

TANZANIA / JUDGMENT

20100928 TZHC Arusha

COURT
TZHCDECIDED
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1. If : / I I ! i : ! • • . I I _ . I . I . " 0 ; I . • < ' • • , : • • . - : ; , , , . , ; : . play or whether the other party was given a say on the issue. (-ii- . rocedure was improper. ! I I I The proper procedure to be followed when a referral is filed . . together with an application for fOndonation has been discussed in a : . I . . _ -nu_m~er of cases by this court. IJ one such decisions, J. w. Ladwa and Peter Kimote, LC revision No. 52;{2009/ it v,Vas observed that: "My interpretation of the la~ is that it; is not enough that the complainant/employee files :the condonation form. When the i dispute is time barred, the CMA has no powers to entertain it, unless it has heard and grc1nted an application for extension · of time i. e condoned the delay as per prescribed procedure I , 1 the procedure for processing con'r:lonation is specifically , I . provided for under rule li. and 29 of the rules.; The said I ; . procedure requires that qfter receiving the respondents . application for condonationJ the CMA should serve the same on the applicant as per rule 29 (5) then proceed to hear and . determine it under rule 29 boJ or (11). Now, that procedure . i 11 does not, appear to have been I followed, in this case.... The,. point ~ . was further explaietji in KIOol LTD and Kennedy Chalamila, LC revision No. 147/2008, that:!"Perhaps to remove doubt\ as to when and how the issue of limitation of time shouldi be heard and decided by the Commission; I should drat attention the following provisions I ' · of the rules: First, ,the Co'(nmission can process ~ime barred , I • : , disputes. following : application by :the referring party as t I • - . I . I I explained in 'the cases cit~d above. Second, under rule 31 of (2] ; . - ... - · _/:' . ' the rules, "the Commission may condone any failure to comply with the tim:e frame in these rules on good cause'~ \ That rule in my opinion, gives a wider power to the 1, Commission to proc~ed in a time barred dispute provided it shows on record, its reasons for doing so "(Commission \. refers to CMA) v· \ : · ' . L· In this case, t~e arb\trator simply stated'. that 'delay has been · , co_ndoned'~ that. did npt suffice. The CMA had to decide the issue and . give f-easOns for its decisio~, in my considered opinion, failure 'to do ; s0' · amounted to a material irregularity sufficient to vitiate 1 proceedings. \ \ _There is another andmaly ob~ious from the CMA record of 1 proceedings. The arbitrator failed to observe the principles prescribed ; . u~nder ,, rule 22 of the Labouri Institutions : (Mediation .. and Arbitration Guidelines) Rules, GN 67/2007 regarding crucial stages of arbitration. I .. ! A.i no stage were the disputef issues clearly stated, as such a crucial issue of whether there fas ar employment relationship between the

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