and Arbitration(CMA) Labour dispute No. CMA/DSM/TEM/192/2022 against Tanzania Zambia Railways Authority(TAZARA), the first respondent complaining that the first respondent did not consider statutory retirement age when making an order of his compulsory retirement. In the referral form(CMA F1), applicant indicated that the dispute arose on 31st August 2005. Together with the said CMA F1, applicant filed an application for condonation(CMA F2). When the parties appeared before the mediator,

counsel for the 1st respondent raised a preliminary objection that CMA had no jurisdiction to determine the dispute because applicant is a Public Servant.

On 22nd August 2022, Hon. Ngalika, E, Mediator, having heard submissions of the parties, issued a ruling that CMA had no jurisdiction because applicant is a public servant and that applicant was required to exhaust remedies provided for under the public Service Act prior to filing the dispute at CMA. The mediator therefore struck out the dispute.

Aggrieved by the said ruling and being out of time, applicant filed this application for extension of time within which to file revision before this court. In support of the application, applicant filed his affidavit. On the other hand, respondents filed the counter affidavit sworn by Beatrice Mtembei, to resist the application.

When the application was called on for hearing, Thomas Brash, Advocate, appeared and argued for and on behalf of the applicant while Ms. Beatrice Mtembei, State Attorney, appeared and argued for and on behalf of the respondents.

Arguing the application on behalf of the applicant, Mr. Brash submitted that, reasons for the delay are that CMA did not timely issue the

Ruling to the applicant because the same was received on 05th October 2022 and that applicant filed this application on 14th November 2022. He submitted further that; applicant was supposed to file an Application for Revision within 42 days from the date he was served with the impugned ruling. He argued that time spent by the applicant waiting to be supplied with ruling should be considered as a good ground for extension of time and cited the case of ***Tanzania Revenue Authority v. Yusuph Juma Yusuph***, Civil Application No. 2 of 2014 CAT (unreported) to support his submissions. When probed by the court, counsel for the applicant conceded that from 05th October 2022 that is to say, the date applicant was served with the ruling, to the date of filing this application, it was only 36 days. Counsel for the applicant submitted further that, applicant lost his relative at Kahama as deponed by the applicant in paragraphs 10 to 14 of the affidavit in support of the application. He however conceded that, there is no death certificate or burial permit to prove death of applicant's relative. Counsel was quick to submit that bus tickets to and from Kahama proves that applicant travelled to Kahama. Upon reflection and after being probed by the court, he readily conceded that the said bus tickets don't show reasons for applicant's travel to Kahama.

Counsel for the applicant also contended that the impugned ruling was issued by the Mediator, who, had no jurisdiction. He argued that Mediator's role is limited to mediation and not to decide on issues of law. He therefore prayed that the application be granted.

Resisting the application, Ms. Mtembei, learned State Attorney, submitted that the impugned ruling was issued on 22nd August 2022 in presence of applicant's counsel but no action was timely taken. Learned State Attorney submitted further that, there is no proof that applicant lost his relative at Kahama. She went on that; applicant had a chance of filing an application for Revision when he came back from Kahama because he was still within time. Ms. Mtembei submitted further that, applicant has not adduced good reasons for the delay and that the court can only extend time if there is good cause and cited Rule 56(3) of the Labour Court Rules, GN. No. 106 of 2007 to support her submissions. She further submitted that applicant was required to account for each day of the delay and adduce good grounds for the delay and cited the case of ***Omari R. Ibrahim v. Ndege Commercial Services Ltd***, Civil Application No. 83/01 of 2020 CAT (unreported) to cement on her submissions. She strongly submitted that in the application at hand, there is no good reason

for the delay and that applicant acted negligently. It was submissions of Ms. Mtembei, State Attorney that the Mediator had jurisdiction. She therefore prayed that the application be dismissed.

In rejoinder, learned counsel for the applicant submitted that applicant has shown good cause for the delay and that he made follow up hence he was not negligence.

I have examined both the affidavit and the counter affidavit filed by the parties and considered submissions made thereof. I entirely agree with submissions of both counsel that in an application for extension of time, applicant must show that he/she had good cause for the delay and must account for each day of the delay. It is my view that good cause for the delay is not the only criteria for extension of time. There are many and varied reasons amongst being jurisdictional issues. The Court can extend time if it finds that there is a jurisdiction issue so as to give chance the parties to argue it in the main case. In the application at hand, counsel for the applicant submitted that the mediator had no power to issue the impugned ruling but State Attorney had a different view. This being an application for extension of time, I will not decide on that rival arguments relating to the jurisdictional issue of the Mediator as was raised by counsel

for the applicant. That issue can be sufficiently resolved at the revision stage and not at this stage. From the facts of the application at hand, I find it important for the application to be granted so that the court can resolve *inter-alia* the jurisdictional issue raised by the applicant.

For the foregoing, I hereby grant applicant fourteen(14) days leave from the date of this Ruling within which to file the intended Revision application.

Dated in Dar es Salaam on this 28th February 2023.



B. E. K. Mganga
JUDGE

Ruling delivered on this 28th February 2023 in chambers in the presence of Francis Wisdom and Lilian Samson, all State Attorneys for the Respondents but in the absence of the Applicant.



B. E. K. Mganga
JUDGE