THE UNITED REPUBLIC OF TANZANIA

THE JUDICIARY

IN THE HIGH COURT OF TANZANIA

AT MBEYA

LABOUR REVISION NO. 22 OF 2021

(Arising from Consolidated Labour Dispute No. CMA/MBY/87/2019**)**

BETWEEN

LAWIS MTOI ..... 1ST APPLICANT

WETSON MWAKISU ..... 2ND APPLICANT

BULUBA MWAMBA ..... 3RD APPLICANT

AMIRI MASUMAYI ..... 4TH APPLICANT

VERSUS

NOKIA SOLUTIONS AND NETWORKS TANZANIA LTD..... RESPONDENT

JUDGMENT

Date of last order: 29/06/2022
Date of judgement: 30/08/2022

NGUNYALE, J.

It was alleged that the applicants delayed to file a Labour Dispute for nine (9) years advancing two reasons for the delay that, the nature of work they were doing prohibited them to file the application within time and

that, there existed constant promises of the respondent to pay them, those promises made them to be reluctant to file the dispute within time. They preferred an application for condonation or extension of time before the Commission for Mediation and Arbitration (CMA). The application was dismissed for lack of merit because the Arbitrator found that both grounds lacked foundation which will amount to sufficient reasons for the delay.

Following the dismissal of the application for lack of merit the applicants preferred the present application for revision under section 91 (1) (a), (b), 91 (2) (a),(b), 91 (4) (a),(b) and 94 (1) (b) (i) of the Employment and Labour Relations Act, 2004 as amended by Written Laws (Miscellaneous Amendments) Act No. 3 of 2010 and Rules 24 (1), 24 (2) (a), (b), (c), (d), (e) and (f) and 24 (3) (a), (b), (c), (d) and 28 (1) (c), (d), (e) of the Labour Court Rules G. N 106 of 2007 praying for the following orders; -

(a) That this Court be pleased to revise and set aside the Ruling issued by the CMA (N. Kimambo, Arbitrator) dated 16th July 2021 in Dispute No. CMA/MBY/87/2019, for the purpose of satisfying itself as to the correctness, legality or propriety of the said proceedings and as to their regularity and revise them accordingly.

(b) Any other relief (s) that the Court may deem fit to grant.

The application was supported by the affidavits of the applicants. In their respective affidavits each of the applicants stated that the Arbitrator erred by finding that they did not establish sufficient cause to warrant grant of

extension of time. The application was resisted with a counter affidavit sworn by Amelye Nyembe the Human Resources Manager of the respondent who was dully authorised to swear the counter affidavit. In the affidavit he stated inter aria that the Arbitrator properly decided the matter as the applicants failed entirely to establish sufficient reasons for the delay.

The applicant was represented by Mary L. Mgaya and occasionally assisted by Rehema Mgeni both learned advocates meanwhile the respondents enjoyed the service of Thomas Mihayo Simpemba learned advocate. The parties by consent agreed the matter to be disposed by written submission, their timely compliance to the scheduling orders of filing the respective submissions is highly appreciated.

The applicants counsel submitted that Rule 11 (3) (b) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 provides for the criteria that, the Court to invoke its discretionary powers under this rule, is that sufficient reasons have to be shown for the delay. Therefore, in this case the issue is whether or not there were sufficient reasons for condonation. It was the view of the applicant that sufficient reasons mean reasons which convincingly explain the delay to institute a labour dispute within the prescribed time. What amounts to sufficient reasons depend

on the circumstance of each particular case. In this case the Counsel submitted that the reasons which were shown in paragraph 9 of the affidavit in support of the application for condonation before the CMA amounted to the sufficient reasons to warrant the CMA to enlarge time.

It was the applicants further submission that the Arbitrator erred in law and facts when refused to extend time, this is because the application for condonation was raised with sufficient reasons, that, the lateness to file complaint timely was rendered by the nature of work which compelled the applicants to be permanently stationed in their respective sites (rural areas) keeping a close eye to all the employer's equipment's including cellular towers for effectively operation, henceforth it was impracticable for them to abandon their work station by proceeding to urban areas for the addressing and institution of their claims, and another sufficient reason advanced by the applicants was to the effects that they were still waiting for promises of the respondent that their entitlements will be paid. The promises of the respondent were equated by the applicants as amicable settlement of the dispute.

