

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**LABOUR DIVISION**  
**AT MWANZA**

**LABOUR REVISION NO. 06 OF 2021**  
*(Originating from the Labour Dispute No. CMA/MZ/ILEM/331/2020)*

**HARRIETH CHARLES MUGUMIRA----- APPLICANT**

**VERSUS**

**NMB BANK PLC----- RESPONDENT**

**JUDGMENT**

*Date of Last Order: 27/09/2022*

*Date of Judgement: 30/09/2022*

**MASSAM, J.**

The applicant, Harrieth Charles Mugumira made the present application to call upon the court to revise and set aside the award in Labour Dispute No. *CMA/MZ/ILEM/331/2020* and grant of any other order the court will find just and fit to grant. The application is made under the provision of Rule 24(1), 24(2)(a)(b)(c)(b)(e) and (f), and 24(3)(a)(b)(c) and (d) and Rule 28 (1)(c)(d) and (e) of the Labour Court Rules of 2007, GN No. 106 of 2007 and section 91(1)(b)(i) of the Employment and Labour Relations Act, Cap. 366 RE: 2019.

The application is supported by the applicant's affidavit and challenging the application the respondent filed a counter affidavit deponed by Hamadan O. Silliah, the principal officer of the Respondent.



Briefly, the facts heading to this revision are as follows; that, the applicant way back in 2008 was employed by the respondent till 10.07.2020 she was terminated for the reason of gross misconduct. She sours believing that the termination was unfair and decided to file her claim before the CMA where she found out of time for 108 days. She applied for condonation before the CMA in labour revision No. *CMA/MZ/ILEM/331/2020*. CMA did not grant the application for the reasons that the applicant did not give sufficient reasons for the application to succeed. Believing that her reasons advanced to the CMA was sufficient, she now appealed to this court against the order of the CMA refusing to grant her application move this court to revise and set aside the award of the CMA in *CMA/MZ/ILEM/331/2020*.

The applicant was represented by Mushongi Advocate while the respondent afforded the service of Sabas Shayo advocate. With the leave of the court, as prayed by the applicant's learned counsel, hearing of this application was done by the way of written submissions. The applicant filed a submission in chief on 22.09.2022, the respondent filed his reply on 26.09.2022 and the applicant file his rejoinder on 27.09.2022. I thank both parties to the case for complying with the orders of the court.

The applicant learned counsel on his submissions, he fronted two grounds for this court to access: Whether the reasons adduced for



extension of time were not sufficient and: Whether it is the legal requirement for the applicant to account even for the statutory time of 30 days.

On the first ground, whether the reason adduced by the applicant was not sufficient, he submitted that sickness is a good ground for extension of time. He referred this court to the case of **Jehangir Aziz Abdulrasul vs Balozi Ibrahim Abubakar and Another**, Civil Application Number 79 Of 2016, CAT at page 5 of the attached judgment the court of appeal held that, the sickness of the applicant is sufficient to constitute good reason.

He insisted that the authenticity of the medical report attached was not challenged in the counter affidavit or at the time of hearing of the application hence it was not proper for the commission to refuse to extend time.

He went further submitting that, the commission while agreeing with the respondent that she was sick, it decided that blame the applicant that she was able to attend the police while sick and failed to file her case. He avers that the records show that the applicant was sick and she was also attending to her sick child therefore it was difficult for her to file the case on time. He insisted that the applicant had sufficient reasons and



pray this court to consider that the ground of sickness was good ground for the commission to condone the applicant to file her dispute against the respondent out of time.

Responding to the applicant's learned counsel opposed his submissions insisting that CMA was right to refuse the applicant's application. He avers that in matters relating to condonation, the applicant seeking an extension of time needs to satisfy the CMA that there are sufficient grounds for extending time referring to Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules G.N No. 64 of 2007 for the reason that granting of extension of time is entirely in the discretion of the Court, the discretion which needs to be exercised judiciously.

