THE COURT OF APPEAL OF TANZANIA

AT KIGOMA

CIVIL APPEAL No. 631 OF 2022

(CORAM: KWARIKO. J.A., GALEBA. J.A., And MASOUD. J.A)

REHEMA TIMOTH MKAMA ....**APPELLANT**

VERSUS

EDWARDINA DANIEL BONYO (Administratrix of the Estate of the Late Daniel Sinyo Bonyo) ....**RESPONDENT**

(Appeal from the Judgment and Decree of the High Court of Tanzania at Kigoma)

(Mlacha, J.)

dated 6th day of October, 2022

in

Labour Revision No. 09 of 2021

....

JUDGMENT OF THE COURT

29th April & 8th May, 2024

MASOUD. J.A.:

The respondent in this appeal, is an administratrix of the estate of the late Daniel Sinyo Bonyo who died on 31st May, 2020 and whom the appellant herein claims to be her employer, having allegedly employed her under an oral contract of service as a Bar/Guest House Attendant and House Girl since January, 2001. In that contract of service in which the appellant's monthly salary was TZS. 80,000.00, the deceased allegedly paid her salaries for only 13 months. Thereafter, from 31st January, 2002,

they agreed under oral agreement that the subsequent appellant's monthly salaries would be withheld by her employer and paid to her when the total monthly salaries would have accumulated to a total amount of TZS. 20,000,000.00. Thus, when the deceased died on 31st May, 2020, the appellant had allegedly an outstanding sum of unpaid salaries amounting to TZS. 17,600,000.00.

As the appellant was out of time to refer a labour dispute to the CMA against the estate of her deceased employer, she filed an application for condonation of late referral of a dispute to the CMA on 1st March, 2021. In that application, she stated in the duly filled prescribed form that she was late to refer the dispute to the CMA for "*eight months, three weeks and five days*" for the only reason of "*locus standi*" and expounded on that reason in her affidavit supporting the application for condonation. The respondent on the other hand opposed the application, stating in her counter affidavit with respect to the reason for the delay that the appellant did not account for each and every day of the delay as from the commencement of the alleged agreement.

After the hearing, the CMA was satisfied that the appellant did not show good cause as she did not adduce sufficient reasons accounting for each day of the entire period of the delay to warrant the granting of the

condonation as required by rule 31 of the Labour Institutions (Mediation and Arbitration) Rules, G.N No. 64 of 2007. In the end, the CMA dismissed the application for condonation.

Being aggrieved, the appellant preferred a revision of the decision of the CMA to the High Court which upheld the decision of the CMA. The High Court found that the appellant did not demonstrate sufficient reasons to justify granting of the condonation for the entire period of the delay as from January, 2001. It also found in relation to *locus standi* alleged by the appellant that there was no good cause shown for there were no sufficient reasons accounting for each day of the delay for the period subsequent to the appointment of the administratrix by the Ujiji Primary Court on 25th August, 2020. The High Court was thus satisfied that the CMA properly exercised its discretionary power in refusing to grant the condonation.

Still aggrieved by the decision of the High Court, the appellant lodged a memorandum of appeal to this Court, containing five grounds of appeal which could be paraphrased thus; (i) failure to consider oral agreement the appellant and deceased entered for the appellant's monthly salary from January, 2002 to be withheld and paid when it accumulates to a sum of TZS. 20,000,000.00; (ii) failure to hold that during the pendency of the said oral agreement between the appellant

and the deceased, no accrual of a cause of action could take place; (iii) not finding that the cause of action did not accrue in the year 2001 when the appellant was employed by the deceased; (iv) denying the appellant a right to be heard and; (v) failure to allow revision based on unique factors of the case.

At the hearing, Mr. Masendeka Anania Ndayanse, learned advocate, appearing for the appellant, relied on the written submissions addressing the above grounds which he had lodged earlier on in terms of rule 106 (1) of the Tanzania Court of Appeal Rules, 2009, and briefly expounded on them orally and generally. Essentially, the learned advocate attacked the High Court for failing to find that the CMA did not properly exercise its discretion in refusing to grant the condonation.

On the other hand, all that Mr. Daniel Edward Rumenyela, learned advocate representing the respondent was saying and insisting on, in his oral submissions in opposition to the appeal, is that the High Court considered the reasons for the delay advanced by the appellant. And that, having done so, it was, as was the CMA, satisfied that the reasons adduced did not sufficiently account for each and every day of the entire period of the delay and even for the period subsequent to the appointment of the administratrix on 25th August, 2020.

It is settled that extension of time is a matter of discretion on the part of the court, and that such discretion must be exercised judiciously with regard to the relevant facts of the particular case. See, **Sebastian Deogratius Kajula v. Simon Group/Shamba Africa,** Civil Appeal No. 160 of 2021 (unreported) in which we drew inspiration from the famous South African case of **National Union of Mineworkers v. Council for Mineral Technology** (JA94/97) [1998] ZALAC 22 (17 August 1998).

