IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB - REGISTRY OF MWANZA

AT MWANZA

LABOUR REVISION NO. 22 OF 2023

[*From Labour Dispute No. CMA/MZ/NYAM/163/2022*]

ADISESHU VEMULA ----------**APPLICANT**

VERSUS

QUALITY BEVERAGE (T) LTD----------**RESPONDENT**

JUDGEMENT

Oct. 18th & 20th, 2023

Morris, J

Mr. Adiseshu Vemula, vide this application, invites this Court to revise the decision of the Commission for Mediation and Arbitration for Mwanza (herein, *CMA or Commission*) dated September 22nd, 2022. In the subject decision, his application for condonation to file a labour dispute against the respondent out of time was denied by CMA.

In this Court, the application is supported by his affidavit. However, the same is contested by the counter affidavit of Vidya Sagar Reddy. When the matter was tabled for hearing, parties were represented by Mr. Stephen

Kaswahili and Ms. Milembe Lameck, learned advocates for the applicant and respondent respectively.

From the record, the applicant alleges to had been the respondent's employee whose salaries were not paid by the latter since 2020. Hence, he intended to commence a labour dispute against the respondent for such neglect. However, he was late to file the envisaged dispute. He, thus, applied for condonation before the CMA. His application was dismissed. This revision impugns the CMA dismissal. The applicant has four issues for determination. Nevertheless, at the commencement of the hearing, the quadruple points were merged into two. That is, the applicant demonstrated good and reasonable grounds for extension of time at CMA; and that, the applicant was denied his right to be heard by the Commission.

The rivalry submissions from each party are easy to summarize. The counsel for applicant, after adopting his client's affidavit, submitted that the applicant worked for the respondent from 2019 until June 30th, 2022 when he applied for condonation. He added that the applicant continued working even when the application was pending before the CMA. It was argued

further that, at the beginning of employment, he was being paid his monthly salaries and remittances to the National Social Security Fund (NSSF) were smooth.

However, from 2020 the respondent unjustifiably stopped to pay him and making remittances to NSSF. Hence, the applicant demanded payment but the respondent both acknowledged the arrears and promised to pay him to no heed. To the applicant therefore, his failure to file the dispute on time was caused by his employer's promises; and applicant's intention to maintain good working relationship with the latter. To his counsel, this kind of delay was technical and forms a good ground for extension of time. He referred to the case of ***Fortunatus Masha v William Shija and Another*** [1997] TLR 144.

Regarding the second ground the applicant submitted that CMA denied him the right of being heard. To him, such right is very fundamental in the precepts of natural justice. He made reference to Article 13 (6) (d) of ***the Constitution of United Republic of Tanzania***, 1977 and the case of

Mbeya Rukwa Autoparts & Transport Ltd v Jestina George Mwakyoma [2003] TLR 251 to buttress his argument hereof.

In reply, it was the respondent's submission that the Commission considered three factors in determining for or against extension of time. That is, reasonableness of the delay ground; accounting of all days of the delay; and efforts of the applicant in pursuit of his cause. The respondent's counsel argued further that the alleged promises made by the respondent were not proved at CMA. For instance, no letter was produced to prove such promises. Also, to the respondent, the applicant failed to account for his delay. According to her, the applicant delay was for 787 days; and that all these days were not accounted for.

Regarding the claimed right to be heard, it was the submission of Ms. Milembe that such right is subject to limitation. She argued that timelines need to be complied with in the interest of justice. Thus, it was her conclusion that the applicant cannot enjoy the right which he intentionally blew away at the opportune time.

In rejoinder, Mr. Kaswahili argued that the applicant's follow-ups were physical and the respondent's promises were made orally. Therefore, there was no written proof thereof. In addition, he submitted that the applicant's right to be heard should not be deterred by technicalities.

From the above contentious arguments of parties, the obvious question for determination by the court is *whether or not the ground(s) advanced by the applicant were sufficient enough for the CMA to grant his application for condonation*.

