

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION APPLICATION NO. 27228 OF 2023

BETWEEN

RAJESH DAS APPLICANT

VERSUS

STANBIC BANK (T) LIMITED RESPONDENT

RULING

Date of Last Order: 25/04/2024

Date of Ruling: 07/05/2024

The brief background of the application is that; the Applicant was employed by the Respondent in the position of Information Security Manager. He worked with the Respondent until 3rd December, 2012 when he was terminated on the ground of gross dishonest. Dissatisfied by the termination, the Applicant referred the matter to the Commission for Mediation and Arbitration (herein CMA) where the matter was decided in his favour. Aggrieved by the CMA's decision, the Respondent herein preferred revision application before this Court. Upon considering the evidence on record, the Court quashed and set aside CMA's proceedings and the subsequent Award on the ground that the matter was not properly referred to arbitration. Therefore, the matter was remitted back at the CMA.

Following the Court's order dated 22/06/2023, the parties were served with summons to appear before the CMA on 12/07/2023. It was alleged that when the matter was placed before another Arbitrator, the Respondent raised a preliminary objection that the matter was time barred since the notice to refer the dispute to Arbitration was filed after lapse of 30 days. That the CMA overruled the objection and ordered the matter to proceed for hearing. It was alleged that when the matter came for hearing, the Applicant withdrew the same and decided to file an application for condonation to refer the dispute to arbitration.

It is further alleged that when the matter came for hearing of condonation, the Arbitrator ordered the same to be disposed by way of written submission. However, the Applicant did not file his written submission as scheduled by the CMA. After being advised by the CMA, the Applicant filed an application for extension of time to file written submission out of time. Unfortunately, the later application was denied by the CMA. Being dissatisfied by the CMA's decision, the Applicant filed the present application on the following grounds:

- a) The CMA erred in law and in fact for holding that, the Applicant had no sufficient reasons for granting condonation to file the written submission.

- b) The CMA erred in law and in fact for holding that the Applicant had not complied with the Commission's order dated 16/12/2023 ordering the Applicant to serve the Respondent his Written Statement while the Respondent was served with the same on 16 December, 2023.
- c) That the CMA erred in law and in fact for holding that the Applicant had not proved sufficiently the reason for condonation to file the written submission.

The application proceeded by way of written submissions. Before the Court, the Applicant was represented by Mr. Geoffrey Joseph Lugomi, learned Counsel. While, Arbogast Mseke, learned Counsel appeared for the Respondent.

The first and the second grounds were argued jointly. Mr. Lugomo submitted that the reason that made the Applicant's Advocate unable to file the said submission on the scheduled date 27/6/2022 is that the Advocate travelled to Songea from 14th June 2022 to 28th June 2022 to attend his sick father as stated in the affidavit in support of this application where the Applicant also attached bus tickets.

Mr. Lugomo submitted that the reason adduced by the Applicant's Advocate is sufficient and hold water. Thus, we are leaving in an African

context where it is a moral obligation of a child to take care of her parents when sick and in old ages. Therefore, attending a sick parent in this case, cannot be taken as an insufficient reason neither can it be termed as an unsatisfactory reason. He added that even the holy scriptures have directed us to take care of our parents and members of our households as it is provided in the holly bible, first book of Timothy Chapter 5 verse 8.

On the point of not attaching the medical documents of his father in the affidavit to prove his allegation, Mr. Lgomo submitted that the Arbitrator misdirected herself on the fact that it is improper to disclose someone's illness. Thus, it was his father who was sick and, therefore, the said medical documents are not owned by the Applicant's Advocate and the nature of his father' s illness could not be disclosed to third parties.

It was Mr. Lugomo's further contention that the cases cited by the CMA are distinguishable to the circumstances at hand. In the cited cases, it was the Applicants themselves who stated that they were sick and, in that case, it was expected of them to bring medical documents as proof contrary to the present case.

To sum up his submissions the counsel submitted that it was wrong for the CMA to deny the Application for extension of time to file the written submission since the Applicant adduced sufficient reasons for the grant of the same.

In response to the application, Mr. Mseke was of the strong position that, it was correct for the CMA to dismiss the application because the Applicant did not comply with the CMA's order. He argued that, the CMA was lenient with the Applicant since, instead of dismissing the application the submission was expunged and the CMA ordered the Applicant to follow proper procedure to file submission out of time. It was submitted that having expunged the submission from the record, they expected the Applicant to file an application for extension of time to file submission to the contrary, the application was never served to the Respondent.

It was Mr. Mseke's strong submission that the Applicant did not demonstrate good cause for the Court to grant an application for condonation. He said, the Applicant failed to act diligently. He further stated that the issue of sickness alleged by the Advocate was just a mere kick of dying horse because the Applicant is represented by the firm with number of competent Advocates who know Court procedures. Mr. Mseke

added that; in case one Advocate is absent, they expect the other Advocate to take over and represent the Applicant or follow proper procedure to notify the Court.

On the second ground, it was replied by Mr. Mseke that the Arbitrator's holding that the Applicant did not comply with the CMA's order dated 16th December 2022 is wrong owing to the fact that on the same date the Applicant served the Respondent with the written submission for their reply on or before 27th January 2023. However, for the reasons better known to the Respondent himself, he did not file the rebuttal submission. He added that referring to ANNEXTURE RAJESH 10 at page 9, it shows that it was signed and stamped by Advocate Arbogast Mseke.

Mr. Lugomo in rejoinder submitted that before issuance of further orders or writing a ruling, the Applicant expected that before the ruling, the arbitrator would have inquired by summoning the parties on whether the order of 16th December 2022 was complied without the Respondent submission and ending blaming the Applicant who had complied with the same.

