

TANZANIA / JUDGMENT

NYANZA ROAD Ruling5

COURT
TANZLII

DECIDED
12 December 2024

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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. 14248 OF 2024 (Arising from Commission for
Mediation and Arbitration for Mwanza in CMA/MZA/ILEM/COND/21/2024) NYANZA ROAD
WORKS LTD APPLICANT VERSUS ERADIUS PROSPER
MUSHUMALI RESPONDENT

RULING

12th December, 2024 CHUMA, J. The applicant was aggrieved by the decision of the Commission for Mediation and Arbitration for Mwanza (hereinafter CMA) which allowed the respondent's application for condonation for his dispute on arrears of salaries to be heard on merit out of time. According to the applicant, the respondent failed to substantiate sufficient cause for condonation as he failed to account for each day of delay and failed to prove negotiations and promises made to him which delayed him to refer his dispute timely. The application was heard by way of written submissions, Messrs. Innocent Michael and Innocent Kisigiro both learned advocates filed submissions for the applicant and respondent respectively. 1 In the course of composing the ruling, I encountered one point of concern on whether the application was competent before this court having arisen from an application for condonation. To day on 12th day of December, 2024, to accord the parties right of hearing, I invited the parties to address this legal issue and had the following response. On one hand, Mr. Innocent Michael's advocate for the applicant confirmed that the application is competent and proper based on his submission under Rule 28 of the Labour Court Rules GN No. 106 of 2007 which provides an avenue for an aggrieved party to challenge the decision and does not specify a category. And that the application is peculiar as the applicant was dissatisfied with the assigned reasons in the impugned decision. In response, Mr. Kisigiro advocate for the respondent strongly challenged the submission by Mr. Michael on the ground that the present application, is prematurely made under Rule 50 of GN No. 106 of 2007 bars revision, appeal and review on interlocutory orders or decisions which has no effect of final determining the matter. The impugned decision falls within interlocutory orders. He then prayed this application be struck out and remit back the matter to proceed before CMA to its finality. 2 I have dispassionately considered the submissions of parties regarding this point I will now determine whether this application is proper before this court. Rule 10 (1) and (2) of the Labour Institution (Mediation and Arbitration) Rules, GN No. 64 of 2007 mandates the complainant in a labour dispute on unfair termination to refer his dispute within 30 days from the time the

employer decided to terminate or confirm termination, whereas, with regards to other disputes, the time frame is 60 days from the date when the dispute arose. According to rule 11 (2), a party who delayed filing his complaint needs to file a condonation form. The manner in which the labour dispute is brought alongside the condonation is provided by Rule 12(1) and

- (2) (b) which reads; 12(1) A party shall refer a dispute to the Commission for Mediation by completing and delivering the prescribed form (“the referral document”)
- (2) the referring party shall
- (a) n/a (b) If the referral document is filed out of time attach an application for condonation in accordance with rule 10. The prescribed Form for referring the dispute and application for condonation is provided by the third schedule to the Employment and Labour Relations (General) Regulations, GN No. 47 of 2017. According 3 to the Referral of Dispute Form (CMA F.1), the complainant needs to specify if an application for condonation of the dispute is necessary. The application for condonation form (CMA F.2) on the other hand, requires the complainant to specify inter alia the degree and reasons for his lateness. On how the dispute is referred to CMA alongside an application for condonation, I am of the settled view as correctly submitted by Mr. Innocent Kisigiro advocate for the respondent that, when the CMA determine an application for condonation by allowing the dispute to proceed on merit, that decision is interlocutory as it does not finalize the dispute and rights of the parties. Rule 50 of Labour Court Rules, GN No. 106 of 2007 reads; “No appeal, review or revision shall lie on interlocutory or incidental decision or orders unless such decision has the effect of finally determining the dispute” I understand that the decisions of this court regarding this legal issue have two schools of thought. The first school is of the view that the decision of CMA to allow an application for condonation is not interlocutory. This position was stated in the case of Lucky Games Limited Vs. Salim Madati, Revision Application No. 53 of 2023 (unreported) on page 11 where this court said: - 4 “It is my considered opinion that the application for condonation is a separate application from the dispute intended to be filed by the person seeking condonation. Therefore, in applying the “nature of order test” explained hereinabove, the ruling and order granting condonation, in my view, cannot be an interlocutory order. I am of that view because, in an application for condonation, the applicant filed the affidavit stating reasons for the delay and the respondent must, if resisting the application, file the counter affidavit. In my view, once a ruling is delivered either granting or dismissing the application for condonation, then, that becomes the end of the application. After delivery of the ruling granting or dismissing the application for condonation, the whole application becomes disposed of. In other words, nothing remains pending for determination before the arbitrator.” (Bolding rendered for emphasis). The second school of thought is of the view that a decision granting an application for condonation is interlocutory in the parameters of Rule 50 of Labour Court Rules. This position was stated in the case of Geita Gold Mining Limited Vs. Patrick George and 5 others, Revision Application No. 20 of 2023, Medinova Health Care Vs. Asha Daudi Mbaruku, Revision Application No. 18155 of 2024 and International Tax Consultants 5 Limited Vs.

Macdonald Justus Rweyemamu, Labour Revision No. 119 of 2023 (all unreported). In the latter case, after this court considered several Labour law provisions and case law, had the following to say on page 21: - “It is the observation of this Court that; if the application for condonation is denied, the order is final in effect. It is definitive of the rights of the parties because nothing remains in place for determination. As such, the aggrieved party will have the right to file a revision before this Court. But if the application for condonation is granted, the primary consideration should be to accord the parties with the right to be heard on merits because that course will bring the just and expeditious decision of the major substantive dispute between them.” While opting my preference from the two schools, I have considered several factors, one, under the doctrine of the most recent decision, this court is bound by the decision of the case of Medinova Health Care Vs. Asha Daudi Mbaruku (supra) which was delivered on 15.10.2024. In that case, this court favoured the second school of thought. Two, I have opted to depart from the humble reasoning of this court in the case of Lucky Games Limited Vs. Salim Madati (supra), due to my 6 deliberations above, the complaint at the CMA is brought alongside an application for condonation. Therefore, once an application for condonation is allowed, the matter does not halt before the CMA, the CMA proceed to determine the already referred labour dispute on merit. Three, if an application for condonation does not finalize the dispute at CMA, the CMA still has an opportunity to mediate the parties on the said dispute and if mediation fails parties will render their evidence on matters at issue and the CMA will determine the rights of the parties. Four, my careful perusal of the counter affidavit filed by the applicant before the CMA, the applicant did not say if will be prejudiced if the application for condonation is granted for the dispute to be heard on merit. Paragraph 4(d) of CMA F.2 was to the effect that, the applicant herein will not be prejudiced if the application for condonation is allowed. That being said and done, I align with the second school of thought that, once the CMA allows an application for condonation, that decision is interlocutory, the aggrieved party therefore has no right to file revision rather he is bound to await the outcome of the pending labour dispute before the CMA. Since the application for condonation was allowed then the resultant order had no final effect unlike where the condonation is denied. The cited 7 Rule 28 has to be read together with Rule 50 of GN No. 106 of 2007 which its words are couched in a mandatory manner that is shall. In the final analysis, the application is therefore incompetent for being filed prematurely. I proceed to struck it and remit the file back before the Commission for Mediation and Arbitration to hear the parties’ dispute on merit. Owing to the nature of this matter, I desist from making an order for cost. It is so ordered. DATED at MWANZA this 12th day of December, 2024 W. M. CHUMA JUDGE 8 Ruling delivered virtually in attendance of Mr. Innocent Michael and Mr. Innocent Kisigiroti both Learned counsels for the applicant and respondent respectively this 12th day of December, 2024. W.M. CHUMA JUDGE 9

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