

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

LABOUR REVISION CASE NO. 3 OF 2022

(Arising from Labour Dispute No. CMA/KGM/252/2021 in the Commission for Mediation and Arbitration for Kigoma before Mediator, B. Mpapasingo)

LABAN WILSON MAYILAAPPLICANT

VERSUS

THE BOARD OF TRUSTEES OF NDAMEZE ENGLISH

MEDIUM NURSERY AND PRIMARY SCHOOL RESPONDENT

JUDGMENT

22/9/2022 & 7/10/2022

L.M. Mlacha,J

The applicant, Labani Wilson Mayila filed an application for revision under section 94 (1) (d) and (e) of the Employment and Labour Relations Act Cap 366 R.E 2019 and Rule 24 (1), (2) (a) (b) (c) (d) (e) (f), 24 (3) (a), (b), (c) (d), Rule 28 (1) (b) (c) (d) (e) and 28 (2) of the Labour Court Rules, GN No. 106 of 2007. The application was supported by the affidavit of Labani Wilson Mayila stating the grounds upon which the application is based. He is seeking for the following order:

a) That, the learned Mediator erred in law and facts for dismissing the Condonation Application and the main dispute without considering the merit of the Application on the ground that the labour dispute was filed out of time while the Applicant adduced cogent reasons for his failure to institute his Labour dispute within 30 days.

The respondent, The Board of Trustees of Ndamaze English Medium Nursery and Primary school filed a counter affidavit in opposition sworn by Eliuta Kiviyiro. Hearing was done by oral submissions.

The record shows that the applicant was a driver employed by the applicant but later his services were terminated. He could not file his application at the Commission for Mediation and Arbitration for Kigoma (the CMA) within the prescribed period of 30 days. He then filed the case at the CMA in CMA/KGM/252/2021 seeking extension of time within which to file an application to challenge his termination. Reasons for the delay are contained in para 4 of the affidavit; i) that after being terminated he consulted TUICO, PCCB and the Office of the Regional Commissioner seeking to resolve the dispute amicably where he got some hope but things changed in the end. ii) that, the delay was not due any fault on the part of the applicant but was due to the efforts of trying to settle the

dispute out of court. The CMA could not see sound reasons up on which the order for extension of time could be based. It dismissed the application hence the application for revision.

When the case was called for hearing before the court, the applicant repeated what he had said at the CMA that he delayed in the office of the Regional Commissioner and the TAKUKURU where he had gone to complain after the termination. They kept him on the reconciliations which failed. They advised him to go to CMA at a later stage. Mr. Eliutha Kiviyiro who appeared for the respondent told the court that it was not enough for the applicant to say that he was in those offices. He was supposed to file affidavits of officers from those offices to prove that he was in those offices. Failure to get the affidavits made his case baseless, he said. He proceeded to say that the applicant had a duty to explain where he had been from 31/8/2020 up to 6/9/2021 which is more than a year. He never did so. That means that he had no good cause making the finding and decision of CMA justified, he submitted. He argued the court to dismiss the application.

I have read the record and the judgment of the CMA. This is a case for extension of time up on which to file a case at the CMA. The termination

was done on 31/8/2020 and the application was lodged on 6/9/2021 making a gap of 370 days. The issue is whether the decision of the CMA refusing to extend the time was justified. Powers of extension of time are discretionary and we have a lot of authorities in this area. The principles were well explained in **Lyamuya Construction Company Ltd v. Board of Registered Trustee of Young Women's Christian Association of Tanzania**, (CAT) Civil Application No.2 of 2010, pages 6-7. It was said thus:-

*"As a matter of general principle, it is **in the discretion of the Court** to grant extension of time. But that discretion is judicial, and so it must be exercised according to the rules of reason and justice, and not according to private opinion or arbitrarily. On the authorities however, the following guidelines may be formulated:-*

- (a) The applicant must **account for all the period of delay***
- (b) **The delay should not be inordinate***
- (c) The applicant must **show diligence, and not apathy, negligence or sloppiness** in the prosecution of the action that he intends to take.*
- (d) If the court feels that there are other sufficient reasons, such as **the existence of a point of law of sufficient***

*importance; such as the **illegality of the decision** sought to be challenged".(Emphasis added)*

See also **Magnet Construction Limited vs Bruce Wallace Jones (CAT)**, Civil Appeal No. 459 of 2020

We are told that there is a gap of 370 days. If we less 30 days which was the period within which the applicant could file his case at the CMA to challenge his termination, there remains 340 days. He says that he was held at TUICO and in the office of the Regional Commissioner and TAKUKURU seeking reconciliation with his employer which failed. In other words, he needed to tell the CMA that he had discussions with his employer outside the court which failed. This is the only reason which he gave and the events are not dated. The defence was put forward generally. Much as negotiations and discussions with the employer outside the legal forum are not valid grounds for extension of time, but the events were not dated making the argument completely baseless. Further, as explained correctly by Mr. Eliutha Kiviyiro, there was no evidence that he was in the negotiations which were facilitated by TUICO, the office of the Regional Commissioner and TAKUKURU. Mere words were not enough. It

follows that he had no good cause upon which the CMA could base its decision making the revision baseless.

That said, the application for revision is found to have no legal base and dismissed. It is ordered so.





L.M. Mlacha

Judge

7/10/2022

Court: Judgment delivered. Right of Appeal Explained.




L.M. Mlacha

Judge

7/10/2022