IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: SEHEL, J.A., KENTE, J.A. And MASOUD, J.A.)

CIVIL APPEAL NO. 160 OF 2021

SEBASTIAN DEOGRATIUS KAJULA .....APPELLANT

VERSUS

SIMON GROUP/SHAMBA AFRICA..... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania, Labour Division at Dar es Salaam)

(Aboud, J.)

Dated the 27th day of October, 2020

in

Revision No. 681 of 2019

JUDGMENT OF THE COURT

9th & 22nd February, 2024

KENTE, J.A.:

The question falling for determination which is at the core of this appeal is only one. That is, whether the appellant Sebastian Kajula had furnished good cause to account for the delay to refer his grievances to the Commission for Mediation and Arbitration (the CMA) after his contract of service was terminated on 17th February, as to qualify for condonation in terms of Rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, 2007 GN. No. 64 of 2007 (hereinafter the Mediation and Arbitration Rules). Notably, both the CMA and the Labour

Division of the High Court (the Labour Court), upon application for revision, held in the negative.

In a nutshell, the factual background leading to the condonation application before the CMA, the revision application before the Labour Court, and subsequently to the present appeal goes as hereunder: Effective from 8th October, 2015 the appellant was employed by the respondent as a Project Manager on a renewable one-year fixed term contract. He was based at the respondent's head office in Dar es Salaam. However, after sometime, the appellant was transferred to Kivungu area in Kilosa District, Morogoro Region.

Following the respondent's entering into a partnership agreement with one Samwel Finck who was a foreign investor from France for purposes of developing the respondent's farms at Kivungu and Madoto Farms which were then under the management of the appellant, the appellant was informed that the said investor did not want to work with him. As a result, the relations between the appellant and respondent were rocky in the days following the day of the appellant being informed that his services were unwanted. On that account, the appellant claimed that, on 17th February, 2018, his employment contract, was subsequently terminated.

Aggrieved by the termination of his employment contract, the appellant referred his grievances to the CMA asking it to condone his late reference of his complaints in terms of Rule 31 of the Mediation and Arbitration Rules.

After hearing the appellant, the CMA took a dim view of his explanation and accordingly held that, no good cause had been shown by him to warrant the grant of condonation. Riled by the decision of the CMA, the appellant further applied for revision to the Labour Court which, however, upheld the decision of the CMA.

In its judgment, the Labour Court found that, the reason advanced by the appellant to account for the delay was not tenable at law and further that, the lateness in lodging his complaint was rather inordinate. Relying on our decision in the case of **Bushiri Hassan v. Latifa Lukio Mashayo,** Civil Application No. 3 of 2007, the learned High Court Judge found that, the applicant had failed to account for each day of the delay. Consequently, the Labour Court held that the applicant was not entitled to the condonation and dismissed his application.

Unhappy with the decision of the Labour Court, the appellant launched the present appeal requesting us to reverse the concurrent findings and decisions of the two lower courts.

In his memorandum of appeal, the appellant contends in the first place that, having accepted as a fact that his employment contract was terminated on 17th February, 2018, and that, he had applied for condonation on 3rd May, 2018, the learned High Court Judge erred both in law and in fact by holding that, the 75 days (sic) delay was too long, in total disregard of the negotiations that were going on between him and the respondent with the view to settling the dispute amicably.

The appellant's further complaint is that, the High Court Judge did not properly apply her mind to the law and the established facts when she held that, the payment of TZS 1,000,000.00 by the respondent to him on 10th March, 2018 was not sufficient proof of the existence of the ongoing negotiations between him and the respondent. All in all, the appellant contended that, the High Court Judge strayed into error when she held that, the appellant had not demonstrated that the delay to lodge her complaint with the CMA was occasioned by a good cause and that he had not accounted for each day of the delay as required by law.

At the hearing of the appeal, Mr. Deogratius Ogunde, learned counsel who appeared for the appellant opted to rely on the written submissions which he had filed earlier on, in terms of Rule 106 (1) of

the Tanzania Court of Appeal Rules, 2009 (the Rules). The learned counsel also briefly augmented his arguments orally.

For his part, Mr. Nehemia Nkoko, learned advocate representing the respondent submitted orally in opposition to the appeal. It is noted that the respondent had forgone the right to file reply submissions to the appellant's submissions as required under Rule 106 (7) of the Rules.

We have duly considered the arguments contained in the appellant's written submissions together with Mr. Ogunde's oral submissions expounding on them. We also have in mind the arguments by Mr. Nkoko in his oral submissions briefly insisting that, the appellant had fallen short of proving that he could not refer his grievances to the CMA within the prescribed period because of being engaged in lengthy negotiations with the respondent.

From the onset, and as it was observed by the lower courts, the issue we have to grapple with is whether or not the appellant had furnished a good cause to warrant the grant of condonation.

In view of the above posed question, it behoves us to first identify the applicable legal principles when the CMA is called upon to determine a condonation application.

In terms of rule 31 of the Mediation and Arbitration Rules, the CMA may condone any failure by any party to comply with the time frame set out in the rules, on good cause being shown. Along the same vein, and this has become something of a commonplace in labour disputes, the CMA may, upon good cause shown, condone the late reference to it of a dispute by the aggrieved employee.

