IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 308 OF 2022

CHARLES G. JABU ..... 1ST APPLICANT

RUTH MWITA ..... 2ND APPLICANT

MARTHA KAGONJI ..... 3RD APPLICANT

ANNA MARIA W. MAGIGE ..... 4TH APPLICANT

FRIDA MKULASI ..... 5TH APPLICANT

TATU MUSTAPHA ..... 6TH APPLICANT

HAWA YAHAYA ..... 7TH APPLICANT

ANNETH MOLELI ..... 8TH APPLICANT

LADSLAUS NGERESA ..... 9TH APPLICANT

INNOCENT ALFONCY ..... 10TH APPLICANT

RAZARO KAPINGA ..... 11TH APPLICANT

NICOLAS CHEZANGOMA ..... 12TH APPLICANT

ESTER STANLEY ..... 13TH APPLICANT

CHRISTINA ANDREW ..... 14TH APPLICANT

MOHAMED CHIPPI ..... 15TH APPLICANT

MONICA LAUKILA ..... 16TH APPLICANT

BEATUS ULANDA ..... 17TH APPLICANT

FATUMA MWINGIRA ..... 18TH APPLICANT

JULIA JOSEPH ..... 19TH APPLICANT

ADIMILABILIS HAULE ..... 20TH APPLICANT

BENEDICT ASSEY ..... 21ST APPLICANT

FLORA A. MBAPA ..... 22ND APPLICANT

ALIPIPI L. MWANSULE ..... 23RD APPLICANT

JAMBIA BAKARI ..... 24TH APPLICANT

MATRIDA FRANK ..... 25TH APPLICANT

TITUS M. BILAURI ..... 26TH APPLICANT

VERSUS

UMOJA WA MATABIBU SEKTA ISIYO RASMI DAR ES SALAAM TANZANIA (UMASIDA/UMASITA) ..... RESPONDENT

(From the decision of the Commission for Mediation and Arbitration of DSM at Kinondoni)

(Mollel: Mediator)

dated 12th August, 2022

in

REF: CMA/DSM/KIN/486/21

JUDGEMENT

09th & 22nd February, 2023

Rwizile, J

This application is for Revision. The applicant has asked this Court to call for the records of the proceedings of the Commission for Mediation and Arbitration (CMA) in the Labour Dispute No. CMA/DSM/KIN/486/21 and revise the decision dated 12th August, 2022.

Facts albeit brief can be stated that; the applicants alleged were employed by the respondent in different dates and positions but all in the year 2007. They were not paid their salaries from then to the day they filed this application before the CMA. The applicants believe they were constructively terminated.

Applicants being out of time, filed the application at CMA praying for condonation. The application was dismissed. They were aggrieved, hence this application.

The application is supported by the applicants' joint affidavit stating grounds for revision as follows: -

i. *That, honourable arbitrator erred in law and in fact by failing to realize that there was sufficient reason that led the applicants to delay hence denying the applicant condonation was not proper*
ii. *That, the honourable arbitrator errored in law and in fact by not properly analysing the evidence of all the parties in the dispute and relied only in one side of the respondent*
iii. *The honourable arbitrator erred in law and in fact by failing to analyse applicants' evidence and consequently wrongly interpreted decided cases on the issue of extension of time/condonation*
iv. *That the honourable arbitrator erred in law and in fact by holding that the applicants have failed to account and prove on cause of delay in every single day*
v. *The honourable arbitrator erred in law and in fact by failing to observe the clear evidence by the applicants and reached an*

erroneous decision regardless of clear explanation given by the applicants written submission

vi. *The honourable arbitrator erred in law and in fact in disregarding completely the applicants' written submission in supporting the matter, to the contrary based on unfounded facts and reasoning instead reasoning in line with the law and evidence in record*

vii. *The honourable arbitrator erred in law and in fact by being wrong in law to declare that applicants were supposed to prove reason for delay and account for every single day of delay*

viii. *The honourable arbitrator erred in law and fact to declare that applicants had no sufficient reason and disregarding the facts that there was valid and clear explanation on the reason for delay in the applicants' side*

The application was orally heard. Both parties were represented. Mr. Jamal Ngowo, learned Advocate from TUICO, appeared for the applicant, whereas the respondent was represented by Mr. Benjamin Kalume, learned Advocate.

Mr. Jamal, generally argued the application. He stated that applicants were not paid their salaries and so they were following up the matter since

2019. To support his point, he cited rule 56(1)(3) of Labour Court Rules and article 13(2)(6)(a) of the Constitution of United Republic of Tanzania.

He continued to submit that the applicants were not paid their salaries from 2008. He stated that they were told to open bank accounts but were not paid. He further submitted that the applicants wrote to the Minister and they were directed to go to TACAIDS. He said, from there, they were told to file a dispute before the CMA. It was his view that at the time they decided to file the said application, 12 years had elapsed. It was his view that since the applicants are laymen the CMA ought to hear their points for delay and grant their application.

