

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

**REVISION APPLICATION NO. 160 OF 2023**

*(Arising from Labour Dispute No. CMA/DSM/KIN/243/2023 the award of the Commission for Mediation & Arbitration of DSM at Kinondoni)*

**SOPHIA MWALIMU MROPE.....APPLICANT**

**VERSUS**

**AML FINANCE LIMITED.....RESPONDENT**

**JUDGEMENT**

21<sup>st</sup> Sept. & 16<sup>th</sup> Oct. 2023

**OPIYO, J.**

This decision concerns revision application arising from the award issued in Labour Dispute No. CMA/DSM/KIN/243/2023 in the Commission for Mediation, and Arbitration of Dar es Salaam, Kinondoni (herein after referred to as CMA). The application was for condonation which was dismissed for want of merits. Aggrieved with the decision, the applicant has filed this application under the provisions of Section 94(1) (b),(i) of The Employment and Labour Relations Act [CAP 366 R.E 2019]; Rule 55(1),(2), 24 (1) (2) (a), (c), (d), Rule 24 (3) (b),(c), (d), (e) of the Labour Court Rules, G.N. No. 106 of 2007; requesting for this Court to call for records of the CMA for revision and setting aside illegal dismissal of the applicant's application and order the dispute to be heard by another Arbitrator.

The background of the matter was that, the applicant was employed by the respondent on 18<sup>th</sup> June 2015, their relationship ended on 20<sup>th</sup> January 2023 for the alleged misconduct (gross negligence). Aggrieved with decision the applicant filed an application at CMA seeking extension of time so as to challenge the respondent's decision. At CMA condonation was rejected on the reason that the applicant failed to adduce good reason for the delay. Being resentful of the decision of CMA the applicant filed the present application.

The hearing of the application proceeded orally. The applicant was represented by Mr. Joachim Joliga, Personal Representatives while the applicant was represented by Mr. Robert Kipingili, Advocate from RK Attorneys.

Supporting the application, Mr. Joliga submitted that the applicant explained that she was taking care of her sick mother as per the exhibits. He stated that the birth certificate, NHI card and a letter from the hospital showing that the one who was sick was really her mother was attached. However, in the ruling by Ngaruka, Arbitrator did not talk anything about those documents in his ruling. According to him, this brought a doubt to her whether he considered her reasons backed with evidence. The non-consideration of the evidence resulted injustice to the applicant for not considering her relevant documents that would have substantiated her case. Supporting his position, he cited the case of **Johnson Joliga Tanda v. Chief Court Administrator and AG**, Misc. Appl. No. 39 of 2017 and Revision No. 52 of 2016, chief court administrator and AG v Johnson Joliga Tanda, HC of Tanzania, at Dar es salaam. It was further

submitted that in those cases the applicant delayed for 17 years to file application, but he was granted extension of time, on the reason that social justice was distinguished from legal justice. On that basis, he is of the view that, the applicant had a sufficient cause as per the annexures, and she ought to be granted extension of time for the reason. He thus, prayed for the CMA decision to be quashed and set aside.

Opposing the application, Mr. Kipingili submitted that the applicant failed to adduce good ground for delay to warrant extension of time to be granted in terms of Rule 11(3) of GN No. 64/2007 which provides criteria to be met for one to be condoned.

Mr. Kipingili argued, that the first criteria is degree of lateness and continued to state that, the applicant in this matter delayed for 64 days to file the intended application. The only thing she provided was an NHIF form, which was issued on 14<sup>th</sup> January 2023 which in fact is immaterial because it was six days before her termination which was on 20<sup>th</sup> January 2023. Reinforcing his stand, he referred to the case of **Tanzania Coffee Board Vs. Rombo Millers Ltd (2015) TZCA 49** at Page 8 where it was held that a delay of even a single day must be accounted for.

The second criteria is reason for lateness for which he argued that the applicant has failed to discharge her duty by not providing her reason for lateness which would have assisted the commission to examine the validity of her claim. He also referred to the case of **Ladger Bernard Nyoni Vs National Housing Cooperation Civil**

Appeal No. 372/01/2018 (2018) TZCA 370 at pg. 7 it was held that the condonation should not be granted merely on asking but there must be reasons to enable the court to understand clearly the reasons and assess the reasonability.

Mr. Kipingili submitted further that the other criteria is the prospects of success in the dispute and obtaining the reliefs sought. He stated that, the applicant has failed to substantiate her claim because she had indulged on her own negligence and all her terminal benefits were paid to her, as she has not provided any proof of non-payment as alleged.

On 4<sup>th</sup> condition as to whether there was any prejudice to the other party, Mr. Kipingili submitted that the applicant's actions has occasioned a loss of over 3 billion Tanzania shillings to the respondents and all procedures were adhered to in her termination. He contended that, the applicant has not provided any proof to the contrary before CMA. Strengthening his position, he cited the cases of **Lyamuya Construction Co. Ltd Vs. Board of Registered Trustees of Young women's Christian Association of Tanzania**, Civil Appl No. 2 of 2010 which also gives the same grounds for consideration as submitted herein above. He stressed that, look at the CMA records, it is clearly revealed that there is no proof of sickness of the mother as stated by the applicant and the applicant was attending her work well before termination all the time and never asked for a leave to attend her sick mother.

He further challenged the applicant ground of sickness, by questioning that, if she alleged her mother being hailing for 3 years, how she managed to do work without excuse from duty, but could

not when she was terminated. On that basis he is of the view that, she could also manage to take the matter to CMA without delay by herself or engage a personal representative as she has done now. They thus prayed for the application for revision to be dismissed with costs for lack of merits.

