

TANZANIA / JUDGMENT

ABDUL Ruling

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA LABOUR REVISION NO. 7615 OF 2024 (Arising from Commission for
Mediation and Arbitration for Mwanza in CMA/MZA/NYAM/230/2023) ABDUL RAHMAN FERUZI
NSOLEZI APPLICANT VERSUS ACE AFRICA TANZANIA
..... RESPONDENT

RULING

17th July & 4th October, 2024 CHUMA, J. The applicant in this application is seeking indulgence of the court to revise the decision of the Commission for Mediation and Arbitration for Mwanza (hereinafter CMA) which denied the applicant's application for condonation to file his dispute for areas of salaries out of time. The application is supported by the affidavit of the applicant whereas it is contested by the affidavit of John Emmanuel Ryakitimbo the principal officer of the respondent. The application was disposed of by way of written submissions. Messrs. Innocent Kisigiro and Paul Bomani both learned advocates filed the submissions for the applicant and respondent respectively. It was the argument by Mr. Kisigiro that, the Arbitrator failed to analyze and evaluate the evidence on record. This is because the delay on the part of 1 the applicant to file the dispute of unpaid salaries was massively contributed by the respondent who was the employer of the applicant. The respondent made several promises to the applicant concerning the payments of May to August, 2023 salaries while the applicant was still an employee. That the respondent had a strong convincing power thus led the applicant to believe that he would be paid his salary. I was referred to the case of Nyanjugu Saiki Masudi Vs. Tanzania Mines, Energy Construction and Allied Workers Union (TAMICO), Labour Revision No. 5 of 2013 (reported on page 185 of Labour Court Cases Digest) where it was stated that; "With due respect, it is my considered view that under labour law, amicable settlement of labour dispute is preferable and encouraged, so as to maintain good labour relations. Such is the spirit and one of the objectives of the Employment Labour Relation Act. In light of that, party's efforts towards amicable settlement of disputes are recognized. That would not happen if parties had to rush to dispute settlement institutions every time a dispute arose so as to be caught up with limitation, instead of giving amicable settlement to work... The logical conclusion of my said position is that, in labour dispute the cause of action starts to count when the offending party has reached a final decision not to settle the dispute." 2 He submitted further that, in the view of Nyanjugu's Case, in a labour dispute, the cause of action starts to count when the offending party has reached a final decision

not to settle the dispute. That, if the Arbitrator could have granted this application for condonation the respondent could have not suffered irreparable loss as the applicant suffered. In reply, Mr. Boman raised one point of preliminary objection that, the application is incurably defective for lack of notice of representation required under section 56(c) of the Labour Institution Act, No. 7 of 2004 and Rule 43(1) of the Labour Court Rules, GN No.106 of 2007. That, the application was drawn and filed by Advocate Innocent Kisigiro but no notice was filed to that effect. Further reference was made to the case of Hashim Ally Digello & another Vs. Alpha Krust Limited, Labor Revision No. 435 of 2022, and Alex Situmbura Vs. Mohamed Nawayi, Labour Revision No. 13 of 2021. In reply to the merit of the application, Mr. Boman submitted that there must be good reason for the court to exercise its discretional powers to extend the time. He Lyamuya Constriction Company Limited Vs. Board of Trustee of Young Women Christian Association of Tanzania, Civil Application No. 02 of 2010 and Benedicto S.B Mahela Vs. Tanzania Bureau of Standard, Misc. Application No. 632 of 2019 (both unreported) to the effect that, the applicant is to account every day of delay. 3 The applicant has failed to provide a reasonable explanation of how the respondent's promises prevented him from referring the dispute to CMA for more than three months. Furthermore, the applicant failed to prove that there was any promise made by the respondent. I was referred to the case of Elia Gandi and 2 others Vs. Kahama Cotton Co Ltd, Labour Revision No 52 of 2018 (unreported) to the effect that the question will be as to whether the applicant may be trusted that he delayed to refer the matter to CMA due to the promised committed by the respondent. Mr. Boman prayed for this application to be dismissed with costs. From the above contentious arguments for the parties, I will now determine this application by considering whether the applicant advanced good cause for an extension of time before the CMA. Before that, one point of preliminary objection was raised by the counsel for the respondent that, the applicant filed no notice of representation. The applicant filed no rejoinder therefore there was no reply to this objection. Nevertheless, I have read the Notice of Application filed by the applicant. Paragraph 3 reads; "AND TAKE NOTICE THAT: the applicant has engaged Mr. Innocent Kisigiro Advocate from Rugaimukamu & Kisigiro LAW FIRM respectively (sic) for the drawing of documents in relation to this application" The notice of application further provides the address of the 4 Rugaimukamu &Kisigiro law firm. Therefore, this point of preliminary objection lacks merit. With regards to the merit of application the CMA while denied an application for condonation exercised its discretional powers. The cardinal law is that the court cannot interfere with the exercise of discretion by an inferior court/tribunal unless it is satisfied that its decision was wrong because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take consideration in matters which it should have taken into consideration and in doing so arrived at a wrong decision as stated in the case of Mbogo and another Vs. shah [1968] EA 93 at page 94. It is also cardinal law that, the applicant for an extension of time must demonstrate good/sufficient reason(s) as to why he/she did not take the necessary step(s) in time. What amounts to sufficient or good cause has been discussed in a range of cases including the Court of Appeal case of John Mosses and Three Others Vs. The Republic, Criminal Appeal No. 145 of 2006 where the position of the law stated in the case of Elias Msonde Vs. The Republic, Criminal Appeal No. 93 of 2005 was quoted that; "We need not belabor the fact that it is now settled law that in an application for

