

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)
AT ARUSHA**

REVISION APPLICATION NO. 89 OF 2019
(Originating from CMA/ARS/ARB/172/2016)

FLORA MUNUO APPLICANT

VERSUS

SUBA AGRO TRADING AND ENGINEERING RESPONDENT

RULING

21st April & 11th August, 2020

Masara, J.

This is an application for revision whereas **Flora Munuo** (the Applicant), moves the court to revise and set aside the proceedings and ruling of the Commission for Mediation and Arbitration (the CMA) in dispute No. CMA/ARS/ARB/172/2016 delivered on the 25th July, 2016. The said ruling was delivered in favour of **Suba Agro Trading and Engineering** (the Respondent) on the ground that the Applicant failed to account for the delay to file her claims within the time prescribed by law.

The Applicant was employed by the Respondent in the position of Sales and Customer Care Officer from January, 2012 to July 2015. On 20th July 2015 her employment was terminated. The Applicant claims that she was unfairly terminated. She could not file her claims before the CMA on time on the grounds that she was attending her son who is said to have been



seriously injured in a fire accident. On 4th April, 2016 the Applicant filed an application seeking for condonation so that she can file her claims for unfair termination against the Respondent. After hearing the application, the CMA rejected the Applicant's request for condonation in that she did not sufficiently account for the delay in filing her claims. Aggrieved, she has approached this Court seeking to challenge that ruling, so that she may be allowed to pursue her rights before the CMA. She initially filed Revision Application No. 23 of 2019 before this Court but the same was withdrawn on 29th October, 2019 with leave to re-file. Pursuant to that order, the Applicant filed the instant Application on 8th November, 2019. The application is supported with an affidavit deposed by the Applicant. The Respondent opposed the application by filing a counter affidavit deposed by Mr. Eli Peter Mbagu, a Principal Officer and Human Resources Manager of the Respondent.

At the hearing of the application, the Applicant was represented by Mr. Frank Maganga, Personal Representative; while the Respondent was represented by Ms. Vanessa Nyanga, learned advocate. The application was heard by way of written submissions.

Submitting in support of the application, Mr. Maganga reiterated the grounds that the Applicant had submitted before the CMA; that is, she failed to act on time due to the fact that she was attending his sick son who was involved in a fire accident on 30th June, 2015 while at Arusha Secondary School. That accident happened few days prior to her termination from employment. He argued that the Applicant had no option

other than taking care of her son while at the hospital and when discharged as he needed close assistance since he was unable to walk. The Applicant being his mother, was the only person who could assist him. Challenging the CMA decision, Mr. Maganga argued that the CMA failed to consider all the aspects necessary for condonation application as enumerated in GN 64 of 2004(sic); namely, *Degree of lateness, the reasons for lateness, prospects of succeeding with the dispute and obtaining the relief sought against the other party, any prejudice to the other party and any other relevant factors.* Mr. Maganga submitted that the CMA was unfair in its holding as it did not take into consideration all the aforementioned factors. To cement his argument, he cited the case of ***Eddie Hamza Versus African Barrick Gold Mine Ltd***, (Labour Division DSM) Revision No. 240 of 2012 pages 44 and 45 where the court acknowledged sickness as a good cause for condonation to issue.

Mr. Maganga also faulted the Mediator's holding that the medical certificate tendered was a forgery arguing that the Mediator was not competent to ascertain whether the document was forged or otherwise. He also faulted the finding that a photocopy of the medical certificate was tendered in the absence of notice as required by the Evidence Act, arguing that the matter was still at the mediation level and not at the arbitration level where exhibits are tendered. He fortified that in the mediation stage a document can be shown only to support the submission and not exhibit as required by the Evidence Act. Mr. Maganga fortified that the application by the Applicant has great chances of success considering that the Respondent did not comply with procedures described by the law before terminating

the Applicant. This fact, he states, was neither disputed nor discussed by the CMA. In his view, there was no valid reason to terminate the Applicant therefore the Applicant is likely to succeed in her claims if the matter is heard on merits. He cited a number of cases on that aspect; including, ***Leonard Mgeta Versus G4 Security Service***, Labour Division LCCD 2013 No. 180, ***Catherine John Versus Leopard Tours Ltd***, Revision No. 85 of 2015 and ***Hashim Mohamed Kimbunga Versus Impala Hotel***, Revision No. 6 of 2018. On the basis of the submission made, Mr. Maganga implores the court to grant the application, quashing the CMA ruling and order the matter to be heard on merits.

On her part, Ms Nyanga resisted the application by reiterating that the Applicant did not adduce good cause to enable the CMA to condone the delay. She contended that the Applicant was terminated on 20th July, 2015 and the fire accident occurred 30th June, 2015, therefore the accident took place a month before she was terminated, which means that the child's sickness did not bar the Applicant from referring the dispute to the Commission. She added that had the child been really sick, the Applicant ought to have provided proof of the same. Ms Nyanga added that the Applicant was late for more than 178 days because the patient had his last dose on 28th September, 2015 and the Applicant filed her complaint to the CMA on the 24th March, 2016. Ms Nyanga further contended that the Applicant did not account for each day delay as required and that she did not prove any guardianship to the alleged sick boy. Further, the document presented in the CMA was not from a recognizable hospital as the same had no stamp or even hospital name. She cited various decisions; including

Timothy Daniel Kilumile Company Ltd Versus Hilary Patrice Otaigo t/a Nyankanga Filling Station, Commercial Case No. 22 of 2004 (Unreported) cited in the case of ***Mwananchi Insurance Company Ltd Versus The Commissioner of Insurance***, Misc. Commercial Case No. 264 of 2016 (Unreported).

