IN THE HIGH COURT OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

REVISION APPLICATION NO. 81 OF 2020

BETWEEN

(Originated from CMA/ARS/MNR/357/20)

JOSEPH GIDORI KARENGI ..... APPLICANT

VERSUS

CONSOLIDATED TOURIST AND

HOTELS INVESTIMENT LIMITED ..... RESPONDENT.

JUDGMENT

5th May & 2nd September, 2022.

MZUNA, J.:

This is the second attempt by Joseph Gidori Karengi, the applicant herein, for condonation to refer the dispute out of time. The trial CMA dismissed the said application on the ground that the applicant failed to demonstrate good cause to bring the matter out of prescribed time as he was late for about 15 months.

Aggrieved by the findings of the CMA, the applicant filed this application under section 91(1)(a), 91(2)(b) and 94(1)(b)(i) of the Employment and Labour Relations Act No. 6 of 2004 and Rule 24(1), 24(2)(a)(b)(c)(d)(e) and (f) and Rule 24(3)(a)(b)(c) and (d);

28(1)(b)(c)(d) and (e) of Labour Court Rules; G.N. No. 106 of 2007 praying for the following orders: -

> ***First**, To invoke its revisionary powers to call upon the records of the Commission for mediation and arbitration in labour dispute number CMA/ARS/MNR/357/2020 between Joseph Godori Karengi versus Consolidated Tourist and Hotel investment Limited.*
>
> ***Second**, To inspect the said records vary the decision of honourable Arbitrator thereof and give such directions as it may consider necessary."*
>
> ***Lastly;** Any other relief(s) this honourable court may deem fit to grant.*

Hearing of this application was done through written submissions. The applicant was ably represented by Mr. Baraka and Frank Maganga, the Personal representatives while the respondent was represented by Mr. David Kahwa, the learned advocate.

The main issue for adjudication is whether the applicant had demonstrated good cause for the delay?

In his submission, the Personal Representative for the applicant submitted on six grounds which reads:-

1. *That the arbitrator erred in law and fact when holding that the applicant was not among the employees who were represented by CHODAWU in the matter which was struck out while the respondent did not oppose on it.*
2. *That the arbitrator erred in law and in fact by holding that the applicant was late due to his negligence while all documents were*

in the possession of CHODAWU and the applicant had no way out rather than to claim to deferent government offices and the applicant received the copies concerned through those offices.

3. *That the arbitrator erred in law and in fact by holding that the respondent will be affected if the applicant's application will be granted.*
4. *That, the arbitrator erred in law and in fact by holding that the applicant's application was not satisfied (sic) the requirement of rule 11(3) (a) up to (e).*
5. *That the arbitrator erred in law and in fact by entertaining the void collective bargaining agreements.*
6. *That, the arbitrator erred in law and in fact by dismissing the application and holding that is baseless while the application showed a good course (sic) for delay?*

Submitting on the above grounds, the Personal Representative says on the first ground that the mediator contradicted himself by showing interest by hold man that (sic) the applicant was not among the one who were represented by CHODAWU and the man was on top of that. CHODAWU was represented employees (sic) who had interest in the said Agreement and the applicant was the one who affect from the employer's act to change the clause that the applicant will be benefited from it.

On the second ground he says the arbitrator was wrong to state that the applicant was late for his negligence while the applicant had no any document to support his claims and that when CHODAWU withdrew the

matter at CMA, time had already elapsed. Further that the matter was not lodged in the name of the applicant instead it was CHODAWU on behalf of the employees. That it constituted technical delay.

On the third ground he submitted that the arbitrator who deserved to be impartial declared that the respondent will be affected if the application will be allowed without saying how the respondent will be affected. He says that, responding on the issue that was neither argued by the respondent resulted into unjust decision.

On the fourth ground he says the arbitrator erred by holding that the applicant failed to meet the requirement of rule 11(3)(a)(c). He expounded that he stated the reason for being late, prospect of success and prejudice to the other party which ought to have been discussed by the arbitrator.

On the fifth ground he says the arbitrator entertained the void collective agreement. The employer terminated the contract and amended clause 12.1 without reasonable notice to the parties contrary to section 71(6) and (7) of the ELRA. That the arbitrator failed to declare that illegality is also good cause for extension of time.

Lastly the applicant submitted on the 6th ground that the applicant showed good cause for the delay but according to him the CMA ignored

that fact and circumstance of the delay and reached unjust decision. He distinguished normal civil proceedings from labour matters saying that in civil cases ground for extension of time is upon proof of sufficient cause while condonation condition stipulated under Rule 11(3) of G.N.64 of 2007 must be considered. He cited a case of **Catherine John Versus Leopard Tours Ltd**, Rev. No. 85 of 2015 and the case of **Hashimu Mohamed Kimbuka vs Impala Hotel,** Rev. No. 6 of 2018 (all unreported). To conclude the applicant prayed for this court to set aside the said ruling of CMA and order the matter to be heard on merits.