As such, this Court on appeal may only interfere with such exercise of discretion on well settled principles; if the appellant satisfies the Court that the decision is clearly wrong due to misdirection or because the court acted on matters on which it should not have acted or it failed to take into consideration matters which it should have taken into consideration and in doing so, it arrived at a wrong conclusion. See, **Mbogo v. Shah** [1968] EA 93.

We have, in the light of the above principle, examined the material on the record and given a careful consideration to the rival submissions of the learned advocates for the parties on the grounds of appeal which all boil down to an issue as to whether there was good cause in terms of rule 31 of the Labour Institutions (Mediation and Arbitration) Rules to warrant granting of the requested condonation.

It was not disputed that the appellant was required to refer the dispute to the CMA within sixty days from the date when the dispute arose in terms of rule 10 (2) of the Labour Institutions (Mediation and Arbitration) Rules. As to when the cause of action entitling the appellant to approach the CMA for her unpaid salaries accrued, the High Court agreed with the finding of the CMA that the cause of action started right from the commencement of the alleged oral contract of service in January, 2001. It was thus held that the appellant was supposed to account for the delay starting from the date when her salaries were due in January, 2001 up to the moment the application for condonation was filed at the CMA. It also agreed with the CMA that there was no good cause shown for there were no sufficient reasons given accounting for each and every day of the entire period of the delay of twenty (20) years to warrant granting of the sought condonation.

We find it evident at pages 44 and 65 of the record of appeal that the learned advocate for the appellant also agreed with the period of delay of twenty (20) years as from 2001. It is no wonder that there was nothing during the hearing at the CMA and the High Court referring to or expounding on the period of "*eight months, three weeks and five days*", equivalent to 266 days, earlier stated in the application for condonation.

Worse still, the appellant's affidavits at the CMA and the High Court did not also account for such period in tandem with the alleged causes of the delay at page 20 of the record of appeal either.

Even if it were to be taken that the period of the delay was to be accounted as from the death of the deceased on 31st March, 2020 and thus from the moment the respondent was appointed the administratrix of the deceased in tandem with the reason of *locus standi* advanced, we would still agree with the finding of the learned Judge at page 107 of the record of appeal, that there is also no good cause on the record, justifying why the dispute was not filed by the appellant at the CMA immediately after the appointment of the respondent as an administratrix by the Ujiji Primary Court on 25th August, 2020.

We are of the above finding because there is nothing shown on the record that barred the appellant from preferring such dispute at the CMA as she also challenged the appointment of the administratrix of the deceased's estate at Kigoma District Court in the Probate Appeal No. 5 of 2020. Equally, there is nothing on the record justifying her choice of challenging the appointment of the administratrix instead of preferring her labour dispute at the CMA if the only reason for the delay was *locus standi* following the death of her alleged employer. Furthermore, the

appellant's choice evident at page 20 of the record of appeal of waiting to see whether the respondent would consult her to settle the dispute after the District Court's decision in Probate Appeal No. 5 of 202 is unjustified and would not amount into good cause. See, **Sebastian Deogratius Kajula** (Supra), where we held that:

> *"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."*

The argument about unique circumstances of the case is misplaced since it was not raised by the appellant as a reason to justify granting of condonation. We so find because neither the condonation form at pages 16 up to 18 of the record of appeal, nor the affidavit at page 20 of the record of appeal mentioned it. Likewise, the argument of not being heard

is baseless as it is not supported by the record as is the allegation of existence of the oral agreement whose case was not made out to entitle the appellant to the court's indulgence.

We are at this juncture settled in our mind that the High Court was justified in its finding that the CMA properly exercised its discretion in refusing to grant the sought condonation primarily on the ground that no good cause was shown for there were no sufficient reasons given accounting for each and every day of the entire period of the delay.

Since there was no good cause established, the sought condonation could not just be allowed for no reason. In **Uitenhage Transitional Local Council v. South African Revenue Service**, 2004 (1) SA 292, which was cited and applied in **D. N. Bahram Logistics Ltd and Another v. N. B. C. Ltd and Another**, Civil Reference No. 10 of 2017 (unreported), the Supreme Court of South Africa observed that:

> *"Condonation is not to be had merely for the asking; a full detailed and accurate account of the causes of the delay and its effects must be furnished so as to enable the Court to understand clearly the reasons and to assess the responsibility."*

In the same vein, in the case of **Sebastian Deogratius Kajula** (supra), we held 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.*
>
> *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.*
>
> *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."*

In view of our foregoing deliberations and findings, all grounds of appeal fail. We dismiss them.

In the end, we find no basis to interfere with the finding of the High Court that the CMA properly exercised its discretion in refusing to grant the condonation. The appeal stands dismissed. We make no order as to costs since this is a labour dispute.

DATED at **KIGOMA** this 7th day of May, 2024.

M. A. KWARIKO
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Judgment delivered this 8th day of May, 2024 in the presence of the appellant in person and Mr. Daniel Edward Rumenyela, learned counsel for the respondent, also, holding brief for Mr. Masendeka Anania Ndayanse, learned counsel for the appellant; is hereby certified as a true copy of the original.

F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL