

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

REVISION APPLICATION NO. 433 OF 2022

(Originating from the Labour Dispute No. CMA/DSM/ILA/468/2021)

1. PHILO SIMON MAHALI
2. ESSAM MANOLOGA
3. ELIAD SIMPUNGWE
4. DISMASS MACHUME
5. DAUDI EUSEBIO
6. ELIANSHIKIRA WILFRED NDOSSI
7. CHRISTINA KIBORA
8. SUZANA KYOMO
9. MOHAMED KASETA Sr,
10. ERICK PETER
11. ELIEZA ANTHON MWAKALINGA
12. ALAWI RAMADHANI ALAWI
13. BRANDO ADAM
14. NICHOLAUS MWAKILA
15. NOEL NDAKIZE
16. DENGE ALI
17. MAURICE NGAHYOMA
18. OMBENI MWAIGOMOLE
19. EDWARD NTYANGIRI
20. EMMANUEL LUCKLY
21. BONNY KONGA
22. KADE MKWIZU
23. MESHACK MAGANZA
24. GOODLUCK GHERABASTER

Labour Court Tz.

APPLICANTS

PK

25. FRANK KAWAMALA
26. ANDREW GEORGE KASUTA
27. MASOUD NOUR MGAWA
28. ALLY SAID WEISHWA

VERSUS

NAS DAR AIRCO COMPANY LIMITED RESPONDENT

JUDGMENT

15th May 2023 & 19th May 2023

K. T. R. MTEULE, J.

This is an application for revision against the decision of the Commission for Mediation and Arbitration of Dar es Salaam, Ilala (CMA) in **Labour Dispute No. CMA/DSM/ILA/468/2021**. The application is challenging the decision of the Mediator who refused condonation to have his application filed out of time.

According to the affidavit of Philo Simon Mahali filed to support this application, it is deposed by the Applicant that vide CMA Form No 1, the Applicant referred their dispute to CMA claiming for their salary deductions, but the dispute was struck out on **22 October 2022**. To



file another application, a condonation application was made on **29 October 2022**, with reasons that the delay was technical. The condonation application was dismissed by the mediator for lack of merits on the reason that the previously struck out dispute was filed out of time. The Applicant raised one ground of revision that the arbitrator erred in Law and Facts in holding that the applicants have no sufficient reason for extension of time.

The Respondent filed a counter affidavit in which all the material facts in the affidavit are disputed. According to the counter affidavit the Applicant's condonation was dismissed because there was no sufficient grounds for delay.

The Application was argued by Written Submissions where the applicant was represented by Advocate Lucas Nyagawa and the Respondent by Advocate Arnold Peter.

In his submission Advocate Nyagawa in trying to fault the arbitrator refusal to condone the Applicants dispute, submitted that the main ground for the delay to refer the dispute was the reason that their previous referred dispute was struck out for being incompetent.



According to him the said previous dispute was filed on time on 30/07/2021 well within 60 days from the date that deductions stopped, but mistakenly filled CMA Form No 1 indicating the dispute to have aroused on 27/02/2021 instead of 30/07/2021. He challenged the mediator for having failed to take into consideration that the delay was technical and not actual one especially since the applicants acted promptly by filling a condonation application on 29/10/2021. He referred to the case of **Fortunatus Masha vs William Shija & others TLR 1997 (154)** where it was held that;-

"A distinction had to be drawn between cases involving real or actual delays and those of such as the present one which is clearly only involved technical delays in the sense that the original appeal was lodged in time but had been found to be incompetent for one or another reason and a fresh appeal had to be instituted"

According to Advocate Nyagawa, the mediator had to take into consideration that Labour Courts(including (CMA) are Courts of social justice and not legal justices, therefore their purpose is to promote social justice as per section **3(a) of Employment and Labour**



Relations Act CAP 366 R.E 2019 (hereinafter shall be referred as ELRA) therefore is not abiding with the legal technicalities. He submitted that salary deductions of about 27 employees without the prior consent/agreement was the serious issue that touches the employees(social justice) that the Mediator could have taken into consideration that it is needed to be intervened by the CMA as the promotion of social justice.

He finally challenged the Mediator's failure to condone Applicants' dispute while there were sufficient reasons to grant the same.

In reply, having adopted the counter affidavit sworn by MUSSA DAUD COUDOGGER Advocate Arnold did not dispute the fact that the Applicants filed their first labour dispute on 3rd September 2021 claiming for breach of contract and unlawful deduction of salary and that the said dispute was struck out. His argument was that the striking out order was based on the mediator's finding that the dispute was time barred with no application for condonation filed according to law. Advocate Arnold did not further dispute that the respondent instituted another application with an application for condonation that was dismissed for lack of merit

and the impugned decision arise from this second application. According to him, in this application for condonation the Applicants failed to adduce sufficient cause for CMA to grant extension of time.

Advocate Arnold is disputing existence of technical delay cause by the previous application. According to him, the initial application /referral was time barred and was found to be incompetent because it was out of time and no withdraw application or prayer during the original referral at CMA was ever made for rectification of errors/referral, hardly had there been errors in the Application as claimed by applicants.

Advocate Arnold distinguished the case of **Fortunatus Masha v William Shija & Others (1997) TLR 154** cited by the applicant from the instant matter in that in Fortunatus, the original appeal was filed in time but found incompetent for one reason or another and a fresh appeal had to be instituted while in this case the initial /original referral or application was time barred hence does not suffice to fall under technical delay but actual delay that was supposed to be accounted for on each day of delay.

Regarding the second argument by the Applicants on the Labour Courts being the Courts of social Justice Advocate Arnold submitted that limitation of time is material point in the speedy administration of justice and precludes a party from coming to court as and when he chooses. According to him, social justice cannot be used as a cover for illegality and non-observance of legal principles. He submitted that the relief sought by the Applicants is equitable in nature where the court considers clean hands doctrine which precludes a party from seeking an equitable relief from taking advantages of his /her own wrongs.

It is with this respect that the Applicants have failed to adduce sufficient cause for the delay that may move the court to condone the Application and has also failed to account for each day of delay as per the requirement of law.

Having considered the parties submissions, the issue is **whether there are sufficient grounds for the court to interfere with the decision of the CMA refusing condonation of late filing of the labour dispute**. The Applicant is basing his reasons for delay on the ground of technical delay. The respondent does not dispute the fact that



technical delay constitutes excuse to grant extension of time. Her contention is that the previous application was struck out because of being time barred.

The Applicants have argument that accidentally a date was inserted in their previous application to indicate that the dispute aroused on **27/02/2021** instead of **30/07/2021**. As to whether the Respondent inserted a wrong date in the previous application in my view, constitutes an indication that it is not known as to when exactly the dispute did arise. In normal circumstances for a matter which is time barred, the arbitrator was expected to have dismissed the dispute. Having the striking out order suggest an offer to refile the dispute as striking order renders a matter to be as equal as it has never been filed at all, and that is why a party is allowed to refile his dispute when it gets struck out. Perhaps, it was due to the uncertainty of when did the cause of action arise that the mediator struck out the matter instead of dismissing it. Should the respondent believe the striking out to be due to time limitations, he should have challenged it by a way of revision for the matter to be dismissed instead of being struck out.



If that is the case, and if the applicant is claiming for another date of cause of action, then it remains that there is a dispute on that aspect. The dispute is on when did the cause of action arise. To understand this, parties are to adduce evidence. When evidence is needed to resolve a matter, such matter cannot be ended technically. Parties must be heard to consider evidence to ascertain the date when the dispute arose. This evidence cannot be given if the matter does not go into merits.

From the foregoing, it is my finding that since the previous Labour dispute was struck out and not dismissed, and since the Applicant is claiming to have wrongly inserted 27/02/2021 as a date when the dispute arose instead of 30/07/2021, the arbitrator had to condone the dispute so that evidence could be adduced as to when the dispute arose so as to decide whether it is time barred or not. On this reason, I find that the applicant has managed to establish sufficient cause to fault the arbitrator's ruling. Basing on this conclusion, the issue raised is answered affirmatively.

Consequently, I hereby revised and set aside the ruling of the mediator that refused condonation in **Labour Dispute No.**



CMA/DSM/ILA/468/2021. I hereby condone the late filing of the said labour dispute, and the issue as to when the said dispute arose be one of the issues for determination, and shall the arbitrator, after consideration of evidence finds the dispute to have arisen on a date which renders the matter out of time, then shall decide so and dismiss the dispute for being time barred. It is so ordered.



Dated at Dar es Salaam this 19th May 2023.


KATARINA REVOCATI MTEULE
JUDGE
19/05/2023

Labour Court TZ.