In reply Mr. Benjamin submitted that CMA acted as the law directs. He stated that the CMA referred to rule 11 of G.N. No. 64 of 2007 on limitation. He submitted further that the applicants were not justified to stay 11 years without involving their employer.

He submitted that the joint affidavit of the applicants at paragraphs 13 and 14 show, its defectiveness as it did not come from the applicants themselves. To cement his point, he cited cases of **TCCIA Investment Co. Ltd v Dr. G. Kaunda**, Civil Appeal No. 310 of 2019 and **Salima Vuai v Registrar of Corporative Societies and Others** [1995] TLR. 75.

He continued to argued that, also the jurat contravenes section 10 of the Oath and Statutory Declarations Act, [CAP. 34 R.E 2002]. He prayed; this application be dismissed as it has so many irregularities.

In a rejoinder, Mr. Jamal submitted that applicants' joint affidavit was properly attested since paragraph 15 came out of their knowledge. He finalised by stating that the applicants were employees but their evidence was not considered.

After perusal of parties' submissions, CMA proceedings and exhibits, the court finds one issue to determine, that is;

> *Whether the CMA had justification to dismiss the application for condonation.*

It can be stated that extension of time in law has always been in the absolute discretion of the court, so is condonation at the CMA.

The CMA has the mandate under Rule 11 of the Labour Institutions (Mediation and Arbitration) Rules, 2007, G.N. No. 64 of 2007 to condone late filing of the application.

And as I have said, it has the absolute discretion to do so provided it is guided by the terms of rule 11 of GN No.64. It has therefore to consider four things, ***one*** the degree of lateness, ***two***, reasons for the lateness,

three, its prospects of succeeding with the dispute and obtaining the relief sought against the other party, ***four,*** any prejudice to the other party and any other relevant factors. The above, is summarised as to show sufficient cause for delay as provided for under rule 31 of the G.N. No. 64 of 2007. The position is amplified in a host of authorities such as the case of **Wambura N.J. Waryuba v The Principal Secretary Ministry for Finance and Another**, Civil Application No. 320/01 of 2020, where it was held;

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

The famous case of **Lyamuya Construction Company Limited v Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 (unreported) laid down principles to be considered before extension of time can be granted or denied. It was held that: -

> *"As a matter of general principle, it is in the discretion of the Court to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and*

not according to private opinion or arbitrarily. On the authorities however the following may be formulated: -

i. The applicant must account for all the period of delay.

ii. The delay should not be inordinate.

iii. The applicant must show diligence, and not apathy, negligence or sloppiness in the prosecution of the action that he intends to take.

iv. If the Court feels that there are other reasons, such as the existence of a point of law of sufficient importance, such as the illegality of the decision sought to be challenged."

In the present application, reference to Rule 10(2) of GN No.64 provides for 60 days to file a dispute of this nature before the CMA. This is a claim of salaries apart from fairness of termination which is limited to 30 days.

The record shows, the application as it is usually the case is commenced by CMA Form No. 2, which shows, the dispute arose on 30th December, 2007, whereas the application to challenge the same was filed before the CMA on 26th November, 2021. 60 days for that matter, lapsed by 28th February, 2008. It is not disputed that all this time, the applicant had to

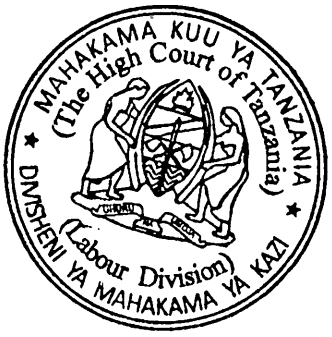
account for what happened. The application was filed 14 years as correctly stated in CMAF No. 2.

The reason stated by the applicants in the same form is that the employer kept them with hope of paying them since then. It came to their minds that a dispute be filed upon such passage of time. According to CMAF1, they are claiming for salary arears from 30th December 2007 when the dispute arose to date. They are considering themselves employees.

By any standard the undisputed 14 years of waiting for salaries is shockingly inordinate. It is absurd that the only reason advanced in the form is just a hope that the same would be paid.

It was submitted by the applicants that they also wrote to the Minister and were told to provide their bank accounts. In as much as I agree that there may have been some efforts to that effect. Still, the applicants had to provide sufficient information to show how did they fight for their rights and the obstacles that they have faced. The commission was of the view that the applicants did not sufficiently account for the delay. In the same reasons, I think, the applicants did not either in their affidavit before the CMA or CMAF2 show sufficient reasons for delay.

In actual fact, it shows since 2007, some efforts were made in 2008 and then after over 10 years later in 2018, the affidavit shows they wrote a letter to the Prime Minister in respect of the matter. Like the CMA, I am not convinced that the applicants have sufficiently shown good cause for their application to be granted. This being the case therefore, this application is found unmerited. It should be dismissed as I hereby do. I order no costs.



A.K. Rwizile

JUDGE

22.02.2023