

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

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**REVISION APPLICATION NO. 23 OF 2020**

(Originating from CMA/ARS/ARS/592)

**EMMANUEL LALAH MANDA..... APPLICANT**

**VERSUS**

**NGORONGORO CRATER LODGE .....RESPONDENT**

**RULING**

28/7/2021 & 22/9/2021

**ROBERT, J:-**

The Applicant, **Emmanuel Lalah Manda**, seek to revise the decision of the Commission for Mediation and Arbitration (CMA) in labour dispute No. CMA/ARS/ARS/592/2018, delivered on 11<sup>th</sup> March, 2020. The application is supported by an affidavit sworn by the applicant and resisted by a counter affidavit sworn by **Ms. Vivienne Mtei**, Human Resource Manager for the respondent.

Briefly stated, facts giving rise to this application reveals that, the applicant was an employee of the respondent. On 21<sup>st</sup> December, 2017 the respondent terminated the applicant's employment. Dissatisfied with

the termination, he referred the matter to CMA on 22<sup>nd</sup> January, 2018 with delay of one day and applied for condonation. The CMA denied the condonation application for failure to adduce sufficient reasons for the delay. Aggrieved, he preferred the present application.

At the hearing of this application, both parties to this application were represented. Mr. Lawrence Mollel, Personal Representative, appeared for the applicant, while Mr. Erick Kimaro, learned Counsel represented the respondent.

Submitting in support of this application, Mr. Mollel stated that, when the applicant went to file CMA F-1 on 16/1/2018 the CMA office was closed and there was a notice indicating that all the employees had left to attend a seminar in Morogoro. On 22/1/2018 he filed an application for condonation as he was late for one day. At first the application was heard by Hon. Kefa and later on transferred to Hon. Anosisye, who decided that no sufficient reasons were advanced by the applicant to move the commission to grant the prayer sought. His decision was contrary to GN No. 64/2007 which allows complaint to be referred to CMA at any time within 30 days from the day the termination occurred.

They prayed for the court to set aside the said decision and order trial de novo before another competent Arbitrator.

Opposing the application, Mr. Kimaro submitted that, it is in the discretion of the court to grant or to refuse application for condonation. The applicant is required to show sufficient reasons why he did not file his application within the time stipulated by the law.

He maintained that, the applicant's delay was inordinate hence the CMA was right in refusing his application. He cited the case of **Daniel Malambo & Joseph Kapela vs Pangea Minerals Ltd**, Misc. labour Application No. 3 of 2020 (unreported). He argued that, the applicant's allegation that he found the office closed and got informed that all the employees went to attend a seminar in Morogoro was not substantiated by an affidavit of the employee who gave him that information. He made reference to the case of **John Chuwa vs Anthony Ciza** (1992) TLR 234 where the court quoted the case of **Kighoma Ali Malima vs Abas Yusuph Mwingamno**, Civil Application No. 5 of 1987 to show that affidavit of a person so material has to be filed. He prayed for this application to be dismissed.

Having carefully examined the parties' submissions and examined the CMA records, I will now make a determination on the merit of this application.

It has been the position of the Court that an application for extension of time is entirely in the discretion of the court to grant or refuse. This discretion however has to be exercised judiciously and the overriding consideration is that there must be sufficient cause for so doing. From the decided cases, a number of factors have to be taken into account, including whether or not the application has been brought promptly; the absence of any or valid explanation for delay; lack of diligence on the part of the applicant, and whether the applicant has accounted for each day of delay.

In the circumstances of this case, as correctly decided by the CMA, among other factors, the applicant had to account for a day of delay. On why to account for the delay, the Court in **Bushfire Hassan vs. Latina Lucia Masaya**, Civil Application No. 3 of 2007 (unreported) clearly stated that: -

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

Having gone through the applicant's affidavit filed at the CMA, it is clear that the applicant did not account for the days of delay apart from

the narration that CMA employees were attending seminar in Morogoro which he failed to substantiate.

In Civil Reference No. 12 of 2004 between **David Mwakikunga vs Mzumbe University**, (unreported) the Court of Appeal of Tanzania, dealing with similar situation, observed that:-

*"From these, together with the applicant's Oral submissions, it is clear to us that, the applicant is blaming the Civil Registry staff of the High Court for misleading him that the copy had first to be endorsed by the registrar before it was served on the respondent, and that the registry never returned to him the copy which he would otherwise have served the respondent. There is neither affidavit nor evidence of any kind from the registry office confirming the same... whatever the case, in our view, none of these amounts to sufficient ground for his failure to serve the respondent with the copy of the letter.*

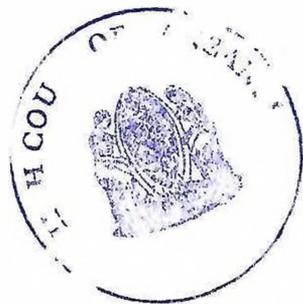
The law requires he who alleges to prove. The applicant failed to prove his blames against the CMA office but raised mere allegations which could not be relied upon.

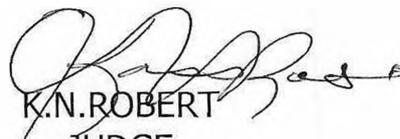
That said, this Court finds that, the applicant did not adduce sufficient reasons for her delay, and as opposed to the argument by the

applicant's counsel that the Hon. Arbitrator did not consider elements for consideration in granting of extension of time, it is apparent that the ruling of the CMA is well composed and the Hon. Arbitrator considered all factors needed to be taken into account

In the circumstances, I find no need to fault the CMA decision since the applicant failed to adduce sufficient reasons for the delay. The application is hereby dismissed.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
22/9/2021