

TANZANIA / JUDGMENT

ally yusuph vs florida 2000 bar and restaurant 2023 tzhc 23733 11 december 2023

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11 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF ARUSHA AT ARUSHA REVISION NO. 5 OF 2023 (Originating from the Commission for
Mediation and Arbitration, Application No. CMA/ARS/ARS/ 90/2021) ALLY
YUSUPH..... APPLICANT VERSUS FLORIDA 2000 BAR
AND RESTAURANT..... RESPONDENT

JUDGMENT

23/10/2023 11/12/2023 GWAE, J Dissatisfied by the decision of the Commission for Mediation and Arbitration (CMA) in Application No. CMA/ARS/ARS/90/2021, the applicant has filed this revision seeking revision of the CMA proceedings and ruling. He further prays for an order directing the matter to be determined on merit. The application is further supported by an affidavit of the applicant and the same was opposed by the counter affidavit of the respondent's counsel Mr. Emmanuel Sood. i The applicant's affidavit is to the effect that, he filed his complaint to the Commission and as it was time barred, the same was accompanied with CMAF2, an application for condonation. It was the applicant's argument that, his delay to file his application on time was as a result of fruitless negotiations whereby the respondent was promising to pay him. Unfortunately, the Commission was not satisfied with the reasons advanced by the applicant. Consequently, the application was dismissed for want of merit. In his counter affidavit Mr. Sood strongly disputed the applicant's application and stated that, the applicant herein failed to demonstrate sufficient reasons for his delay. More so, it was his argument that, the applicant herein failed to account for each day of delay for the whole period of five (5) years and 6 months. When the matter was called on for hearing, the applicant appeared in person, unrepresented, whereas the respondent enjoyed legal services of advocate Emmanuel Sood. The application was argued by way of written submissions. It is the submission of the applicant that, the respondent as a security guard from the year 2008 employed him. That in the year 2015 there were changes of the Management of the respondent following the 2 death of the first Manager. The applicant went further to state that, after the change of the management, the respondent was supposed to pay the applicant his benefits together with severance but the same were not paid as agreed. In the

year 2021 the applicant and the respondent entered into an agreement (through a letter dated 08th January 2021) before the District Commissioner of Arusha and the respondent offered to pay the applicant Tshs. 700,000/= the amount which was not accepted by the applicant. Thereafter, the applicant opted to refer his complaint to the Commission together with the application for extension of time. It is his further submission that, the reason of delay was due to the efforts he undertook to seek amicable settlement of the matter, followed with promises by the respondent. The applicant also lamented that, he had no legal knowledge that is why he relied much on the respondent's empty promises, which he believed that, they could be fulfilled instead of referring the matter to the Commission on time. He supported his arguments with the following courts' decisions *Nyanjugu Sadiki Masudi vs. Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO) [2013] LCCD 185*. 3 The applicant thus urged this court to consider his reasons for the delay in order to exercise its discretionary powers to grant extension of time to enable his dispute be heard on merit. Responding to the applicant's application, Mr. Sood vigorously supported the decision of the Commission that, the applicant did not adduce sufficient cause for extension of time. Expounding his submission, the counsel stated that, much as the applicant alleges that there were promises of payment by the respondent but there is no evidence to justify the applicant's allegations and it was his firm stand that the respondent herein has never made any promises to pay the applicant his dues as claimed. Mr. Sood went on to state that, the response letter written by the respondent to the applicant dated 8/01/2021 did not categorically give the applicant any offer for payment of his dues. The counsel thus maintained that the applicant's arguments for his delay are mere words, which are unfounded and unsupported with any evidence. Moreover, the learned counsel went further to state the applicant also failed to meet the requirements of rule 11 (3) of G.N 64 of 2007 for extension of time. He added that, the applicant's delay is of 5 years and 6 months, which is so inordinate and the applicant has not given account of each day of delay. The counsel supported his argument with the decision of the Court of Appeal of Tanzania in *Bruno Wenceslaus Nyalifa vs. The Permanent Secretary, Ministry of Home of Affairs & another, Civil Appeal No. 82 of 2017 (Reported Tanzlii)*. Responding to the applicant's argument that he lacked legal knowledge and that is why he was kept waiting for empty promises by the respondent. According to the counsel for the respondent, this was an afterthought, it was also his submission that ignorance of law has never been a defence. He supporting this argument with the decision of the Court of Appeal in the case of *Vedastus Raphael vs. Mwanza City Council & others, (Civil Application 594 of 2021) [2021] TZCA 696 (26 November 2021)*. Mr. Sood further submitted that the right to be heard is an essential right to every citizen but the same has to be exercised within a reasonable time. Labour laws are very clear as far as condonation for the delay is concerned. Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, G.N 64 of 2007 provides that; "The Commission may condone any failure to comply with the time frame in these rules on good cause." Also Rule 10 (1) & (2) of the same Rules provides that; 5 "1. Disputes about fairness of the employee's termination of employment must be referred to the Commission within thirty days from the date of termination or the date that the employer made final decision to terminate or uphold the decision to terminate.