In addition, counsel Lugomo submitted that the application for extension of time at the CMA met the requirements for the grant of the same. He stated that the Applicant mentioned five grounds as follows:

- i. That, the Advocate in conduct of and conversant with the matter, travelled to Songea to attend his sick father from 14th June 2022 to 28th June 2022
- ii. That, the day he returned to Dar es Salaam i.e. 28/06/2022, the time to file the written submission had lapsed a day before.
- iii. That, the Applicant's Advocate promptly informed the CMA of the situation facing him and informally requested extension to 1st July 2022.
- iv. That, on 1st July 2022 the Applicant Advocate promptly filed the written submission.
- v. That, the delay to file the written submission was not the Applicant or his Advocate's own making.

It was further argued by the Applicant's Counsel that for the Court to grant extension of time, it is a trite principle that, the Applicant must show a sufficient cause for his delay, and that, the delay should not be caused his own making/negligence and he/she should account for each and every day of delay. In support of his submission, the counsel cited

the case of **Antelope Safaris Limited v. Atupele Mwambuna**, Misc. Application No. 515 of 2016 (unreported).

The Applicant's Counsel went on to submit that in examining what constitute a sufficient cause, the CMA should have been wide and considered circumstances beyond the Applicant's control like the matter at hand. The position which was held in the case of **Felix Tumbo Kisima v. TTC Limited Another**, Court of Appeal No. Civil Application No. 1 of 1997. In the upshot, the Applicant's Counsel urged the Court to grant the application.

In response to this ground, Mr. Mseke submitted that the Applicant has never at any point and time acted diligently in prosecuting his case. He stated that, it can also be seen in the present application where the Applicant took seven (7) months to file the present application while the CMA's decision was delivered on 19/05/2023. He therefore the Court to dismiss the application.

The record shows that, on 13/06/2022 the CMA ordered the parties to dispose the application by way of written submissions. The Applicant was ordered to file his submission by 27/06/2022, the Respondent to file reply by 04/07/2022 and rejoinder by 11/07/2022. Furthermore, the

matter was scheduled for ruling on 11/08/2022. On the date scheduled for ruling, the Arbitrator stated in verbatim as follows:

Mbele ya Tume ni maombi ya kuleta mgogoro huu hatua ya uamuzi, ambapo Mleta maombi alisema anaomba kufanya kwa njia ya maandishi. Tume ilitoa order Mleta maombi awasilishe mnamo tarehe 27/06/2022 hata hivyo tarehe 27/06/2022 Tume ilipokea maombi ya kuongezewa muda wa kuwasilisha hadi tarehe 01/07/2022. Kwamba mnamo tarehe 04/07/2022 Tume ilipokea ombi la "Perusal of File" kutoka kwa Mjibu maombi. Baada ya hapo pande zote zimefika mbele yangu kuleta concerns zao leo tarehe 11/08/2022.

The above quotation briefly means, the CMA stated that the Applicant was ordered to file written submission by 27/06/2022 however, on the same date of 27/06/2022 the CMA received an application from the Applicant for extension of time to file his submission by 01/07/2022. It was also stated that on 04/07/2022 they also received an application of file perusal from the Respondent. Thus, on the mentioned date, the CMA decided to hear the concerns of both parties. After considering the submissions of the parties, the CMA found that the application for extension of time by way of a letter was improperly made by the Applicant. Therefore, the Applicant was ordered to file formal application for extension of time within 7 days.

At page 4 of the impugned ruling, the Arbitrator stated that on 12th December 2022, the Respondent appeared before the CMA and submitted that the Applicant did not serve them their written submission which resulted for them not to reply/oppose the application. That, on 16th December 2022 the CMA ordered the Applicant to serve the Respondent their written submission and the Respondent to reply before 27th January 2023. The Arbitrator stated that the order was issued to the Applicant's representative who appended his signature for receiving it on the same date. It was further stated that up to when she was writing the impugned decision, the Applicant failed to serve the written submission to the Respondent as well as the Respondent failed to reply the same.

On the basis of the above finding, the Arbitrator found that the Applicant's Advocate was less serious with the case and acted unprofessional in total disregard of the CMA's order. Thus, the extension of time sought was not granted.

I have critically analysed the records. It is found that the proceedings from 12th December, 2022 up to 19th December, 2022 when the Applicant was granted extra time to file his submission are missing. The case file was remitted back to the CMA in regard of the missing records. With an affidavit dated 29th April, 2023 the trial Arbitrator

deponed by an affidavit that the proceedings of the mentioned dates are missing but the same were submitted to the CMA registry office since 15/02/2024.

Following the missing records which are sufficient important to establish the Advocates negligence, it is my view that to avoid prolonged proceedings and for the benefits of doubt, I find prudent for this application be granted. What the Applicant is seeking is for extension of time to refer the matter to arbitration. Therefore, if the alleged negligence was proved on the part of the Arbitrator still the Applicants dispute was not determined on merit. Thus, considering the fact that the Applicant had been in CMA corridors pursuing for his right tirelessly, it is for the interest of justice to grant the application at hand.

On the basis of the above analysis, for speed administration of justice, the application is hereby granted. The Applicant is granted 15 days leave to refer the matter to arbitration.

It is so ordered.

A handwritten signature in black ink, appearing to read 'Y.J. MLYAMBINA', with a long, sweeping horizontal stroke extending to the left.

Y.J. MLYAMBINA

JUDGE

07/05/2024

Ruling delivered and dated 7th May, 2024 in the presence of Obora Kaduga, Legal Officer from Mzizima Law Chambers for the Applicant and in the absence of the Respondent.



Y.J. MLYAMBINA

JUDGE

07/05/2024