The applicants to bolster the above argument cited the case of **Nyanjugu Sadiki Masudi vs. Tanzania Mines, Energy, Construction and**

Allied Workers Union (TAMICO) [2013] LCCD 185 where Rweyemamu, J (as she then was) held that; -

> *"In view of my said position, I find decisions relied on by the Mediator to be distinguishable and decide that in the circumstances of labour practice the Mediator's decision was contrary to law. It is my conclusion that, in labour law and good practice, parties' efforts for amicable settlement of disputes are encouraged and recognized, as such, such efforts constitute a good cause for delay for the period the parties were engaged in such endeavour"*

The applicants insisted that failure of the employer to pay the employees entitlement as undertaken and the promise to pay was sufficient cause to condone the time to file the dispute to CMA.

In the second limb the applicants Counsel submitted that the Arbitrator erred to dismiss the application for condonation, despite material explanation by the applicants on the reasons for the delay. The reasons for the delay were properly deponed in the affidavit. That the applicants were not alone responsible for the delay, the respondent also contributed for the delay when kept promising the payments of the applicants' entitlement. It was the view of the applicants that the learned Arbitrator failed to exercise his powers judiciously to grant the application. They cited the case of **Lyamuya Construction Co. Ltd vs. Board of Trustees of Young Women's Christian Association of Tanzania**, Civil Application No. 2 of 2010 where it was stated;-

"As a matter of general principle, it is the discretion of the Court to grant an extension of time. But that discretion is judicial, as so it must be exercised accordingly to the rules of reason and justice, and not according to private opinion or arbitrarily."

In the third limb the applicant lamented that the Arbitrator erred to hold that the applicants failed to account for each day of the delay to file the application while the same was clearly stated in the supporting affidavit. It was the view of the applicants Counsel that a question of accounting each day of delay was answered and covered in the applicants' affidavit, as it was evidenced by continuous breach of a cause of action by the respondent when kept promising the applicants on their payment of the statutory entitlements. The waiting for the payments by the applicants suffices to accounting for each day of delay.

In the fourth limb it was the ground for revision by the applicant that the arbitrator erred when he held that the applicant failed to prove how they were promised by the respondent, the arbitrator failed to consider the nature of employment which was on a permanent basis, as well as the applicants' duties which were mostly in remote areas. The applicants Counsel submitted that in the applicant's affidavit is support of the application for condonation the deponents stated that, lateness to file the complaint timely was rendered by the nature of work which compelled the applicants to be permanently stationed in their respective sites keeping a

close eye to the respondent's equipments including cellular towers. It was impracticable for them to leave the site.

The position submitted by the applicants was strongly contested by the respondent. The respondent under representation of Mr. Thomas Sipemba asked the Court to observe that the applicants dispute and claims are out of time for a period of 9 years as indicated in their CMA Form No. 1 and affidavits in support of the application for condonation. It was their humble submission that, in their affidavits, the applicants failed to show sufficient reasons for their inordinate delay of 9 years therefore the CMA was correct in dismissing their application for want of sufficient and justifiable reasons.

The applicants Counsel insisted that the Court of Appeal in a number of cases has emphasized that in an application for extension of time the pre-condition is to show sufficient reasons and to account for each day of delay. He referred the Court to the case of **Leons Barongo vs. Sayona Drinks Ltd** Revision No. 182 of 2012, High Court of Tanzania (Labour Division) at Dar es Salaam (unreported) where it was stated; -

> *"Admittedly Rule 11 (3) of the Labour Institutions (Mediation and Arbitration) Rules provides for conditions.... Now the question of limitation of time is a fundamental issue involving jurisdiction. Though the court can grant an extension, the applicant is required to show sufficient grounds for the delay."*

The courts in granting extension of time shall also consider the requirement of accounting for every day of the delay. This is the observation of the Court of Appeal of Tanzania in numerous cases including the case of **Finca Tanzania Limited and another vs. Boniface Mwalukisa,** Civil Application No. 589/12 of 2018 one of the numerous decisions. The applicants were to account for each day of the delay in 9 years of delay but they failed to do so.