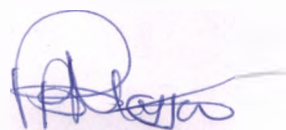
He submitted that, the applicant did not adduce good reasons for the extension of time because the applicant was able to attend several times at the police station but she claims that he was prevented by illness to institute a labour dispute at the CMA. He insisted that, although sickness can be a ground for extension of time but courts are warned not to grant extension of time-based on sympathy rather the applicant needs to demonstrate how that sickness prevented him/her from instituting the dispute within time. He supported his argument by referring this court to the case of the court of appeal in **Nyanza Road Works Limited vs**



**Giovanni Guidon** Civil Appeal No.75 of 2020 CAT and the case of **Daphyne Parry vs Murray Alexander Carson** (1963) EA 563. He, therefore, insisted that the applicant failed to advance sufficient reasons for the grant of the order for condonation.

Submitting on the second ground it is the argument of the applicant that the argument of the applicant is not supported by any authority and therefore lacks any basis. He went on that, the applicant applying for an order of extension of time has to account for every day that she has delayed. He claims that the applicant failed to explain what she was doing from 10<sup>th</sup> July 2020 when she was terminated on 9<sup>th</sup> August 2020 when 30 days expired one would wonder therefore what she was doing in all those days which prevented her from filling the labour dispute, therefore, the CMA finding on that ground was not correct.

He went submitting that, extension of time cannot be granted to an applicant who has failed to account for every day of delay. Insisting his argument, he refers this court to the case of **Vodacom Foundation vs Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 and the case of **Interchick Company Limited vs Mwaitenda Ahobokile**, Civil Application No. 218 of 2016. He insisted that the



applicant failed to adhere to the legal requirements and pray this court to dismiss the application with costs.

Re-joining the applicant reiterates his submissions in chief adding that, the records are clear through annexures that the appellant was admitted to the hospital and her son was also admitted several times, therefore it was difficult for her to file his matter at the CMA. Adding on the days of delay, he avers that days which should be accounted for, should be reckoned after the lapse of 30 days provided by the law and all days of delay were accounted for in the affidavit by the applicant.

He, therefore, concludes that the applicant has reasonable grounds to be condoned to file her dispute against the respondent. He, therefore, maintains his prayer that this application to be allowed.

From the parties' submissions, and their respective affidavit and counter affidavit, I now have one issue for determination which is **whether this Revision application is merited.**

The Revision Application before me is for revising the decision of CMA which denied to grant the prayer of condonation as prayed for by the applicant and extend time to file a case before the CMA. It is settled law that granting the prayer of condonation and extend time is within the discretion of the court. However, this discretion should be exercised



judiciously for the court must be guided by the principle as to whether the applicant has advanced good cause for the court to consider and along the good cause, the applicant is required to account for each day of delay.

The term, good cause has not been defined under the law and therefore, each case has to be determined in accordance with its own facts and circumstances surrounding it. This was also said in the case of **Jacob Shija vs M/S Regent Food & Drinks Limited & Another** Civil Application No. 440/08 of 2017, where the Court of Appeal at Mwanza held that;

*"What amounts to good cause cannot be laid by any hard and fast rules but are dependent upon the facts obtained in each particular case. That is, each case will be decided on its own merits, of course taking into consideration the questions, inter alia, whether the application for extension of time has been promptly, whether every delay has been explained away, the reasons for the delay, the degree of prejudice to the respondent if time is extended as well as whether there was diligence on the part of the applicant."*

In this matter at hand, the applicant insisted that there were sufficient reasons before the CMA to extend time for the applicant to file the claim against the respondent but the CMA did not consider it. In the determination of the applicant's claims, I went through the CMA records



and the main reason advanced by the applicant was that she was prevented by sickness. As it appears on the records, she was terminated on 10.07.2020 and was to file his case at the CMA within 30 days which was to be on or before 9<sup>th</sup> August 2020. She stated that, she was sick from 09<sup>th</sup> august 2020 and on 12<sup>th</sup> August 2020 and she was admitted for two weeks and annexed a hospital report (annexure A). She also stated that, after she was discharged and before she could recover, she was also arrested and kept in police custody for 5 days and from there she was again sick where she was admitted on 09 September 2020 (annexure B).

