

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

LABOUR REVISION NO. 21 OF 2018

(Arising from the decision of the Commission for Mediation and Arbitration of Moshi in
Labour Dispute No. MOS/CMA/M/135/2018)

JULIUS MAKARIUS NGATUNGA APPLICANT

VERSUS

MANPOWER SOLUTION LTD RESPONDENT

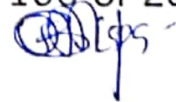
Date of last order: 31/07/2019

Date of Ruling: 18/10/2019

RULING

MKAPA, J:

This ruling relates to an application for revision of the ruling dated 20th July 2018, by the Commission for Mediation and Arbitration "the Commission" by G P Migire, (Mediator/Arbitrator) in Labour Cause No. MOS/CMA/M/135/2018. The application is brought under section 91(1)(a)(b), 91(2) (a) (b) and 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.



The brief facts of the case are that, the applicant had a specific time contract with the respondent which ended on 15th February 2017. On 24th October 2017 he gave notice in writing of his intention not to renew the said contract. On 15th February 2017 the applicant was given his terminal dues which is half salary together with a letter accepting his non-renewal of contract. The applicant claimed that he was not given severance and annual leave benefits and upon inquiry from the respondent, he was promised orally to be availed such benefits but in vain.

On 25th May 2018, the applicant lodged his complaint at the Commission which dismissed the application for lack of good cause for the delay as the complaint was filed out of time. Aggrieved, the applicant has brought this application which the respondent has opposed by filing a counter affidavit.

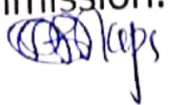
The applicant is praying this court to set aside the Commission's decision and order the Commission to determine the application on merit.

By Consent, the the court ordered the application be argued by filing written submissions. The applicant was represented by Mr. Manase Gideon from TASIWU while the respondent was represented by Mr. Tumaini Materu, learned Advocate.

Submitting in support of the application, Mr. Manase submitted that the applicant was employed by the respondent as a 'welder' for more than four years without leave until 15th February 2018 when he was unfairly terminated. Mr. Manase submitted further that, following the unfair termination the applicant filed a complaint before the Commission on 25th May 2018, when 62 days elapsed contrary to Rule 10 (1) of the Labour Institutions (Mediation and Arbitration) Rules G.N. No 64 of 2007 which requires the aggrieved party to file his complaint within 30 days. It was Mr. Manase's further contention that, the delay was occasioned by the respondent's endless promises to pay the applicant severance payment.

Mr. Manase further challenged the respondent to the effect that, the delay in filing the complaint was for 62 days and not 99 days as alleged by the respondent since the 30 days which are the legal requirement are supposed to be excluded from the 99 days.

It was Mr. Manase further contention that, the delay was not intentional as the applicant adhered to the required procedures by filing CMA F1, CMA F2, notice and affidavit, therefore by dismissing the application the applicant shall be denied of his right to be heard by the Commission.

 (Signature)

Mr. Manase finally prayed for the decision by the Commission to be set aside and the Commission be ordered to determine the application on merit.

Countering Mr. Manase's submission, Mr. Materu contended that, the timeframe for filing a complaint 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). A complaint lodged after 30 days is time barred and the same cannot be entertained by the Commission unless the applicant adduced good cause for the delay.

Mr. Materu contended further that, the applicant alleged that the delay was caused by regular communication with the respondent but has failed to provide any proof to that effect. Mr. Materu argued further that, the delay was inordinate and yet the applicant has failed to account for each day of the delay. To support his argument Mr. Materu cited the case of **Lyamuya Construction Company LTD V. Board of Trustee of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 CAT, Arusha.**

Furthering his argument Mr. Materu submitted that, the applicant slept over his right since the day his contract ended on 15th February 2018 until 25th May 2018 when he filed his application to the Commission.

Mr Materu finally submitted that, the applicant has not been unfairly terminated as he had already opted for non-renewal of the employment contract. Therefore, regular communication with the employer being the reason for the delay as alleged by the applicant is baseless, thus the Commission was right in dismissing his application. Hence he prayed this court to dismiss the application with costs.

Having considered both parties submissions, the question is whether the decision by the commission to dismiss the application did occasion any injustice? The answer is yes. 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 number of decided cases to that effect. From the respondent'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. But that notwithstanding, I think in the present case there is a pertinent legal issue relating to applicant's entitlement or otherwise to



severance payment which can only be determined on merit so that the applicant can be given the right to be heard.

With the foregoing observation, justice demands the extension of time be granted in order for the Commission to determine the application to its finality.

Therefore, the Commission for Mediation and Arbitration is ordered, for interest of justice to extend time for the appellant to file his application out of time and the same be determined on merits.

Dated and delivered at Moshi this 16th day of October, 2019




S.B. MKAPA
JUDGE
16/10/2019