

TANZANIA / JUDGMENT

amani matinde vs the registered trustees of mama clementina foundation 2023 tzhc 17028 28 april 2023

COURT
TZHCDECIDED
28 April 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LABOUR DIVISION ATIRINGA
LABOUR REVISION NO. 17 OF 2022 (Originating from Labour Dispute No. CMA/NJ/MA Y/26/2022
in the Commission for Mediation and Arbitration at Njombe) AMANI MATINDE-----
-----APPLICANT VERSUS THE REGISTERED TRUSTEES OF MAMA CLEMENTINA
FOUNDATION—TM----- RESPONDENT

JUDGMENT

Date of Last Order: 30/03/2023 Date of Ruling: 28/04/2023 A. E. Mwipopo, J. The respondent namely the Registered Trustees of Mama Clementina Foundation, employed Amani Matinde, the applicant herein, as a teacher for a fixed-term contract renewed several times from the 1.8th of July, 2016, to the 29th of January, 2022. On the 3rd of February, 2022, the applicant received a letter from the employer informing him that the i employer would not renew further his employment contract. The applicant filed a labour dispute to the CMA on the 16th of February, 2022, which was struck out on the 25th of April, 2022, for incompetence. The applicant filed to the CMA an application to be condoned to file a labour dispute on the 27th of May, 2022. The CMA heard both parties through written submissions and dismissed the application for condonation for want of merits in its ruling dated the 6th of October, 2022. The applicant was aggrieved with the decision of the CMA and filed this application for revision. The application for revision was filed by Notice of Application and Chamber Summons supported by an affidavit sworn by the applicant himself. The applicant's grounds for revision are in paragraphs 6Z 7, 8, 9, 10, 12 and 4 of his affidavit. In those paragraphs, the applicant raised issues that the ruling of the Commission was improper for including words which the applicant did not say in his submission and his submission was not considered in the verdict; the procedure was inappropriate as the applicant was intimidated by the Mediator who was not impartial and for the failure of the Mediator to recuse himself from the proceedings; and that he has sufficient reasons for the CMA to condone his application. 2 On the hearing date, the applicant appeared in person unrepresented, whereas Mr Daudi Mwakatundu, a member of the board of Trustees of the respondent, appeared for the respondent. The Court invited both sides to make their submissions. It was the applicant's submission that the CMA held that there was insufficient reason for the Commission to condone

the application filed by the applicant seeking to file his dispute out of time. It was on 16.02.2022 when the labour dispute was referred to the CMA against his employer within time. The CMA held the labour dispute on 02.03.2022 at the Mediation stage. The mediation failed, and the matter went into the arbitration stage. On 25.03.2022, the CMA held the matter at the arbitration stage on the preliminary objection raised by the respondent, and the Arbitrator said he would deliver the decision within 30 days. 30 days expired without the Arbitrator delivering the decision. He made a follow-up to the CMA for its decision. On 18.05.2022, he wrote a letter to CMA Njombe complaining about the delay in supplying him with the decision. On the same date, the CMA clerk did write him a text informing him that the decision was ready, and the said copy of the decision was sent to him at Makambako on 20.05.2022, which was on Friday. He then prepared the necessary documents for filing a fresh labour dispute at the CMA, and he was able to institute it on 27.05.2022. The respondent opposed the application on the ground that it was out of time. The matter was heard by way of oral submission. The CMA delivered its decision on 13.10.2022. The CMA erred in its decision to dismiss the application for condonation as there was sufficient reason for the delay in filing the labour dispute out of time. The applicant instituted the first labour dispute within time, but CMA struck it out because of the objection raised by the respondent. When the CMA delivered the ruling which struck out the labour dispute, the time to file a fresh dispute expired. The applicant had to file a new dispute after the CMA had condoned it. The CMA supplied the ruling to him on 20.05.2022, and within seven days, the applicant filed the application for condonation in the CMA. Thus, the applicant diligently pursued the right to institute the application. The applicant stated all these in his submission to the CMA in his application for condonation. The respondent, on his part, submitted that the applicant instituted the labour dispute in the CMA on 16.02.2022, and they filed a preliminary objection which was held on 25.03.2022. The objection was that the applicant sued the wrong person. The applicant conceded to the preliminary objection and prayed to withdraw the application so that he may file a proper application. The Arbitrator allowed the prayer to withdraw the application. The applicant filed an application for condonation on 27/05/2022. It is more than 62 days from the date of the decision. Hence he was supposed to provide sufficient reasons for the CMA to condone the application. The applicant needed to provide adequate reasons for the delay. The respondent further submitted that it is incorrect to say the applicant was informed on 18.05.2022 that the ruling copy was ready to be supplied to the applicant. The verdict of the CMA was already given on 25.03.2022 when the applicant and his advocate decided to withdraw the dispute. The applicant should have accounted for each day of the delay. As the applicant has no sufficient reasons to be condoned, the respondent concluded by praying for this Court to dismiss the application for want of merits. In his short rejoinder, the applicant submitted that it was on 18/05/2022 when the CMA clerk informed him that the ruling was ready for delivery, and the CMA gave the ruling to him on 20.05.2022. 5 Having heard the rival submission by the parties and having carefully perused the Court records, the issue to be determined herein is whether this application has merits. The applicant did not submit on improper ruling and procedure issues before the Commission in this revision. His submission was that he had sufficient reason to be condoned. In determining the revision, I will revisit Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No.64 of 2007, which provides for the application for condonation.