extension of time to do an act required by law, all that is expected by the applicant is to show that he was prevented by sufficient or reasonable or good cause and that the delay was not caused or contributed by dilatory conduct or lack of diligence on his part". In this matter at hand, one reason was advanced in the affidavit filed before the CMA that there was negotiation by the applicant with his employer to the effect that the former will be paid his dues on May to August salaries. As a general rule, out-of-court communication or negotiations regarding the matter are not grounds for stopping the running of time. In the case of *Fortunatus Lwanyantika Masha and another Vs. Claver Motors Limited*, Civil Appeal No. 144 of 2019, the court of appeal has this to say on page 13; "With respect, we are unable to agree with Mr. Aaron on this point. It is settled that communications or negotiations between the parties is not a ground for stopping the running of the time. In *Consolidated Holding Corporation v. Rajan Industries Ltd & Another*, Civil Appeal No. 2 of 2003 (unreported) the Court stated clearly that the time taken in negotiations does not fall under the specified ground warranting exemption from limitation" (emphasis added) Also, in the case of *M/S P&O International Ltd Vs. the Trustee of Tanzania National Parks (TANAPA)*, Civil Appeal No. 265 of 2020; at page 6 10 the court of appeal said; "It is trite that pre- court action negotiations have never been a ground for stopping the running of time. Our decision in *Consolidated Holding Corporation v. Rajani Industries Ltd & Another*, Civil Appeal No, 2 of 2003 (unreported) cannot be more relevant in this appeal for the proposition that negotiation do not check the time from running. The Court sought inspiration from a book by J.K Rustomji on the Law of Limitation, 5th edition to the effect that the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties." (emphasis added) However, while I subscribe to the humble view of the court of appeal, this matter has its peculiarity. It was deposed in the affidavit filed before the CMA that, irrespective of nonpayment of May to August salaries, the applicant was still an employee of the respondent, he continued working and he was paid September and October salaries. The respondent in the counter affidavit noted the fact that the appellant was paid September and October salaries. The respondent aversively denied the fact stated by the applicant under paragraph 3 of the affidavit that, the applicant was not paid May to August salaries and that the respondent kept on promising to pay the same when 7 things were well. Paragraph 5 of the counter affidavit filed before the CMA says; "That, the contents of paragraph 3 of the applicant's affidavit are denied and the applicant is subjected in to (sic) strict proof thereof." In my view putting the applicant into strict proof amounts to admission of the fact stated under oath. In the case of *East African Cables (T) Ltd V Spencon Services Limited*, Misc. Application No. 61/2016 (HC- unreported) my brother Mruma J. said inter alia that; "When a fact is stated on oath, it has to be controverted on oath and this gives the court an opportunity to weigh which fact is probably true than the other When the fact sworn to or affirmed is not controverted then it is deemed to be admitted. When a person swears or makes a sworn declaration of a fact, the best way to challenge him/her is to swear a fact which tends to show that what he sworn to was false. Putting him to strict proof of the fact without giving your side of the story which you want to be believed, amounts to admission of the fact." I am further persuaded by the decision of Hon. Rweyemamu J. in *Nyanjugu Saiki Masudi Vs. Tanzania Mines, Energy Construction and Allied Workers Union* (supra) that; 8 "...in labour law and good practice, parties' efforts for amicable settlement of disputes are encouraged and

reorganized, as such, such efforts constitute good cause for delay for the period the parties were engaged in such endeavor” I would add that, court negotiations between the employer and employee while the latter is still on duty, constitute sufficient reason for an extension of time because the employee has great expectation that, so long as he is still working, the dispute will be settled amicably and his employment will continue peacefully. In the event then the application is granted. The CMA failed to take into account the fact that the applicant was still in a good labour relationship with the respondent at the time of negotiations. Therefore, the applicant is allowed to file his labour dispute within 30 days before the CMA from the date of delivery of this ruling. Owing to the nature of this matter, I desist from making an order for cost. Dated at Mwanza this 4th day of October, 2024. W. M. CHUMA JUDGE 9 Ruling delivered in court before Mr. Innocent Kisigiro and Paul Boman Learned advocates for the applicant and respondent this 4th day of October, 2024. C. KISONGO DEPUTY REGISTRAR 10

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