Before I pedal-start with determination of the applicant's grounds, I find it pertinent to reiterate the general cardinal principle that the court is not supposed to interfere with the exercise of discretion by a subordinate court/tribunal. However, if the decision such court/tribunal is clearly wrong; or the judicial fora misdirected itself; or it acted on matters on which it should not have acted; or it failed to take into consideration matters which it should have considered; all or either of which culminated into unjust decision, the subject discretion may be interrogated. Hereof, I am guided by

Mbogo and Another v Shah [1968] EA 93 (at page 94); and ***Kiriisa v Attorney General and Another*** [1990-1994]1 EA 258.

Without repeating myself unnecessarily, court's power to extend time is discretional. That is law. However, such discretion must be exercised judiciously; free from personal whims, sympathy, empathy or sentiment. See, ***Bakari Abdallah Masudi v Republic***, CoA Criminal Application No. 123/07 of 2018; and ***Bank of Tanzania v Lucas Masiga***, Civil Appeal No. 323/02 of 2017 (both unreported).

I, probably, should also state it here that, the essence of law setting the time limits is to, among other objectives, promote the expeditious dispatch of justice [***Costellow v Somerset County Council*** (1993) IWLR 256]; to provide certainty of timeframe for the conduct of litigation [***Ratman v Cumara Samy*** (1965) IWLR 8]; and enhance public trust to the judicial system. Consequently, it works in the advantage of proper management of resources; most important of which are time and finance.

Further, the overriding principle is that, the applicant must demonstrate sufficient reason(s) as to why he/she did not take the necessary step(s) in

time. In so doing, he/she should prove how each day of the delay justifiably passed by at no applicant's fault. This is the principle recapitulated in ***Hamis Babu Bally v The Judicial Officers Ethics Committee and 3 Others***, CoA-Dar es Salaam, Civil Application No. 130/01 of 2020 (unreported).

Here and now, I partake to examine the grounds supporting the present application. In the first ground, the applicant alleges to had been making follow-ups to the respondent for payment of his salaries. According to paragraphs 5, 6, 7 and 8 of the affidavit filed at CMA, he deposed that he had been making constant follow-ups from 2020 believing and hoping for the good end. Simply put, such so-called efforts were made for more than two years until mid-2022 when he filed an application for condonation.

However, as submitted for the respondent; such dispositions are not supported by additional evidence. That is, he did not prove the said allegation with requisite documentary or allied evidence. For example, the affidavit does not contain a letter outlining his demands to the employer and/or a written response therefrom. Better still, he would be expected to

at least obtain a written commitment or affidavit from his former employer to the effect that he indeed was following up his dues for all that time.

Law is very categorical that, out-of-court communications, negotiations or follow ups associated with the matter in court do not constitute a ground to stopping the running of time. I am not short of supporting reference in this regard. ***Fortunatus Lwanyantika Masha and another v Claver Motors Limited***, Civil Appeal No. 144 of 2019; ***M/S P&O International Ltd v the Trustee of Tanzania National Parks (TANAPA)***, Civil Appeal No. 265 of 2020; and ***Kigoma Ujiji Municipal Council v Ulimwengu Rashid t/a Ujiji Mark Foundation***, Civil Appeal No. 222 of 2020 (all unreported); are some of the cases in my mind to such firmly settled legal position.

Obviously, I will not misdirect myself to hold that the applicant's allegations of follow-ups and respondent's promises herein have not moved me to find for a good cause to fault the CMA's denial to extend time for him. In principle, the applicant terribly did not exhibit any proof of such negotiations before the Commission nor does he ably do so before this Court.

Without stretching my imagination beyond elasticity, I am inclined to find that, allowing parties to sleep on their rights under the guise of flimsy excuses of amicable out-of-court negotiations and follow ups; is to pave way for chaos to justice and mockery to the due process of law.

Further, it has not skipped my mind that the applicant's counsel argued that his client waited for all that long so as to maintain good relationship with his employer. I have taken liberty to and have traversed the affidavit filed in the CMA. No such averment was made. Therefore, it came from the bar. In law, submissions from the bar are not evidence. Refer to ***the Registered trustees of Archdiocese of Dar es Salaam v The Chairman, Bunju village Government***, Civil Appeal No.147 of 2006; and ***Ison BPO Tanzania Limited v Mohamed Aslant***, Civil Application No. 367/18 of 2021 (both unreported).

