

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LABOUR DIVISION)  
AT ARUSHA**

**REVISION NO. 61 OF 2019**

(Originating from Commission for mediation and Arbitration Application No.  
CMA/ARS/ARS/73/2019)

**JESCA EMANUEL NANGALE ..... APPLICANT  
VERSUS  
SAINT GOBAN LODHIA GYPSUM INDUSTRIES ..... RESPONDENT**

**JUDGMENT**

17/12/2021 & 17/02/2022

**KAMUZORA, J.**

The Applicant preferred an application before the Commission for Mediation and Arbitration (the CMA) praying for the CMA to entertain her claims out of time. The CMA after hearing the submission from both parties, issued a ruling to the effect that the Applicant had no sufficient reasons warranting the grant of application hence the application was dismissed. The present application aims at moving this court to revise the proceedings and decision made by the CMA. The Respondent filed notice of opposition and counter affidavit opposing the revision application.

When the matter was called for hearing, the Applicant appeared in person while the Respondent was represented by Mr. Ahmed Hamis, Learned counsel. Both parties agreed to argue the application by way of written submissions but, only the Applicant complied to the submissions schedule and the Respondent did not file reply. Since the counsel for the Respondent was present at the time the schedule for submission was made, failure to file the submission on the agreed date presupposes that the Respondent waived his right to hearing. Thus, I will proceed on deliberating of the application based on the submission by the Applicant.

The brief background of the matter as depicted in the CMA record is such that, the Applicant was employed by the Respondent as a nurse. That, on 14/06/2018 the Applicant was issued with a termination letter, and the Applicant was complaining for unpaid salary, severance pay, notice and compensation. She was however unable lodge a complaint to CMA for more than seven months. She opted to file an application for extension of time before the CMA and pursuant to CMA F2 the Applicant claimed that her delay was due to health problems, the reason that was not accepted by the CMA which dismissed the application. The Applicant then preferred this application requesting this court to go through the

proceedings and award of the CMA and satisfy itself as to the correctness, legality and /or propriety of the award there to.

Arguing in support of the application the Applicant submitted that, she was terminated when she was pregnant. That, she was unable to file the complaint at the CMA on time as she was advised by the doctor to take bed rest until she delivers. The Applicant further submitted that, the mediator misdirected herself by ignoring the evidence adduced hence reached into a wrong conclusion. To cement her submission, she cited the case of **Safi Medics vs. Rose Peter and 2 others**, Labour Revision No. 82 of 2010, the case of **Serious Microfinance Tanzania Vs. Anasikia Lupaki**, Labour Revision No 6 of 2019, the case of **Stanbic Bank(T) Ltd vs. Grace Mushi**, Revision No 386 of 2015 and the case of **Serengeti Breweries Ltd V Joseph Boniface**. All cited cases are unreported, but it is unfortunate that no copies of the referred decisions were attached to the Applicant's submission.

The law gives discretion for court to grant any order or prayer sought if in the opinion of the court it was necessary that the order be issued. But in exercising such discretion the court that has be guided by the law, rules and principles and ensure that the discretion is exercised judiciously. In the case of **Mwita Mhere v R [2005] TLR 107** Page

113 the court defined discretion power by citing Black's Law Dictionary, 6<sup>th</sup> edition and held that,

*"Judicial discretion is the exercise of judgment by a judge or court based on what is fair under the circumstance and guided by the rules and principles of law... court has to demonstrate, however briefly, how the discretion has been exercised to reach the decision it takes..."*

In considering the above decision, I have gone through the records before the CMA to see if there was good reason warranting the grant of Applicant's prayer. It is evident from paragraph 8 of the affidavit supporting the application before the CMA that, the Applicant adduced the reason for sickness as an impairment for her not to lodge the complaint on time at the CMA. The Applicant claimed to have suffered from mental anguish and BP which consequently led to the miscarriage. She attached a copy of medical report from Kaloleni Urban Health Center and RCH4 Card to support the fact that she was sick. She added that she was unable to file a labour dispute within time because due the said health impairment she was advised by the Doctor to take bed rest until she delivers.

The CMA dismissed the application on the ground that the Applicant did not adduce sufficient reason to warrant the grant of the application. The mediators faulted the Applicant's arguments for failure to submit the medical chit which granted her the bed rest.

I understand that sickness if proved can be a ground for the court to exercise its discretion in granting the application. That position was held by the Court of Appeal in different cases. The Court of Appeal in the case of **John David Kashekya v. The Attorney General**, Civil Application No 1 of 2012 (Unreported), referred the case of **Pimark Profesyonel Mutfack Limited Sirket v Pimak Tanzania Ltd & Another**, Misc. Commercial Case no 55/2018 HC AT Dar es Salaam (Unreported) at page 9 and held that: -

*"Sickness is a condition which is experienced by a person who is sick. It is not a shared experience. Except for children who are not yet in position to express his or her condition whether she or he has strength to move, work and do whatever kind of work he is required to do. In this regard, it is the Applicant who says he was sick, and he produced medical chit to show that he reported to a doctor for check-up ... There is no evidence from the Respondent to show that after that period, his condition immediately become*

*better and was able to come to court and pursue his case. Under such circumstances, I do not see reasons of doubting his health condition. I find the reasons for sickness given by the Applicant to be sufficient reason for granting the Applicant for extension of time to file..."*

In this application the Applicant failed to prove that that she was sick at the time she was required to file her complaint. Upon perusing the records before the CMA, the Applicant attached to the application the contract of employment (annexure 1), a letter for salary increment (annexure 2), a notice to attend disciplinary hearing (annexure 3), termination letter (annexure 4), a report from Kaloleni Urban Health Center and clinic card for pregnancy (annexure 5) and CMA Form 1. The clinic card shows that the Applicant attended clinic on 26/06/2018 and the medical report indicates that the Applicant was granted bed rest on 28/07/2018.

The law under Rule 10(1) of the Labour Institution (Mediation and Arbitration) Rules, GN No. 64 of 2007 requires the aggrieved party to the termination of employment to file a complaint with the CMA within thirty days. While the termination letter was issued on 14/06/2018, the

Applicant filed an application for extension of time on 4<sup>th</sup> February 2019 more than seven months form the date of termination.

While submitting before the CMA, the counsel for the Applicant referred the medical report but the mediator did not refer the same in her ruling and no reason was advanced for its disregard. But, with the above records, it is obvious that since the termination letter was issued on 14/06/2018 and the Applicant was granted bed rest on 28/07/2018, thirty days for lodging complaint had already lapsed. Thus, the Applicant cannot hide behind the shed of bed rest to claim that it was the reason for her failure to file a complaint on time.

I therefore find that the Applicant did not adduce sufficient reasons for the CMA invoke its discretionally powers to extend time to lodge a complaint. The decision of the CMA is therefore sustained. This Revision application have no merit hence dismissed. No order for costs.

**DATED at ARUSHA** this 17<sup>th</sup> day of February 2022.



  
D.C. KAMUZORA

JUDGE

