

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

**REVISION NO. 484 OF 2019**

**BETWEEN**

**ZENUFA LABORATORIES LIMITED ..... APPLICANT**

**VERSUS**

**GEOFREY MATHEW ..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 21/05/2020*

*Date of Judgment: 17/07/2020*

**S.A.N. Wambura, J.**

Aggrieved by the award of the Commission for Mediation and Arbitration [herein after to be referred to as CMA] the applicant **ZENUFA LABORATORIES LIMITED** has now knocked at the doors of this Court by virtue of this application brought under the provisions of Sections 91(1)(a), (2)(b)(c) and 94(1)(b)(i) of the Employment and Labour Relations Act, No. 6 of 2004 and Rules 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d) and 28(1)(c)(d)(e) of the Labour Court Rules, GN No. 106 of 2007 praying for the following Orders:-

- 1. That, this Honourable Court be pleased to revise and set aside the whole proceedings and award of the Arbitrator; Commission for Mediation and Arbitration at Dar es Salaam in the matter CMA/DSM/KIN/R.403/18 delivered by Hon. Igogo on 11<sup>th</sup> April, 2019.*
- 2. That, this Honourable Court be pleased to grant any other relief(s) as it deems fit.*

The application is supported by the affidavit of Hitesh Upreti, the Managing Director of the applicant.

The respondent **GEOFFREY MATHEW** filed a counter affidavit challenging the application.

With leave of the Court the matter was disposed of by way of written submissions. I thank both parties for adhering to the scheduled in filing their submissions.

It was submitted by the applicant that:-

- (i). The trial Arbitrator lacked jurisdiction to entertain the complaint because:-

- (a) The respondent was terminated while under probation and had not been confirmed as a PYP teacher. He thus could not claim to be unfairly terminated citing the cases of **Stella Temu Vs. Tanzania Revenue Authority**, Civil Appl. No. 72 of 2012 and **Commercial Bank of Africa (T) Ltd Vs. Nicodemus Musa Igogo**, Rev. No. 40/2012 to that effect. That he was therefore not covered by the provisions of Section 37 of the ELRA. This was evidenced by Exhibit D1.
- (ii). That the trial Arbitrator erred in failure to evaluate the evidence by finding that the respondent was not accorded the right to be heard. That there was no valid reason for terminating him while termination was for non-confirmation after probation for poor performance as per Rules 7, 8, 9, 10, 17 and 18 of ELRA (Code of Good Conduct) Rules, 2007.

That the applicant complied to the same by informing the respondent of the applicants concerns and gave time to the respondent to improve as provided for in Rule 10(8) of the Code yet the respondent did not make any improvement.

(iii). That the Arbitrator was wrong to nullify the meeting between the applicant and the respondent without a reasonable cause.

They thus prayed for the award to be revised and set aside.

In reply the respondent submitted that he was employed on probation on 08/11/2016 and was confirmed on 17/11/2016 as a Deputy Human Resource Officer unconditionally up to when he was terminated on 29/03/2018. That there were no standards that were set on performance review as per the evidence of DW1 and DW2 and as held in the case of **Sandvick Mining Construction (T) Ltd Vs. Joseph Mlaponi**, Rev. No. 27 of 2012.

That Section 32 of the Law of Contract had nothing to do in respect of his employment contract (Exhibit D1).

That he was not on probation as he worked for two years and enjoyed other benefits such as Health Insurance and a loan which are not provided for employees under probation. He thus distinguished this case with that of **Stella Temu Vs. Tanzania Revenue Authority** (supra).

That the Arbitrator properly evaluated the evidence and it was for the applicant to prove that they had a valid reason for terminating him. The

Arbitrator relied on Exhibit D4 in which was said to be unsatisfactory performance and not non-confirmation.

He thus prayed for the application to be dismissed.

It is on record that at CMA parties framed four issues being:-

- (i). Whether or not the respondent was still under probation at the time he was terminated.*
- (ii). Whether the applicant had valid reasons for terminating the respondent.*
- (iii). Whether or not the applicant adhered to the procedures in terminating the respondent.*
- (iv). The reliefs entitled to the parties.*

Which I shall also adopt in this judgment.

**1. Was the respondent under probation at the time of his termination?**

Whereas the applicant so alleges, the respondent has refused alleging that he was in permanent employment for two (2) years and was benefiting from privileges which employees who are on probation cannot benefit from including loans.

CMA found that the probation period had lapsed and so the applicant was assumed to have been permanently employed although he did not have a confirmation letter.

The position of the Court as held in the cases of **Mtenga Vs. University of Dar es Salaam** [1971] HCD 247, **Stella Temu Vs. Tanzania Revenue Authority** (supra) and recently in **David Nzallgo Vs. NMB Plc**, Civil Appeal No. 61 of 2016 (CA) is the same; that the status of employment for an employee under probation who continues working after the expiration period without the employer having made the decision to confirm or not to confirm him/her after the expiry of probation period does not amount to confirmation. That confirmation cannot be automatic upon the expiry of the probation period.

Now since there is evidence on record of the applicant complaining of the performance of the respondent who was finally terminated for poor performance without being confirmed, it means the respondent remained to be a probationer even though he benefitted from other entitlements such as Health Insurance and a loan. This did not change his status to a confirmed/ permanent employee.

Having found so it means that the respondent could not get any remedy as provided for under Part III sub Part E of ELRA. Therefore the issue of substantive and procedural fairness on termination including reliefs as per Section 40 of ELRA do not come into play.

I thus allow the application CMA's award is herein quashed and set aside.

S.A.N. Wambura  
**JUDGE**  
17/07/2020

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**GEOFFREY MATHEW ..... RESPONDENT**

**Date: 17/07/2020**

Coram: Hon. S.R. Ding'ohi, Deputy Registrar

Applicant: }  
For Applicant: } Absent

Respondent:

For Respondent: Mr. Herry Kimaro Advocate

CC: Lwiza

**COURT:** Judgment delivered this 17<sup>th</sup> day of July, 2020.

  
S.R. Ding'ohi  
**DEPUTY REGISTRAR**  
17/07/2020