Responding to the second limb of the applicants' grounds for revision the respondent Counsel submitted that there was no material explanation by the applicants on the reasons for the delay. This ground is a repetition of what he had stated already about lack of sufficient reasons. He referred the Court to the case of **Patrick John Butabile vs. Bakhresa Food Products Ltd**; Civil Appeal No. 61 of 2019 the judgment of the Court of Appeal stated in part; -

> *"It is very unfortunate in the present case that the appellant did not show how, and what was the respondents contribution to the delay of more than four years. We find it quite unusual because no prudent, reasonable and diligent person would have endured four years' consecutive empty promises of the employer"*

The applicant did not show how the respondent contributed to their delay; it was the submission for the respondent that the applicants delay was because of lack of diligence. The applicants have tried to allege that the

Arbitrator failed to consider material arguments and reasons before her and the relevant applicable law. With all respect the respondent submitted that the Arbitrator addressed their arguments very well at page 7 paragraph 2 and 3 of the ruling when she stated that; -

> *"I have gone through the affidavit together with the supplementary affidavit; unfortunately, I found no any evidence to support this argument that their work would not allow the applicants to move even in a single day. Even the halleged remoteness area in their supplementary affidavit and in the submission in chief they failed to justify that in the mentioned areas it was not easy for the applicants to move easily within 9 years. Delay for 9 years is too long. It will be appropriate to say that these applicants negligently decided to sleep on top of their rights."*

On the complaint about accounting each day of the delay the respondent submitted that it is a settled principle that in an application for extension of time the applicant has to account for each day of the delay. On the said principle he referred to the case of **Ludger Bernard Nyoni vs. National Housing Corporation**, Civil Application No. 372/01 of 2018, Court of Appeal of Tanzania at Dar es Salaam where it was stated in part by Ndika, JA (as he then was); -

> *"It is settled that in an application for enlargement of time, the applicant has to account for every day of the delay involved and that failure to do so would result in the dismissal of the application..."*

The applicants alleged that the period of promises to be paid by the respondent stands to account for each day of their delay surprisingly there

is no proof that they were promised to be paid as they alleged. No evidence was tendered to prove those allegations that the respondent promised to settle. They alleged further that the delay was due to the nature of the work which was not substantiated.

On the ground that the arbitrator erred to hold that the applicants failed to prove how they were promised by the respondent, the respondent submitted that the ground is a repetition. Generally, there was no sufficient reasons for the delay for 9 months. The applicant's affidavit in support of the application for condonation at CMA contained allegations with no evidence to substantiate them. There was no proof at all. The respondent relied to the case of **Paul Martine versus Bertha Anderson**, Civil Application No. 7 of 2007 that the delay of the applicant was due to inaction and lack of diligence. He prayed the Court to dismiss the application.

The Court has considered the records of the application and found that the pertinent issue to be answered is **whether or not the applicant established sufficient reasons to warrant the Commission to grant condonation**. In answering the very issue, the Court will be guided by the grounds for revision as listed in the applicant's affidavit in support of the application.

The CMA is guided by rule 11 (3) of the Labour Institutions (Mediation and Arbitration) Rules, 2007 which provides; -

> *"An application for condonation shall set out the grounds for seeking condonation and shall include the referring party's submissions on the following-*
>
> *(a) the degree of lateness;*
> *(b) the reasons for the lateness;*
> *(c) its prospects of succeeding with the dispute and obtaining the relief sought against the other party;*
> *(d) any prejudice to the other party; and*
> *(e) any other relevant factors."*

From the affidavit, counter affidavit, as well as the arguments given in support or opposition of the application, there is no dispute that, the applicant was employed by the respondent since 2010 and was terminated on 30/06/2019. The applicants' claims are for payment of statutory claims such as initial relocation allowance, payment of overtime, payment of the expenses incurred when performing the employer's duty by using personal tools and healthy compensation resulting from the nature of wark. Again, it was not in dispute that the cause of action against the applicants started the way back in 2010 but is has been accrued in every month and year during the duration of the employment contract until when it was terminated in June 2019. Therefore, it was not in dispute that the time of delay by the applicants is 9 years.

In challenging the decision of CMA dated 16th July 2021 the applicants advanced the following grounds for revision as premised in their affidavit;

> *(a)that the Arbitrator strayed and acted unreasonably under the law and fact by holding that the applicant failed entirely to establish sufficient reasons for the delay.*
>
> *(b) that the Arbitrator erred in law and facts to dismiss the application for condonation, despite material explanation by the applicant's on the reasons for the delay.*
>
> *(c) that the trial Arbitrator erred in law and fact in holding that the applicants failed to account for each day of the delay to file the application, while the same were clearly stated in the supporting affidavit.*
>
> *(d) that the Arbitrator grossly erred in law and fact by erroneously holding that the applicants failed to prove on how they were being promised by the respondent, the Arbitrator failed to consider the nature of employment which was on permanent basis, as well as the applicants' duties which were mostly in remote areas.*

The first and second grounds for revision will be considered and determined together because they are similar in substance. Both tend to stated that the Arbitrator erred to find that the applicant failed to establish sufficient reasons. The applicant stated that the reasons for the delay were properly set by the applicants through their paragraph 9 of their respective affidavits, the CMA ought to be considerate to the said paragraph and find that they have sufficient reasons for condonation. In the other side nature of the applicants work with the respondent as their

employer compelled them to fail to file the application on time. To describe the working environment the applicants stated that the working environment were remote surrounded with consistent duties to attend the respondents' equipment's.