The rule provides that, I quote: "31, The Commission may condone any failure to comply with the time frame in these rules on good cause. " From the above-cited rule, it is trite law that to grant or not to grant condonation is the discretion of the CMA. However, CMA must exercise such discretion judiciously. Thus, the applicant must establish good cause or reasons for the CMA to extend the time. In the case of Airtel Tanzania Limited vs. Mister Light Electrical Installation Co. Limited & Another, Civil Application No. 37/01 of 2020, Court of Appeal, (unreported), it was held that it might not be possible to lay down an invariable or constant definition of the phrase "good cause" but the Court consistently considers such factors like the length of delay involved, the reasons for the delay, the degree of prejudice, if any, that each party stands to suffer depending on how the Court exercises its discretion and the conduct of the parties. The applicant contended that he instituted the labour dispute on time, but the same was struck out after the respondent objected. The CMA supplied the ruling to him on 20.05.2022, and within seven days, he prepared his application for condonation and filed it at the CMA on 27.05.2023. When the CMA delivered the ruling, he had time to file a new dispute. For that reason, he was diligent in pursuing his case. The respondent on his side said in response that the ruling of the CMA was ready to be picked from 25.03.2022 when the applicant and his advocate conceded to the P.O. raised, and the matter was struck out instantly. Thus, the applicant's averment that the CMA gave the ruling to him on 20.05.22 is not factual, as the ruling of the CMA was already from 25.03.2022. He added that the applicant should have accounted for each day of delay. 7 The applicant's main reason for the delay is that he was in Court pursuing his case, which was struck out for incompetence. The said delay is also known as a technical delay. The Court is aware that technical delay is a good reason for condonation. This position was stated in several cases, including the case of Fortunatus Masha vs. William Shija and another [1997] TLR. 154; and Bharya Engineering and Contracting Co. Ltd v. Hamoud Ahmad @ Nassor, Civil Application No. 342/01 of 2017, Court of Appeal of Tanzania, atTabora, (unreported). The principle of technical delay, which applies in both criminal and civil proceedings, guides where a party promptly files a matter in Court, but the Court strikes it out for incompetence. This is sufficient ground for extending the time to file a competent matter for the orders or remedies sought in the struck-out matter, provided that the party promptly moves the Court after the-striking-out order was made. The record of the CMA shows that the ruling, which was struck out of the labour dispute filed by the applicant, was delivered on 25.04.2022. This means that the ruling was delivered on 25.04.2022 and not on 25.03.2022, as both parties submitted it. The ruling shows that the respondent raised a preliminary objection on 25.03.2022, that the 8 applicant had sued the wrong party, and that the applicant conceded. The ruling was delivered on 25.04.2022. The Commission's ruling does not show if it was delivered in the presence of the parties. The applicant submitted that the CMA delivered the ruling in the absence of the parties, and the respondent said that the ruling was delivered on 25.03.2022. This shows that both parties needed to be informed when the CMA delivered the ruling. Both parties were not present when the CMA delivered the ruling. Since both parties were absent when the ruling was delivered, the Commission was supposed to supply the decision to the parties so they were informed of the outcome of the dispute. The applicant said in his affidavit that he received the copy of the ruling on 20.05.2022, and he attached a copy of the ruling showing that he received the document on 20.05.2022, as he alleges. He applied for

condonation at the CMA on 27.05.2022. The applicant deposed in his affidavit before the CMA, this Court, and he submitted that after he received the copy of the ruling, he used seven days to prepare his application to be condoned. The respondent said in his submission that the applicant did not account for each day for the delay, but this needs to be corrected as the applicant used seven days after being supplied with 9 the ruling copy to prepare the application for condonation, and he filed it on 27.05.2022. The seven days he used to prepare and file the application for condonation is reasonable, bearing in mind that the applicant is a layman. The CMA, in its ruling, dismissed the application on the reason that the applicant did not account for each day of the delay. The Mediator believed that the applicant was late for more than two months and that there needed to be more reason for the delay. He said that the ruling which stuck out the labour dispute filed at the CMA for incompetence was delivered on 25.03.2022. However, as I have deliberated earlier herein above, the ruling of the CMA shows that it was delivered on 25.04.2022. It means that the CMA should have directed itself in its reasoning on the date of delivery of the ruling before dismissing the application. The Mediator said in his ruling that the applicant did not file his submission, and when he was afforded the right to make an oral submission, he rejected it. As a result, there was no submission from the applicant. But this needs to be corrected. The proceedings of the CMA show that on 24.06.2022, the Mediator ordered the hearing of the application to proceed by way of written submission. In the said order, the applicant was supposed to file his submission in chief by 01.07.2022. The record of the CMA proceedings shows that the applicant filed his submission to the Commission on 30.06.2022 which was within the time provided in the CMA order. The Mediator misdirected himself and wrongly failed to consider the applicant's submission in his decision. If the Mediator considered the applicant's written submission, he could not have decided the way it decided. Therefore, the application for revision has merits, and it is allowed. The applicant has to file his labour dispute before the competent Commission for Mediation and Arbitration within 30 days, which starts to count today. As this matter is a labour dispute, each party shall bear the costs of the case. It is so ordered accordingly. Right of appeal explained. 28/04/2023 ii

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