Although there has not been any decision by this Court which specifically addresses this point, it can be said with some confidence that, the position obtaining under the South African statutory and case law on which our labour laws are modelled, is more or less the same as what is found under our jurisdiction. This is particularly so in view of the provisions of Rule 11 (3) of our Mediation and Arbitration Rules which provide thus:

> *"(3) An application for condonation shall set out the grounds for seeking condonation and shall, include the referring party's submissions on the following: -*
>
> *a) the degree of lateness;*
>
> *b) the reasons for the lateness;*
>
> *c) its prospects of succeeding with the dispute and obtaining the relief sought against the other party;*
>
> *d) any other relevant factors."*

In South Africa, the above reproduced requirements of the law on condonation have been a subject of judicial interpretation and application in a legion of cases.

Directly relevant to the case now under review and from which we can draw inspiration, is the famous case of the **National Union of Mineworkers v. Council for Mineral Technology** (www.safilii.org/za/cases/ZALAC/1998/22.html) (accessed on 20th February, 2024) in which the Labour Court of South Africa held, **inter alia** that:

> *"The approach is that the court has a discretion, to be exercised judicially upon a consideration of all facts, and in essence, it is a matter of fairness to both parties. Among the facts usually relevant are the degrees of the lateness, the explanation therefore, the prospects of success and the importance of the case. These facts are interrelated; they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. There is a further principle which is applied and that is that without*

a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused."

Coming back to the instant case, essentially the appellant's explanation of the delay is one-fold. As it will be noted at once, in an attempt to appraise this Court of all the facts and circumstances leading to the delay, the appellant's counsel contended just like he did before the lower courts that, his client got caught in the web of the law of limitation after the respondent engaged him in lengthy but fruitless negotiations with a view to reaching an amicable settlement. That in essence is where the argument by Mr. Ogunde solely rests.

The above explanation seeks to cover the period from 17th February, 2018 when the appellant's contract of service was terminated by the respondent to 3rd May, 2018 when he finally applied for condonation. He further alleges that, for the whole of that period, he was in discussions with the respondent from which however, he could not achieve the best outcome. He alleges that, the only thing he could achieve was on 10th March, 2018 when he was paid TZS 1,000,000.00 by the respondent. The appellant thus faulted the two lower courts for

not finding that, if it were not for the said negotiations, the respondent would not have paid him the above-mentioned amount of money.

Even though, as we shall hereinafter demonstrate, the appellant's explanation is not without some material difficulties. As correctly submitted by Mr. Nkoko, contrary to the established practice, the appellant's application for condonation before the CMA did not provide any details in relation to the alleged attempts by the parties to settle their differences amicably. Instead, the application was presented in a bald statement and it is no surprise that the two lower courts could not be convinced by the appellant's explanation. We should insist here for purposes of clarity, that, the appellant's case required, but it was lacking an explanation which covers the whole period of the delay. In these circumstances, the mere statement that the parties were involved in negotiations without a detailed explanation of what was done for the whole of the period that elapsed between the day of the termination and the day of filing the condonation application, could not have placed the CMA and the Labour Court in a proper perspective to assess the appellant's explanation for the delay.

We also do not accept the argument by Mr. Ogunde that, following negotiations, the appellant was paid TZS. 1,000,000.00 but yet, he could

not beat the deadline within which to refer his complaints to the CMA. It is important that, as a reminder to Mr. Ogunde, we revisit what we said albeit very briefly, in the case **M/S P&O International Limited v. The Trustees of Tanzania National Parks (TANAPA)** Civil Appeal No. 265 of 2020 (unreported). This case states that, pre-court action negotiations cannot form a ground for stopping the running of the limitation time.

But what is more and indeed bedevils the appellant's position in this case, is the undisputed fact that, when he was paid the said TZS 1,000,000.00 on 10th March, 2018 the 30 days period within which to refer this complaints to the CMA was yet to expire and no explanation was forthcoming from him to account for delay for the remaining period.

Equally important to observe here, is the settled and undisturbed position of the law for which we need not cite any supporting authority, that, a party seeking condonation is saddled with a duty to make out a case entitling it to the court's indulgence. For, otherwise, it must be trite that condonation cannot be given on a silver plate. Put in other words, a party seeking condonation is required to give a reasonable and acceptable explanation for non-compliance with the rules and the law

prescribing specific timelines within which a party to a labour dispute should take the necessary legal steps.

Needless to say, the above position of the law is premised on the importance and requirement for labour disputes to be conducted with the attendant expedition which has been endorsed by almost all Labour Courts in various jurisdictions.

We also wish, to record our views that, given the position obtaining under our labour laws, rather than wasting time as he did, the appellant could have timely referred his grievances to the CMA and thereafter pursued a court-annexed mediation in the pre-arbitration stage of his case in terms of section 14 (1) (a) of the Labour Institutions Act.

As a final point, we also need to state in passing that, we could not find anything convincing in the appellant's complaint that he was denied his right to be heard on the preliminary objection. For, it is on the record that the preliminary objection which was raised by the respondent before the CMA to challenge the competence of the application brought by the applicant, was dismissed on 25th July, 2018 for want of prosecution.

It follows in our judgment that, there is no substance in the appellant's complaint that he was denied the right to be heard in respect of a preliminary objection which, as it turned out, was not heard and determined on merit after the respondent had failed to prosecute it.

All in all, for the reasons stated herein above, we find that this appeal had been lodged without sufficient grounds. We accordingly dismiss it but with no order as to costs, this being a labour dispute.

DATED at **DAR ES SALAAM** this 20th day of February, 2024.

B. M. A. SEHEL
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of February, 2024 in the presence of the appellant in person and Mr. Nehemia Nkoko, learned counsel for the respondent is hereby certified as a true copy of the original.

W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL