

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
LABOUR DIVISION**

**AT DAR ES SALAAM**

**REVISION NO. 82 OF 2023**

*(From the decision of the Commission for Mediation and Arbitration at Kinondoni Labour Dispute No. CMA/DSM/KIN/647/2022, Hon. Mbunda, P.J. Arbitrator, Dated 28<sup>th</sup> February, 2023)*

**JACOB LUCAS SELESTINE.....APPLICANT**

**VERSUS**

**NAS SECURITY SERVICE LIMITED.....RESPONDENT**

**JUDGEMENT**

07<sup>th</sup> – 15<sup>th</sup> June, 2023

**OPIYO, J**

The applicant filed for this application asking this court to revise and to set aside the award of the Commission for Mediation and Arbitration (CMA) No. CMA/DSM/KIN/647/2022 pronounced by Hon. Mbunda, P.J (Arbitrator) on 28<sup>th</sup> February, 2023.

Historically; the applicant claimed to be employed by the respondent on 01<sup>st</sup> November, 2018 as a security guard and unfairly terminated on 19<sup>th</sup> February, 2022. He then took the labour dispute at CMA on 17<sup>th</sup> November, 2022. Being time barred to file labour dispute directly he first applied for condonation. The matter was heard *ex parte* and bad luck was on the



applicant's side. Aggrieved with the decision he preferred this revision application.

The application was supported by the applicant's affidavit with the following grounds for revision: -

1. That; the honourable arbitrator was legally and categorically wrong after he stopped considering his explanation in his decision when he considered the details of various rules relating to non-attendance of the respondent.
2. That; The Honourable arbitrator erred in law when he failed to consider what it means for the respondent not attending at the Commission for Mediation and Arbitration.
3. That; the honourable arbitrator was legally wrong when he was caught in a chokehold when he made the decision to deny the applicant his right despite insisting in his decision that the respondent had no excuse.
4. That; the honourable arbitrator erred in law when he failed to grant justice to the applicant when he attended alone at the CMA as the respondent did not attend.

The matter was conducted orally. Both parties were represented. Mr. Cosmas Maige, Personal Representative for the applicant whereas Mr. Isaya Maiseli from ATE (Security Division).

In his submission Mr. Maige submitted that the arbitrator erred by denying the applicant the application for condonation irrespective of the fact that

that the matter was heard without defence of the other side. He added that the applicant had reasonable grounds for the application which made him to be late in referring the matter to the CMA. He continued that the applicant was a lay person who did not know law and that he was going to the employer for claim of salary, but he was promised several times until he found himself late. He submitted further that the arbitrator failed to consider the fact that the respondent was served, but failed to appear. He then prayed for this application to be granted.

Against the submission in chief, Mr. Maiseli submitted that the issue of condonation was determined *ex parte* before CMA and the court decided that the applicant was delayed for 8 months and denied his application. He added that the absence of the respondent was actually an added advantage for having no objection that was put forward against his case, but still he did not convince the court that he had a sufficient reason for delay for all the 8 months. He then prayed for the application to be dismissed.

In his rejoinder Mr. Maige submitted that, it is true the applicant was late for all that time but the reasons were put forward to the arbitrator who never considered them and so he prayed for court to invoke its discretion

and grant the application. He then reiterated what he submitted and prayers made in chief.

Going through the submissions of the parties, the issue to determine here is whether CMA was right to the held that the applicant produced sufficient reason which could have warranted an extension of time. On determination of the issue as to whether extension of time is warranted, the law gives guidance; Rule 11(3) of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007 provides that: -

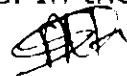
*"(3) An application for condonation shall set out the grounds for seeking condonation and shall include the referring party's submissions on the following-*

- (a) The degree of lateness;*
- (b) The reason for the lateness;*
- (c) Its prospects of succeeding with the dispute and obtaining the relief sought against the other party;*
- (d) Any prejudice to the other party; and*
- (e) Any other relevant factors."*

Also rule 31 of G.N. No. 64 of 2007 provides that: -

*"The Commission may condone any failure to comply with the time frame in these rules on good cause."*

Not only that, but also there are case laws which gives stands on considerations in granting the application for extension of time. In the case



of **Wambura N.J. Waryuba V. The Principal Secretary Ministry for Finance and Another**, Civil Application No. 320/01 of 2020 that: -

*"... it is essential to reiterate here that the Court's power for extending time... is both wide-ranging and discretionary but it is exercisable judiciously upon cause being shown."*

This means the applicant had to show sufficient reason or good cause for him to be granted extension of time. The applicant's reasons were that he was a lay person in law and that he was going to the respondent to claim for his salary as he was promised several times. On the issue of being layman, the law has already made the decision to it as it is not an excuse for extension of time. The same has been held in the case of **Emanuel Lohay & Another vs Republic, Criminal Application No. 03 of 2013** as it has been referred to in the case of **Wambura N.J. Waryuba v The Minister Secretary Ministry of Finance & The Attorney General**, Civil Application No. 320/01 of 2020 at pages 7-8 that ignorance of law is no excuse and cannot amount to sufficient cause for extending time to take certain step.

From the cited case and many others, it is obvious that the reason of being layperson in law lacks a legal stand for extension of time. Moreover, on the reason raised that he was making follow up to the respondent about his

salaries, the case of **Juma Nassir Mtubwa V. Namera Group of Industries Ltd**, Revision No. 251 of 2019, High Court at Dar es Salaam (unreported) it was held that in any application for extension of time the applicant must account on each day of his delay. The reason that, in whole 68 months he was waiting for his employer to call him back after production increase could not stand as a good cause for condonation. It was held to be an apparent lack of diligence and seriousness on applicant's part.

Based on the above holding the reason stated by the applicant of waiting for the respondent to pay him his salaries also shows lack of seriousness on his party as his claim at CMA was not on being paid his salary, but for unfair termination. How could someone who had already been terminated for the past eight months be expecting payment of salaries from the same employer!

As for the arbitrators' finding; I find it to be reasonable, because the applicant did not adduce sufficient reasons to warrant him being granted extension of time as applied. It is indicated in the CMA F1 the dispute arose on 19<sup>th</sup> February, 2022 and the application at CMA was filed on 17<sup>th</sup> November, 2022. Being 271 days later from the day of the dispute arose

while the law under rule 10(1) of G.N. No. 64 of 2007 provides for dispute of unfair termination to be brought at CMA within 30 days from the date the dispute arose. Not only that the applicant failed even to account on each day delay as it has been held in several cases including the case of **Daudi Haga vs Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, CAT at Tabora, (unreported) which held that: -

*"A person seeking for an extension of time had to prove on every single day for delay to enable the Court to exercise its discretionary power."*

For the reasons stated above, the applicant has failed to convince this court also on his reason for delay to file for a labour dispute at CMA. This application is dismissed. CMA decision is upheld. Since this is the labour matter, no order as to costs.



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**M. P. OPIYO,**

**JUDGE**

**15/06/2023**