In reply to the applicant's submission Mr. David Kahwa in his submission prayed for this court to adopt the contents of counter affidavit as part of their submission. He said the matter addressed is not only remote but outrageously unfounded and baseless to justify the applicant's failure in referring dispute within the prescribed time limit.

Recapitulating on the facts, the learned counsel submitted that the applicant retired from work on 31st December 2018 and his claim are based on the Addendum to Collective Bargaining Agreement which was signed on 13th April 2019. The applicant was not a party to it therefore he cannot claim or benefit anything from the addendum of which he was already out of work. Further, the addendum itself did not state that it

would include the employees who were already retired. It is not true that CHODAWU and respondent changed the agreement illegally.

Attacking the first ground of revision, the learned counsel said that the applicant has failed to show why he failed to lodge the application on time, even if the applicant was represented by CHODAWU in any matter, it cannot be sufficient reason for the applicant's failure to lodge the case within time.

Responding the second ground of revision he submitted that the applicant failed to show which document were in possession of CHODAWU and their importance in lodging the case and how turned to be a technical delay.

He further submitted in respect of the third ground of revision that allowing an application which is not supported by good reason would affect the respondent in terms of time and costs. According to him the arbitrator under this ground is not challenged instead the applicant was under a duty to satisfy this honourable court that the delay was justifiable in law.

On the fourth ground of revision the respondent's counsel challenged the submission of the applicant that the provisions of the law mentioned are not clearly cited as no mention of law which the rule is

coming from. There is no justification that the application met the mentioned factors like degree of lateness, the reason for lateness, prospect of succeed and prejudice to the other party. He mentioned the case of **John Sebastian Cosmas and Fred Madala vs Consolidated Tourists and Hotels Investment Limited,** Labour Revision No. 15 of 2020, High court of Tanzania, Labour Division at Musoma (unreported). That grant of extension of time should neither be from the dilatory conduct nor has the applicant to satisfy "a reasonable prospects of success...".

The learned counsel for the respondent vehemently rejected the fifth ground of revision saying that nothing tangible explained to prove that the arbitrator erred in law and fact by entertaining the void collective bargaining agreement and how was it connected with the reason for delay of lodging the matter within time limit. He also failed to show illegalities of the alleged void agreement.

Responding to the sixth ground of revision, the learned counsel submitted that the applicant has explained nothing to prove good cause for the delay as per Rule 10(1) and (2) of G.N. No. 64 of 2007. The set time limit has to be adhered to in filing disputes at the CMA, that is within 30 days for termination disputes and 60 days for other claims.

That, compliance in instituting claims in the court /commission is a legal requirement and not legal technicalities therefore same must be complied to avoid parties to file their matter at the time of their wish. The case of **Leons Barongo vs Sayona Drinks Limited, Lab. Div. DSM**, Revision No. 182 of 2012, **Ombeni Paulo Msuya vs National Insurance Corporation (T) Ltd and Consolidated Holdings Corporation**, Revision No. 369 of 2013, High Court of Tanzania at Dar es salaam**, Bushiri Hassan vs Latifa Lukio Mashayo,** Civil Application No. 3 of 2007, Court of Appeal of Tanzania at Arusha and **Shaaban Issa Semjaila vs Heaven Pre-primary School**, Misc. Labour Application No. 53 of 2020, High Court of Tanzania (Labour division at Arusha) (all unreported) were cited to show the significance of showing sufficient cause and that "delay of even a single day has to be accounted for" as per the holding in the case of **Bushiri Hassan vs Latifa Lukio Mashayo,** (supra). He prayed for this court to uphold the findings of CMA and dismiss the application for revision.

In answering the above raised grounds and submissions thereto, the main issue is whether the applicant has shown **"good cause for the delay"** as per Rule 10(1) and (2) of G.N. No. 64 of 2007.

In that respect, I wish to start with ground Number four. The application purports to apply for revision. In actual fact I have to consider ground upon which the applicant's application was dismissed. The application was for condonation over his lateness to refer the dispute to the CMA. Rule 31 of G.N. 64 of 2007 provides:

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

The CMA found that the Applicant's application failed to meet the requirements as stated under rule 11(3)(a) to (e) of G.N. No. 64 of 2007.

On account of the above cited provision, for the Commission to grant application for condonation, the provision requires a party to submit on *"the degree of lateness, reasons for lateness, its prospects of succeeding with the dispute and obtaining the relief sought against the other party, any prejudice to the other party and any other relevant factors".* These guiding factors were also stated in **Badru Issa Badru V. Omary Kilendu & Another,** Civil Application No. 164 of 2016, CAT at DSM (Unreported).