She went on that, on 15 September 2020 her son got sick and was severally admitted and discharged as stated in her affidavit from paragraphs 14 to 21 of the affidavit and accompanied by annexures C, D, E and F which are the hospital reports. She also stated that, she consulted her lawyer who instructed her that the dispute ought to be filed within 30 days and for the time had already lapsed, she was advised to file a condonation for the CMA to extend time for her to file the dispute which she duly filed on 27 September 2020 which is the subject of this revision application.


I agree with the respondent's learned counsel cited cases of **Nyanza Road Works Limited V Giovanni Guidon** Civil Appeal No.75





of 2020 CAT and the case of **Daphyne Parry vs Murray Alexander Carson** (1963) EA 563 that in relying on the reason that the applicant was sick, Courts are warned not to grant an extension of time-based on sympathy rather the applicant needs to demonstrate how that sickness prevented him/her from instituting the dispute within time. Referring to the applicant's affidavit and annexures A-F, I don't agree with the respondent's learned counsel that the applicant failed to advance sufficient reasons. As in **Samweli Sichone v. Bulebe Hamis**, Civil Application No. 8 of 2015, was cited to reinforce the proposition that what amounts to a good cause is not defined and so, the respondent's sickness was one of the factors to be considered which ought to have been taken into account by the CMA. It is my findings that the applicant had managed to show among other reasons that sickness prevented her. I hold so for the reasons that, his reasons were backed up by proof that she was sick and also her son who was severally admitted.

in line with the cited case of **Jehangir Aziz Abdulrasul (supra)**, that sickness was the reason for delay, the applicant deponed on her affidavit that she had a police case which she severally attended and she was even kept in police custody for five days. This reason was not considered as a factor for delay by the CMA. In fine, I find that the applicant had sufficient reasons before the CMA.



Again, as is the principle of the law that, despite of my findings that there were sufficient reasons, the applicant is duty bound to account for every day of delay. the principle is stated by the court of appeal in **Airtel Tanzania Limited Vs Misterlight Electrical Installation Company Limited & Another**, Civil Application No. 37/01 of 2020 referred with authority to the case of **Bushiri Hassan v. Latifa Lukio Mashayo**, Civil Application No. 03 of 2007, (unreported) where the Court emphasized that: -

*"...Delay of even a single day, has to be accounted for, otherwise there would be no point of having rules prescribing the period within which certain steps have to be taken."*

In this instant matter, I did not agree with the respondent's learned counsel that the applicant was required to account for the statutory days for no law that gives that requirement. What was tasking the applicant was accounting for the days she delayed from 09 August 2020 to 27 October 2020 when this application was filed. As I have analysed above, the applicant was required to file her application on or before 09 August 2020 rather the application was late filed on 27<sup>th</sup> October 2020. Going through the applicant's affidavit, she accounted from paragraphs 4 to 27 for all that transpired. It is therefore that, in line with sufficient reasons




advanced by the applicant, she also accounted for every day of delay as required.

Based on what has been discussed above, I find the revision application with merit and I proceed to allow the application. The applicant is to file her dispute before the CMA within 14 days.

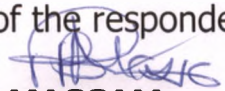
Order accordingly.

**Dated at Mwanza** this 30<sup>th</sup> day of September 2022.



  
**R.B. MASSAM**  
**JUDGE**  
**30/09/2022**

**COURT:** Judgment delivered on 30<sup>th</sup> day of September 2022 in the presence of Musa learned advocate holding brief of Mr. Mushogi Advocate for the Applicant and in absence of the respondent.

  
**R.B. MASSAM**  
**JUDGE**  
**30/09/2022**