In rejoinder, Mr. Joliga submitted that, the applicant delayed for about 60 days only and she proved her matter well before CMA and she is here seeking for her rights. On prospect of success, it is his view that CMA have not failed to prove her claim at CMA as per CMA Form No.1 in termination letter her entitlements were enumerated, but she was not paid any benefit. It was withheld by the equity Bank. It was only one-month salary for January 2023 and another one-month salary in lieu of notice. He urged that, the issue of causing loss to the company is not relevant to our case. He further argued that, the delay of the applicant resulted from her mother's sickness.

Having gone through the parties' submissions and their sworn statements together with the record of the CMA, the issue for determination is whether the applicant adduced good reason for the CMA to grant extension of time. The applicant contended that she failed to lodge her labour dispute relating to unfair termination, due to mother sickness.

On the other hand, the respondent's counsel maintained that the applicant failed to meet some criteria recognized by law for extension of time to be granted. In resolving the disputed question, I find worth to consider the Law guiding time limit of lodging a dispute to the

Commission. Since the nature of dispute is relating to unfair termination as per CMA Form No.1, then the relevant provision is Rule 10(1) of G.N No. 64 of 2007 which directs that the same should be filed within thirty (30) days.

Again Rule 11(3) of G.N No. 64 of 2007 establishes some criteria to be met for the CMA to grant condonation. Further to that, it is an established principle that, it is the discretion of the Court to grant an application for extension of time upon a good cause being shown, (See. **Tanga Cement Company vs. Jumanne D. Masangwa and Another**, Civil Application no. 6 of 2001, Court of Appeal of Tanzania, (Unreported); and **Praygod Mbagu V. Government of Kenya Criminal Investigation 5 Department and Another**, Civil Reference No. 4 of 2019, Court of Appeal of Tanzania, at Dar Es Salaam, (Unreported)].

What constitutes good cause must be adduced by the one who is seeking extension of time to move the court to exercise its discretion. The good cause must be determined by reference to all the circumstances of each case, as was addressed in the case of **Lyamuya Construction Company Ltd. vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010, the Court of Appeal of Tanzania, at Dar es Salaam, (Unreported).

From the above legal authorities for the applicant to enjoy Court's discretionary powers in granting extension of time, he/she will be guided by the above-mentioned criteria. In this matter, the applicant

was terminated on 20<sup>th</sup> January 2023 and she filed the dispute at CMA on 21<sup>st</sup> April 2023. That's means there was a delay of 60 days on the reason that she was taking care her mother as she was sick.

Is this a sufficient cause for delay. Sickness is usually a good cause, but it all depends on the circumstances surrounding it. In our circumstances, I decline to state so. First reason for hesitation is that there was no evidence that her mother was hospitalized for the whole that time of delay. It is on record that her mother was sick even before she was hospitalised and she had never requested off duty to take her care. If she was able to take her care while she was still in employment without getting off duty, it will be absurd to believe that, it is only when she was terminated she had to take full care to the extent of not getting time to follow up on equally important matters involving her rights. For the sickness that is on the third party, not the applicant herself, there is a requirement of proof of extent of involvement that in the said third party's sickness that prohibited the applicant to act for all that long. Therefore, for the applicant who managed to take care of her sick mother while was still in job, could not fail to take up the procedure relating to his job rights due to the same condition that she had handle while on job. Had it been that she is the one who was sick, the considerations would be different.

Second, the applicant delay is inordinate. Delay of sixty days without concrete proof of tight engagement to the extent of failure act. But in this case the applicant gives no convincing ground such inordinate delay. Consequently, she has failed to account for each day of delay, contrary to the principle of ensuring litigation comes to an end at the earliest time possible. In the case of **Bushiri Hassan v. Latifa**

**Lukio Mahayo**, Civil Application No. 3 of 2007 (Unreported) the Court of Appeal held: -

*"Delay of even a single day has to be accounted for otherwise there would be no point of having rules prescribed within certain steps have to be taken."*

Although, I agree that applicants mother sickness must have distracted her in some ways, but her inaction is not solely because of sickness for all the sixty days, unless she was a full time attendant, the fact she did not prove, for she seemingly not when she was still in employment. Lack of diligence on her part contributed to such inordinate delay. The annexure A one (NHIF form), he had annexed to the CMA was made before he termination as correctly argued the respondent's counsel. When the delay is a result of some kind of not been diligence enough the application is denied as it was held in the case of **Zawadi Msemakweli v. NMB PLC**, Revision No. 427 of 2016, High Court (Labour Division) where it was held that:-

*"Therefore, it is my view that the delay was a result of inaction and lack of diligence on the part of the applicant, the factor which does not constitute sufficient reason to warrant the court to exercise its discretionary powers to extend the time sought in the application. "*

As pointed out herein above, the applicant's act amount to inordinate



delay contrary to the principle established in authorities above and many more which I need not make reference to here.

From the above legal reasoning, I have to hold that the applicant failed to convince this Court to exercise its power of revising the CMA ruling on the reason that there was inordinate delay that was not substantiated with good cause.

In such circumstances I hereby uphold the CMA decision by dismissing the application for lack of merits.



A handwritten signature in blue ink, appearing to be "M. P. Opiyo".

**M. P. OPIYO,**

**JUDGE**

**16/10/2023**