To start with the degree of lateness rule 10(1) of GN. No. 64 of 2007 sets time for filing disputes to be 30 days and according to the records from the CMA the disputes arose on 3/1/2019 and the same was

submitted to CMA on 30/4/2020 hence the dispute was brought out of time for about 15 months. Indeed 15 months is no doubt a long period of time. The applicant be it in his affidavit or even submission has failed to account for the time he had been late. In **Bariki Israel v. Republic,** Criminal Application No 4 of 2011 (Unreported), it was held that:

> *" .. .in an application for extension of time/ the applicant has to account for every day of delay. The applicant has failed to ... "*

The applicant has explained the reason for been late that the important document for filing the disputes was in possession of CHODAWU and he spent all the time in different government office seeking for advice on proper way to enforce his rights.

This ground is not justification for failure to lodge the matter on time because he has failed to explain what document and how were they relevant for him to file the dispute before the CMA which were out of his possession and thereby made it difficult for him to lodge the application within time.

On the recourse for other avenues of settlement by referring the matter to the Regional Commissioner for better terms "kutafuta hali bora" and "Msajili wa Vyama vya Wafanyakazi" with due respect that cannot be good cause for extension of time. It was held in the case of **Hellen Jacob**

v. Ramadhan Rajab, Misc. Civil cause No. 24/1994 [1994] TZHC 6, the position which I entirely agree with that:-

> *"The fact that she was busy complaining to CCM and the Minister for Home Affairs is not sufficient reason for extending time".*

I wish to join the position of Honourable arbitrator in his findings that already the applicant knew the proper way to seek his rights but for reasons best known to himself, he chose not to take the path.

So the argument as stated in the second ground that the applicant was late right from the time the CHODAWU withdrew the matter before CMA and that he had no document to support his application, is without merit because he chose to be represented by CHODAWU and if it was the wrong choice that constitute negligence on his part.

If I may hasten to add, the matter before CMA was withdrawn on 28/6/2019 but the applicant lodged the application on 30.4.2020 at Manyara before being transferred to Arusha. There was a lapse of about 10 moths. It has been held time without number that where a party seeks for the court to enlarge time or condonation, he must account for "every day of the delay" see, the case of **Bariki Israel v. Republic** (supra). He ought to have acted promptly by lodging the application if at all he was acting in good faith. The fact that the applicant has failed to account for

time from the day the matter was withdrawn to the time he applied for condonation is a clear proof of negligence on the part of the applicant.

On ground five of the revision, going through the records of CMA exhibit CT1 is the Collective Bargaining Agreement entered on 7th April 2018 which was expected to end on 6th April 2020 and exhibit CT2 refers to Addendum to the Collective Bargaining Agreement signed on 13th April 2019. When Addendum to the Collective Bargaining Agreement was signed on 13th April 2019 the appellant had already retired on 31.12.2018 so he was not bound by this supplement agreement. However, honourable arbitrator had no reason to rule out on the supplement agreement, and in fact he did not, on the reason stated at page 7 of the typed award and I hereby quote; "... *ni mabadiliko ya kawaida kulingana na mazingira yaliyokuwepo, lakini wakati mabadiliko yanafanyika hiyo tarehe 13.4.2019 mleta maombi tayari yeye alikuwa amestaafu toka tarehe 31.12.2018 hivyo mabadiliko hayo hayamhusu".*

Even if the supplementary agreement is held void but since the same was made while the applicant was not in active service of his employment and in the absence of evidence that the applicant's rights were dealt with basing on it, the applicant cannot bring it to justify illegality of the findings of CMA.

I join hands with the submission of Mr. Kahwa in respect of the fifth ground that nothing tangible had been explained by the applicant to prove that the arbitrator erred in law and fact by entertaining the void collective bargaining agreement and how was it connected with the reason for delay of lodging the matter within time limit.

On the first ground of revision the applicant submitted that the CMA decided the issue which was not raised or opposed by the applicant, that he was not represented by CHODAWU. This is discussed at page 10 of the typed judgement where the Arbitrator was expounding negligence of the applicant.

The question is, whether holding that the applicant was not among the employee who were represented by CHODAWU in the matter which was struck out affected the rights of applicant? To the best of my understanding, that has no any impact towards determination of applicant's right. I see no harm for the Honourable arbitrator to express his opinion justifying him reach to a particular conclusion.

It is also on that basis he even said that the respondent will be affected if the application is allowed. So the argument in the third ground of revision that the applicant doubts the impartiality of the arbitrator on that basis with due respect is unfounded. He was explaining the

consequence of allowing the application which was contravening rule 11(3) a-e of G.N. No. 64 of 2007 on degree of prejudice.

The CMA found there was prejudice on the part of the respondent if this application which had taken many years unprosecuted, was allowed. This does not in my view tarnish his impartiality. This ground must fail as well.

Having answered the above grounds in the negative, automatically the answer to the sixth ground of revision is also in the negative. There are no adduced grounds which constitute good cause for the delay, instead he advanced dilatory conduct or negligence.

On the basis of the above discussion, the applicant did not adduce sufficient cause for the delay. The CMA was right to dismiss this application for condonation. The revision application stands dismissed with no order for costs.

M. G. MZUNA,
JUDGE.
02/09/2022