The learned advocate reiterated further that it is the discretion of this Court whether to grant extension of time or not; however, the law requires a party seeking such extension of time to account for each day delay. On that account she cited ***Bruno Wenceslaus Nyalifa Versus The Permanent Secretary Ministry of Home Affairs and Another***, Civil Appeal No. 82 of 2017 CAT Arusha, ***Lyamuya Construction Company Limited Versus The Board of Registered Trustees of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010, and ***Andrew Manyaga Versus Bulyanhulu Gold Mine***, Labour Revision No. 11 of 2011 (All unreported) all of which require that an Applicant accounts for each day delay. She therefore implored the Court to uphold the decision of the Mediator and dismiss the application for want of merits.

In a rejoinder submission, Mr. Maganga reiterated his earlier submissions contending that sickness is not a human choice therefore it was out of the Applicant's control as she had no one to take care of her sick son. He also contested the argument that the Applicant failed to prove her motherhood to the sick son stating that it does not bring sense, shifting the burden to the Respondent to prove the contrary.



I have dispassionately read the contending submissions of the parties' representatives and the parties' respective affidavits. The pertinent issue for determination in this case is whether the CMA's refusal to condone the Applicant's delay was justified.

The rules regarding condonation application are *mutatis mutandis* akin to those applicable in normal applications for extension of time. In order to succeed in an application for extension of time it has to be established that the delay was for sufficient cause. I have gone through the affidavit in support of the application for condonation filed by Applicant before the CMA. The same provide in paragraph 4 that the Applicant did not file her complaint in time because her son was involved in a fire accident and that she had to take care of him.

The CMA records also show that the Applicant submitted a copy of a medical certificate report. The said report, as rightly held by the CMA Mediator, does not disclose the hospital in which the treatment was received and does not have a seal or stamp of any hospital. That document shows that the said patient attended the alleged hospital for receiving doses from 30th June, 2015 to 28th September, 2015, and the patient was registered in the Outpatient record which means he was not admitted. The Applicant was terminated on 20th July, 2015, and the application for condonation in the CMA was filed on 4th April, 2016. Even if the alleged document was to be accepted as a valid document to prove the delay up to the last day indicated therein, still the Applicant failed to account for the



period between October 2015 and April, 2016 when she filed the application before the CMA. It is the finding of this Court that the Applicant failed to account for each day of delay as required by the law. That means the Applicant did not satisfy the requirements both regarding the degree of lateness and reasons for the delay.

Regarding the complaint put forward by the Applicant that the Mediator did not consider all the factors under Rule 11(3) of GN 64 of 2007, it is noted that the Ruling is silent on the issues relating to prospect of success and prejudice to the other party. Mr. Maganga has submitted that failure of the Mediator to examine those facts nullifies the finding of the CMA. It is noted that the Applicant submitted her application and attached CMA Form No. 1 and CMA Form No. 7. Page 3 of CMA F7 provide for responses in four criteria; namely, degree of lateness, reasons for lateness, the referring party's prospects of success and any prejudice to the other party. The Ruling of the CMA appear to have dealt with the first two criteria only. The Mediator did not scrutinise Form No. 7. Unfortunately, the affidavit in support of the Application for condonation did not state anything regarding the prospects of success or prejudice to the other party. Furthermore, the Application did not attach the letter of termination of the Applicant. Ordinarily, failure to discuss all aspects as per Rule 11(3) of the 2007 Rules is fatal. In ***Catherine John Versus Leopard Tours Ltd.***, Labour Revision No. 85 of 2015 (unreported), Mr. Maige, J was called to consider a situation where the Arbitrator dismissed the Application for condonation based on only one ground; that is sufficient cause for the delay. He held, *inter alia*, as follows:

"For the reasons of not considering the other factors for the grant which passed unopposed, the arbitrator, in my view, failed to properly exercise his discretion by conducting a proper judicial inquiry into the merit or otherwise of the application. From the factors contained in Form 7 read together with those in the affidavit, I entertain no doubts that the application by the applicant had merits."

I had also an opportunity to deal with the same aspect in ***Emmanuel Issangya & Anor Versus Tanzania Breweries Limited***, Labour Revision No. 109 of 2017, Arusha (Unreported). Unlike in the two cases above, where the affidavits contained details of the other criteria and the Arbitrators deliberately failed to address them, in this case the Mediator was not afforded the same opportunity. The affidavit of the Applicant only justified the delay. The decision reached thereof cannot be faulted.

Consequently, this Application fails in its entirety. The Applicant failed to account for the delay to file her Application within a reasonable time. She also failed to demonstrate why condonation should be given to her on criteria other than the delay. The decision of the CMA is accordingly upheld.

Order accordingly.




Y. B. Masara
JUDGE

11th August, 2020.