The position of the applicant was strongly contested by the respondent who declared the delay of nine years to be inordinate. The applicants could not manage to lay foundation of sufficient reasons for such long delay. Sufficient reasons are the cornerstone for granting condonation which is as good as giving jurisdiction to the Court or Commission. About sufficient reasons being a cornerstone, the respondent relied to the case of **Barongo** (supra) that the applicant ought to raise good cause. On the argument that the delay was so long or inordinate he rooted his argument under the authority of the case of **Patrick John** (Supra).

The applicant has relied to the averments in paragraph 9 of the affidavit which they presented before the CMA arguing that it was a sufficient proof of sufficient reasons. It was their view that those paragraphs established the consistency of the work leaving no time for moving around to seek legal relief. From the outset I am in agreement with the Arbitrator that the applicants failed to establish sufficient cause because the degree of lateness and the reasons for the delay do not meet the test of a

reasonable man. Failure for nine good years to fight for their rights is as good as the applicants lacked diligent. In defining what amounts to good caused for granting extension of time this Court sitting at Dar es Salaam in the case of **Tanga Cement Company Ltd vs Jumanne Masangwe & another**, Civil Appeal No. 6 of 2001 it was observed that lack of diligence on part of the applicant is as good as lack of sufficient cause or reasons. The Arbitrator concentrated considering the affidavit as filed by the applicant and found that there was no cogent evidence to substantiate such long delay, instead there was general arguments which had no basis to grant the application. Even the remoteness was not described weighed along with such long time of 9 years.

On the third and fifth grounds of the application the applicant lamentation are based on accounting for each day of the delay. In the other side the issue of promise from the respondent that he will pay plus remoteness of the working environment faced the applicants not to claim for their rights. I think the issue of remoteness I will refrain from considering it because it has been considered already hereinabove to avoid repetition. Repetition is inconsistency with logic and common sense.

The applicants submitted that they clearly accounted for each day of the delay to file the application to seek proper remedies in respect of their

claims. The claims were in respect of statutory claims such as initial relocation allowance, payment of overtime, payment of the expenses incurred when performing the employer's duty by using personal tools and healthy compensation resulting from the nature of wark. It was the submission of the applicants that the respondent kept promising them that he will pay them those claim for such whole time of 9 years. It was their view that the long-awaited fulfilment of those promises amounted to accounting each day of the delay. They expected amicable settlement from the respondent. Settlement is highly encouraged in labour matters. I had time to read the respective affidavits. The contents of the affidavit have no substance which prove the existence of such promises, assume that they existed is it practical to base on those empty promises for nine good years. I am in support of the view of the Arbitrator that mere promises without tangible evidence cannot amount to sufficient reasons for granting condonation because the degree of delay was too long. Nine years is long time where a serious right is violated. The alleged tolerance to tough working environment while refraining from fighting for their rights will not be a basis for granting this application. The Court has been persuaded by the decision of this Court sitting at Dar es Salaam Registry in **Makamba Kigome & Another v. Ubungo Farm Implements**

Limited & PRSC, Civil Case No. 109 of 2005 (unreported) where Kalegeya, J. (as he then was) made the following observations:

> *"Negotiations or communications between parties since 1998 did not impact on limitation o f time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation o f time."*

To allow this application will be as good as ignoring the meaning of time limitation considered together with sufficient reasons for condonation. The parties should not go to court as they wish, rules of limitation must be complied for economic development. See **Barclays Bank Tanzania Limited versus Phylisiah Hussein Mcheni,** Civil Appeal No. 19 of 2016, Court of Appeal of Tanzania at DSM.

From what has been endeavoured, I am in agreement with the Arbitrator that the applicants failed to raise sufficient cause for grant of condonation. The application is hereby dismissed for want of merit. This being a labour matter I grant no order as to costs.

Dated at Mbeya this 30th day of August 2022.

THE HIGH COURT OF TANZANIA

D. P. Ngunyale
Judge