2. Other disputes must be referred to the Commission within sixty days from the date when the dispute arises. "Emphasis is mine. The powers of this court to grant applications for extension of time are exercisable upon good cause being shown. The question is whether the applicant demonstrated sufficient cause before the CMA. I am afraid there is no good cause shown on the reason that at best what I have gathered is fruitless promises and the applicant's ignorance in filing his complaint within time, which has nevertheless not been considered as good cause. This legal position has been elucidated in *Ngao Godwin Losero vs. Julius Mwarabu*, Civil Application No. 10 of 2015 (reported Tanzania) where it was stated that; "When all is said with respect to the guiding principles, I will right away reject the explanation of ignorance of the legal procedure given by the applicant to account for the delay. As has been held times out of number, ignorance of law has never featured as a good cause for extension of time..... To say the least, a diligent and prudent party who is not properly seized of the applicable procedure will always ask to be apprised of it for other wise he/she will have nothing to offer as an excuse for sloppiness." As correctly held by the Commission, ignorance of the law and fruit less promises have never featured as sufficient reasons for granting applications for extension of time as doing so will allow parties to sleep on their rights and then come up to courts with such excuses of being ignorant of the law. The applicant herein alleges that the respondent was required to pay his dues from the year 2015 when there was a change of management of the respondent. He further alleges that, there were promises from the respondent that he will be paid his benefits and that at a time the respondent promised to pay him Tshs. 700,000/= which he actually refuted. Therefore, the applicant's reason is based on the alleged fruitless promises by the respondent and also ignorance of the law. As to the defence of fruitless promises, this court is of the considered view that when an employee is engaged into negotiations with his employer, yet he expected to have his complaint filed at the Commission within time. See the decision in the case of *Julius Kamote & 139 others vs. Tanzania 7 Pipelines Co. Ltd*, Labour Revision No. 317/2015 (Unreported) where it was stated as follows; "If the plaintiffs after the expiry of time, will be barred even where the defendant has betrayed him into permitting the time to elapse on fruitless negotiation. That, negotiations between the parties cannot defeat the statutes, and the plaintiff who is negotiating should nevertheless file a suit." Even if I were to assume that this is a good cause, taking into account that the applicant is a layman as he alleges, yet, the applicant's delay of five (5) years and six (6) months in filing his complaint to the Commission is so inordinate and unjustifiable. Similarly, the applicant has failed to give an account of the days of delay from the time the alleged due payments accrued to the time of filing his complaint to the Commission. In applications for extension of time, the issue of accounting days of delay is of paramount. See decisions in the case of *Benedict Mumello vs. Bank of Tanzania*, Civil Appeal No. 12 of 2002 (Unreported), *Yusuf Same and Hawa Dada vs. Hadija Yusuf*, Civil Application No. 1 of 2002 (unreported) and *Sebastian Ndaula vs. Grace Rwamafe*, Civil 8 Application No. 4 of 2014 (Unreported). In the latter case, the Court of Appeal of Tanzania held that; "The position of this Court has consistently been to the effect that an application for extension of time, the applicant has to account for every day of delay." Given the above

position, it is the further view of this court that the delay of 5 years and 6 months is so irrational and the applicant herein was expected to have accounted for each day of delay. In the event, this application lacks merit and it is dismissed for not disclosing good cause for the delay. This being a labour case no order as to costs is issued. It is so ordered. DATED at ARUSHA this 11th December 2023 JUDGE 9

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