

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM**

REVISION APPLICATION NO. 167 OF 2022

*(Arising from a Ruling delivered on 29/4/ 2022 by Hon. Mbunda P.J, Mediator, in Labour dispute No.
CMA/DSM/IL/56/2022 at Ilala)*

NAZAR MANASE APPLICANT

VERSUS

THE HEADMASTER MAGNUS SECONDARY SCHOOL 1ST RESPONDENT

THE DIRECTOR OF MAGNUS SECONDARY SCHOOL 2ND RESPONDENT

JUDGMENT

*Date of Last Order: 09/09/2022
Date of Judgment: 15/09/2022*

B. E. K. Mganga, J.

Brief facts leading to this application are that, on 1st January 2018, applicant was employed by the respondent as a teacher for one year (1) fixed term contract renewable. The two maintained their employment relationship until on 20th August 2020 when applicant resigned from his employment allegedly, on ground that respondent failed to pay him salaries from July 2019 to August 2018 amounting to fourteen (14) months' making employment intolerable. On 21st September 2020 respondent confirmed resignation of the applicant and promised to pay

in 2021 as she was in economic hardship. On 28th January 2022 applicant filed Labour dispute No. CMA/DSM/IL/56/2022 before the Commission for Mediation and Arbitration at Ilala claiming to be paid TZS 15,095,000/= being compensation for breach of contract. Being aware that he was out of time, applicant filed application for condonation Form (CMA F2) accompanied with his affidavit. In the CMA F2, applicant indicated that he was late because he was waiting to be paid by the respondent. At CMA, applicant alleged that, he waited for the applicant to fulfil his promise for the whole 2021 but the promise was not honoured.

On 29th April 2022, Hon. Mbunda P.J, Mediator, having heard submissions of the parties, delivered a ruling dismissing the application for condonation filed by the applicant on ground that promise for payment cannot stand as a sufficient cause for condonation. Aggrieved with that ruling, applicant filed this application for revision challenging the CMA's ruling that the delay to file the dispute was not caused by applicant's negligence, rather, it was due to the respondent's promise to pay. Respondent resisted the application by filing the counter affidavit of Leonce Kayagwa.

When the application was called on for hearing, Ambroce Nkwera, learned Advocate for the applicant submitted that, in his affidavit, applicant raised one issue that delay was not due to negligence. He submitted further that; applicant delayed filing the dispute because on 21st September 2020, respondent promised to pay the applicant. Counsel went on that, on 20th December 2021, applicant noted that respondent does not want to pay as the latter did not respond to a letter written by counsel for the applicant. During his submissions, counsel for the applicant conceded that the dispute arose on 20th August 2020 and led to resignation of the applicant. He submitted further that, applicant was claiming salary arrears and conceded that applicant was supposed to file the dispute within 60 days, but he failed due to the respondent's letter dated 21st September 2020. Counsel argued that the Mediator erred to dismiss the application for condonation filed by the applicant because there was a promise by the respondent. He therefore prayed the application be allowed.

On the other side, Thomas Chubwa, Counsel for the respondent, briefly submitted that, arguments that applicant was promised by the respondent is not true, considering that he resigned on 20th August 2020

and that there was no claim for arrears. He went on that, applicant failed to account for the delay and prayed the application be dismissed.

In rejoinder, Mr. Nkwera maintained that there was promise by the respondent to pay. He however, conceded that agreement of the parties cannot stop the operation of the law.

I have considered submissions of the parties in this application and find that the only issue is whether, applicant had sufficient cause for the application for condonation to be granted or not.

I should point out that, in CMA F1, applicant indicated that the dispute was based on breach of contract. In terms of Rule 10(2) of the Labour Institution (Mediations and Arbitration) Rules, GN. No. 64 of 2007, applicant was supposed to file the dispute at CMA within 60 days from the date the dispute arose. It is clear from the said CMA F1, that the dispute arose on 20th August 2020 and applicant filed the dispute on 28th January 2022. CMA had power in terms of Rule 31 of GN. No. 64 of 2007 (supra) to grant condonation upon good cause for the delay being shown by the applicant. It is undisputed that from the date the dispute arose, to the date applicant filed the dispute at CMA, is about 462 days. These days were not accounted for by the applicant as it was correctly

submitted by counsel for the respondent. It is now settled law that in application for extension of time or condonation, applicant must account for each day of his delay that passes beyond the period prescribed by the law. There is a plethora of Court decision to that position including the case of [Tanzania Cofee Board vs Rombo Millers Ltd](#), Civil Application No. 13 of 2015 [2015] TZCA 49, [Franconia Investment Ltd vs TIB Development Bank Ltd](#), Civil Application No. 270 of 2020 [2021] TZCA 563, ***Bushiri Hassan vs. Latifa Lukio Mashayo***, Civil Application No. 3 of 2007, to mention a few. In ***Mashayo's case*** (supra) it was held that:-

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

Logic and reasons for insisting an applicant to account for the delay was given by the Court of Appeal in the case of ***Tanzania Fish Processors Ltd vs. Christopher Luhangula***, Civil Appeal No 161/1994 (unreported) when it held that:-

"The question of Limitation of time is fundamental issue involving jurisdiction ...it goes to the very root of dealing with civil claims, limitation is a material point in the speedy administration of justice. Limitation is there to ensure that a party does not come to Court as and when he chooses.

The only reason advanced by the applicant for the delay is that he was promised by the respondent. It is my view that, out of court settlement or promise, cannot be a ground for condonation. Applicant was supposed to be vigilant knowing that the said promise cannot stop the operation of the law. This position is now settled as it was held by the Court of Appeal in the case of *M/s. P & O International Ltd v. the Trustees of Tanzania National Parks (TANAPA)*, civil Application No. 265 of 2020, CAT (unreported) that: -

"It is trite that pre-court action negotiations have never been a ground for stopping the running of time...the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties...negotiations or communications between the parties...did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by the law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."

Applicant was caught in a web trap when he thought that the alleged promise will help him. He was in fact, supposed to bear in mind that, there is a law providing timeframe within which his dispute was supposed to be filed at CMA and weigh out between the law and the promise from the respondent and decide the way forward. Since

applicant thought wrongly that promise by the respondent carried more weight than the law, then, he should bear that consequence.

That said, I find that there is no reason to fault the findings of the mediator. I therefore hereby dismiss this application for want of merit.

Dated at Dar es Salaam this 15th September 2022.



B. E. K. Mganga
JUDGE

Judgment delivered on this 15th September 2022 in chambers in the presence of Mariam Mabina, Advocate holding brief of Ambroce Nkwera, Advocate for the applicant but in in the absence of the respondents.



B. E. K. Mganga
JUDGE