

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY**

AT MOSHI

LABOUR REVISION NO. 19 OF 2018

(Arising from the decision of the Commission for Mediation and Arbitration of Moshi in Labour
Dispute No. MOS/CMA/M/103/2018)

ERNEST ALOYCE KAUKI APPLICANT

VERSUS

MANPOWER SOLUTION LTD RESPONDENT

Date of last order: 31/07/2019

Date of Ruling: 18/10/2019

RULING

MKAPA, J:

This is an application for revision of the ruling dated 20th July 2018 delivered by the Commission for Mediation and Arbitration (CMA) Mr. G.P. Migire (the mediator) in Labour Cause No. MOS/CMA/M/103/2018. The application is brought under section 91(4), 94(1)(b)(i) of the Employment and Labour Relations, Act, No.6 of 2004 and Rule 24(1), 24(2) (a), (b), (c), (d), (e), (f), 24 (3) (a),(b),(c),(d) and 28 (1)(c),(d),(e) of the Labour Court Rules, G.N. No. 106 of 2007 and is supported by an affidavit sworn by 

Ernest Aloyce Kauki the applicant. The respondent disputed the application, and filed a counter affidavit.

The applicant made an application at the CMA seeking leave to file labour dispute out of time. In dismissing the application, the CMA held *inter alia* that:

"...for the reason I have endeavoured to give above, I conclude that there is no good cause shown to account for the delay. The application lacks merit and is dismissed. Each party should bear its own costs..."

Aggrieved by the CMA decision, the applicant filed this application praying this court to set aside the CMA's decision and order the CMA to extend time and determine the application on merit.

At the hearing the court by consent ordered the parties to argue the application by way of written submissions. The applicant was represented by Mr. Manase Gideon Mwaunguru, while the respondent was advocated by Mr. Wilhad Kitany, learned advocate.

Submitting in support of the application, Mr. Mwaunguru submitted that the applicant was employed by the respondent as

a 'forklift operator' for more than eight years until 13th February 2018 when he was unfairly terminated. The applicant challenged the unfair termination before the CMA on 27th April 2018, (42 days late). Mr. Mwaunguru contended further that, the delay in filing the application was caused by empty promises from the respondent and his representatives to the effect that, his benefits would have been afforded. By the time the applicant realized that the respondent failed to honour his promises he lodged his complaints to the CMA though late, and the same was dismissed for lack of sufficient cause.

Furthering his argument Mr. Mwaunguru contended that, the application was delayed for 42 days (excluding the first 30 days allowable by the law) Mr. Mwaunguru submitted further that, the delay was not deliberate, as the applicant adhered to the required procedures by filing an affidavit, CMA F1, CMA F2, and a Notice thus, dismissal by CMA had denied the applicant of his right to be heard.

Mr. Mwaunguru finally prayed the CMA decision to be set aside and CMA ordered to determine the labour dispute on merit.

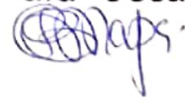


Responding while resisting applicant's submission Mr. Kitali submitted that time limit for filing dispute relating to employee's unfair termination is 30 days from the date of termination as per Rule 10 (1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 (GN 64/2017). Any dispute lodged after 30 days is considered time barred unless the applicant adduced sufficient cause for the delay.

Mr. Kitali argued further that, the applicant's reason for the delay to the effect that he was making close follow up with the respondent on the fate of his terminal benefits was not proved by the applicant and further that the same does not constitute good cause for extension of time. More so, the applicant has failed to account for each day of delay as was held in **Sebastian Ndaula V Grace Rwafama, Civil Application No. 4/2014 CAT, Bukoba (Unreported)**.

Mr. Kitali finally submitted that, the applicant failed to act with reasonable promptitude thus he prayed this court to uphold the CMA decision by dismissing the application.

Having considered both parties submissions I think the question is whether dismissal of the application by the CMA did occasion



injustice to the applicant and in my view the answer is in affirmative. It has always been a principle that in granting extension of time the applicant is duty bound to show good cause for the delay and there is a chain of decided cases to that effect. From the applicant's submission I do agree that the applicant has failed to show good cause for the delay by failure to account for each day of the delay. However it is a practice that physical follow up cannot be accounted by way of paper records or the like, thus the applicant deserves benefit of doubt. True, rules and procedures should be followed but not without some sense of reasoning and justice. It is trite principle to the effect that, extension of time is the discretion of the court. I think in the present case there is pertinent legal issue relating to payment of the applicant's terminal benefits which can only be determined on merit after the applicant has been afforded the right to be heard.

Under the above circumstances, justice demands the extension of time be granted in order for the CMA to determine the dispute to its finality. Therefore for interest of justice the Commission for Mediation and Arbitration is ordered to restore and extend time for Labour Dispute No. MOS/CMA/M/103/2018) in order for the dispute to be determined on merit.

Dated and delivered at Moshi this 18th October 2019



A handwritten signature in blue ink, appearing to read "S.B. Mkapa".

S.B. MKAPA
JUDGE
18/10/2019