The rationales of excluding submissions in determining the rights of parties in lieu of affidavital depositions or sworn testimonials are; **One**, submissions from the bar are oftentimes hearsay assertions. Hence, not admissible at law. **Two**, submissions are not given on oath. Thus, they lack

the reasonably expected sanctity that is otherwise found in sworn evidence. **Three**, veracity of the submissions is not capable of being established because they are not susceptible to cross examination.

Four, submissions carry with them afterthought manifestations of the parties' wish. That is, as a party submits, he steers the arguments his way after analysis of his weaknesses and the strength of the opposite party's case. A *vice versa* plot is the case too. **Five**, submissions may come in a form of a pack of surprises to the opposite party. As such, the latter will have no adequate room to contest them at the spur of the moment. Consequently, if such approach is nurtured to fruition, it would undermine the parties' right of being heard fully.

The affidavits and submissions of the appellant in this Court and before the CMA are to the effect that he was in employment until he pursued condonation. I refrain from subscribing to such averment. I will give the reasons. **Firstly**, the copy of employment contract attached and referred to under paragraph 2 of the affidavit in the Commission; indicates the term of employment ended on March 2021. **Secondly**, there is no averment or proof

thereof in the affidavit that the contract was renewed. **Thirdly**, the work permit attached to the applicant's affidavit cannot be relied upon in absence of a valid and active employment contract. **Fourthly**, no proof of payment of allowances was attached to prove that he was working until when he applied for condonation.

Fifthly, the counter affidavit of the respondent indicates that the applicant was terminated from December 2020. However, no reply to counter affidavit was filed (subject to leave of the CMA) to counter such averment. That is, it remained uncontroverted. **Sixthly**, if the applicant continued working on the employer's constant promises, there was continuing breach which revived his course of action. In the absence of the latter's final refusal to pay, it was impractical to fix the last date of his cause of action. Therefore, in my view, he would be left with no justification to apply for condonation while he was still in time. For all these reasons, I find it rather hard for the Court to sustain his arguments hereof.

The counsel for the applicant also relates the alleged follow-up made by the applicant to be technical delay. I disassociate myself with his view.

Technical delay applies when the applicant for extension of time was prosecuting other proceedings which were later on found incompetent as stated in the case of ***Fortunatus Masha v William Shija and Another*** *(supra)*; and ***Mathew T. Kitambala v Rabson Grayson and Another***, Criminal Appeal No. 330 of 2018 (unreported). In consequence, I find no merit in the first ground. It thus, stands overruled.

Regarding the second ground, it was the submissions of the counsel for the applicant that by disallowing the application for condonation, the Commission denied the applicant of his right to be heard. To me, this assertion is incorrect. The right to be heard is subject to compliance with time set by law. The respondent's counsel aptly argued along this line. Lest, there will be no validation for the law to set out time limits for actions and steps. Further, allowing vexatious applications will defeat the purpose of laws setting time bars. Also, long-dormant claims bear with them more cruelty to justice. That is, they leave justice crying as they are being forcefully pursued.

On the foregoing basis, persons claiming own rights should pursue their causes more diligently and within the legally ascertainable time. See, for instance, the case of ***M/S Sopa Management Limited vs. M/S Tanzania Revenue Authority***, Civil Appeal No 25 of 2010 (unreported). Obviously, once a person sleeps on his/her own right, law stops protecting such person. In the words of my learned brother, Ngwembe J (as he then was); in ***Miraji Salimu Nyangasa v Ramadhan Omary Sewando (Administrator of Estate of Lake Hussain Omary Sewado)***, Civil Appeal No. 1/2021 (unreported) the subject person may be allowed to continue sleeping forever. Therefore, the second ground lacks merit too.

In upshot, I have found no need to interfere with discretion exercised by the CMA in this matter. This application, henceforth, lacks merit. It is accordingly dismissed. Each party shall shoulder own costs. It is so ordered.

Parties' right of appeal is fully explained.

C.K.K. Morris

Judge

October 20th, 2023

Judgment is delivered this 20th day of October 2023 in the presence of Ms. Milembe Lameck, learned advocate for the respondent; and she is also holding the brief of advocate Stephen Kaswahili for the applicant.

C.K.K. Morris

Judge

October 20th, 2023