

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

**AT DAR ES SALAAM**

**REVISION NO. 44 OF 2023**

*(From the decision of the Commission for Mediation and Arbitration at Kinondoni Labour Dispute No. CMA/DSM/ILA/395/2022, Hon. Mbeyaie, R. Arbitrator, Dated 31<sup>st</sup> January, 2023)*

**YASIN YAHYA MPINGE ..... 1<sup>ST</sup> APPLICANT**  
**SHAFI RAJABU MWANAPINDI ..... 2<sup>ND</sup> APPLICANT**  
**SHABANI MOHAMED JAEKI ..... 3<sup>RD</sup> APPLICANT**  
**SERAH HAROLD MGOMBE ..... 4<sup>TH</sup> APPLICANT**  
**YAHYA OMARI BADI ..... 5<sup>TH</sup> APPLICANT**

**VERSUS**

**SWISSPORT TANZANIA PLC .....RESPONDENT**

**JUDGEMENT**

**Date of last Order:** 29/05/2023  
**Date of Judgement:** 16/06/2023

**MLYAMBINA, J.**

In this application, it was alleged that the Applicants were employed by the Respondent in different positions under a permanent contract. It was further alleged that the Applicants were terminated by way of retrenchment. They then filed a Labour Dispute at the Commission for Mediation and Arbitration (herein CMA) having reference No. CMA/DSM/ILA/395/2022. It was the application for condonation. Hon. Mbeyale, R. (Arbitrator) dismissed

the application for the applicant's failure to adduce a justifiable reason of being time barred on 31<sup>st</sup> January, 2023. Being dissatisfied, they filed this Application for Revision for the Court to find it out:

- i. If there was a mistake in deciding a dispute which is time barred.*
- ii. If there was multiple evidences tendered during the hearing the dispute filed while being time barred.*
- iii. If the honourable Arbitrator mixed up documents tendered by the Respondent during the use of the documents tendered on his determination.*

The matter proceeded by way of written submission. Both parties were represented. Mr. Muhsin Msangi, Personal Representative for the applicant and Mr. Amos Mwelelo, Learned Advocate appeared for the Respondent.

Mr. Msangi submitted that the Applicants were employed by the Respondent for more than 20 years before being terminated. So, they are claiming for their terminal benefits. He stated that the Applicants were late for 501 days to file their application at CMA. The reason being that they were seeking their employment rights at different government institutions.

Against the application, Mr. Mwelelo submitted that *Rule 10(1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007* requires for the matters about fairness of an employee's termination to be referred at CMA within thirty days from the date of termination and other dispute within sixty days from the date the dispute arose.

Mr. Mwelelo went on to submit that extension of time can be granted upon the applicant disclosure of good cause for delay. He submitted further that the reason stated by the Applicants was that they were seeking their rights in other government institutions. He stated that matters of lawfulness termination of employment are referred to the CMA in terms of *Section 86 and 88 of Employment and Labour Relations Act [Cap 366 R.E. 2019]*. He added that; the principle of separation of power should be respected. He supported his point by referring to the case of **Jacson Mwendu v. Tussime Holding (T) Ltd**, Misc. Labour Application No. 195 of 2020 (unreported).

It was the submission of Mr. Mwelelo that the Applicants were retrenched on 4<sup>th</sup> February, 2021 and filed their application on 28<sup>th</sup> July, 2022 having 507 days degree of lateness. He added that; the Applicants did not account for each day delayed. He cited the cases of **Omary Ally Nyamalege and Others v. Mwanza Engineering Works**, Civil Application No. 94/08 of 2017, Court of Appeal at Mwanza (unreported), **Wilson Ntembeje Machumu v. Bodi ya Wadhamini ya Mfuko wa Pensheni kwa Watumishi wa Umma (PSPF)**, Revision No. 4 of 2018, High Court at Kigoma which referred the case of **Bariki Israel v. The Republic**, Criminal Application No. 4 of 2011 (unreported).

Mr. Mwelelo added that the Applicants did not show diligence or any effort towards pursuing their rights. He referred to the case of **Wilson Ntembeje Machumu** (supra) which referred the case of **Vodacom Foundation vs Commissioner General (TRA)**, Civil Application No. 107/20 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported). He then prayed for the application to be dismissed.

The applicant had no rejoinder. The Court after perusal of parties' submissions and CMA record, it finds the issue for determination is; *whether CMA was legally right to hold that the Applicants did not adduce justifiable reason to warrant an extension of time.*

In tackling the above issue, the law under rule 10(1) of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007 provides for time limitation to refer the dispute of unfair termination as follows:

*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.*

In this application, both parties agrees that the Applicants filed for a labour dispute at CMA after the lapse of 539 days from the termination date.

This can be proved with the CMA F1 which shows the date the dispute arose was on 4<sup>th</sup> February, 2021 and filed at CMA their dispute on 28<sup>th</sup> July, 2022. Despite of the fact that the Applicants were late, the law is not cruel. *Rule 11(3) of the Labour Institutions (Mediation and Arbitration) G.N. No. 64 of 2007* requires those who are late to apply for condonation. *Rule 11 (3) (supra)* provides:

*(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 (supra)* allows the CMA to grant condonation if there are good reasons stated. *Rule 31 (supra)* provides that:

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

In the case of **Wambura N.J. Waryuba v. The Principal Secretary Ministry for Finance and Another**, Civil Application No. 320/01 of 2020 it was held 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.*

The only reason for the delay of the applicant was that they were seeking for their rights in other government institutions. I agree with the Learned Advocate for the Respondent that the law is very clear that dispute of unfair termination has to be brought at CMA. It does not require to go to other government institutions. In the case of **Laban Wilson Mayila v. The Board of Trustees of Ndameze English Medium Nursery and Primary School**, Labour Revision Case No. 3 of 2022 (unreported) p. 5, it was held:


*He says that he was held at TUICO and in the office of the Regional Commissioner and TAKUKURU ... much as negotiations and decisions with the employer outside the legal forum are not valid grounds for extension of time ...*

It follows, therefore, that the Applicants act of going to other government institutions which are outside the legal forum does not hold water as sufficient reason warranting grant of condonation. In the case of **Daudi Haga v. Jenitha Abdan Machanju**, Civil reference No. 19 of 2006, Court of Appeal of Tanzania 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.*


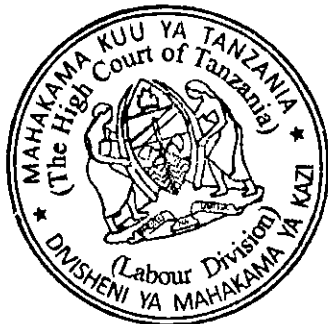
The Applicants were required to account on each single day of delay for the whole of 539 days delayed. Hence, I find no need to fault the Arbitrator's findings as I also do not see the reason that is justifiable for the Applicants delay.

Conclusively, this application is dismissed for being devoid of merit. The CMA decision is upheld. No order as to costs.



**Y.J. MLYAMBINA**  
**JUDGE**  
**16/06/2023**

Judgement pronounced and dated 16<sup>th</sup> day of June, 2023 in the presence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants and in the absence of the 4<sup>th</sup> Applicant and the Respondent. Right of Appeal fully explained.



**Y.J. MLYAMBINA**  
**JUDGE**  
**16/06/2023**