

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

**REVISION NO. 419 OF 2018**

**BETWEEN**

**ZUENA NASSOR ..... APPLICANT**

**VERSUS**

**PHOENIX OF TANZANIA ASSURANCE CO. LTD ..... RESPONDENT**

**JUDGMENT**

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

*Date of Judgment: 29/05/2020*

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

Aggrieved by the ruling on Commission for Mediation and Arbitration [herein after to be referred to as CMA] delivered on 18<sup>th</sup> June, 2018 which refused to condone the matter, the applicant **ZUENA NASSOR** has filed this application under the provisions of Rule 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), 55(1)(2) and 28(1)(c) of the Labour Court Rules, GN No. 106 of 2007 and read together with Section 94(1)(e) of the Employment and Labour Relations Act No. 6 of 2004 praying for Orders that:-

*1. That, this Honourable Court be pleased to accept this Notice of Application for Revision and Chamber Summons and call for records of proceedings, revise and set aside the Ruling by Hon. Mkenda, S. Mediator on the grounds set forth in the affidavit of Zuena Nassor.*

*2. That, this Honourable Court inspect supporting records therein:*

*(a) Ruling*

*(b) Termination letter*

*(c) Medical Report*

*(d) Kibali cha Mazishi*

*To satisfy itself as to the correctness and rationale of the Mediator's Ruling that the matter was filed out of time hence dismissed the application for lack of merit.*

*3. Any other reliefs this Honourable Court may deem fit, just and equitable to grant.*

The application is supported by her affirmed affidavit.

Mr. Odhiambo Kobas, Counsel for the respondents **PHOENIX OF TANZANIA ASSURANCE CO. LTD** filed a counter affidavit challenging the

application. I have stated in a number of decisions that this not a very healthy situation.

Now with leave of the Court the application was disposed of by way of written submissions. I thank both parties for complying to the schedule and for their submissions.

It is on record that the applicant was employed by the respondent as of September, 2009. She was terminated on 14/10/2017. Aggrieved by the termination the applicant filed a dispute at CMA sometime in January, 2018. As she was time barred she also filed an application for condonation which was dismissed. Aggrieved by the ruling the applicant has now knocked at the doors of this Court.

It has been submitted by the applicant that the Arbitrator erred in dismissing the application because:-

- (i). Though he appreciated that sickness is a good cause for the delay, he failed to consider the medical report tendered as Annexure Z2 indicating that the applicant was attending to her sick and widowed mother, a reason which was allowed in the

case of **Novati Rupia Vs. TAZARA**, Misc. Labour Appl. No. 545 of 2016.

- (ii). He disregarded the reason that the termination was based on a number of defects thus was illegal as held in the case of **Principal Secretary, Ministry of Defence and National Service Vs. Devram Valambia** [1992] TLR 185 and that the applicant had not demonstrated sufficient cause for the matter to be condoned.
- (iii). He disregarded the fact that the application had overwhelming chances of success as held in the case of **Samson Kishosha Gabba Vs. Charles Kingongo Gabba** 1980 TLR.

She thus prayed for the application to be granted.

In response the respondent has argued that there is no reason to fault the Arbitrators findings because:-

- (i). The applicants father's death and her mother's Eddah had nothing to do with the delay. That it was mere negligence on the part of the applicant.
- (ii). Her mother's sickness has not been backed up by satisfactory medical reports. That Annexure ZN5 was issued a day after

she was terminated. But she decided not to file the same in time and travelled to Tabora instead. So she ought not to seek the sympathy of the Court for her own premeditated delays. That the applicant has not accounted for the delay of each day as held in the cases of **Juma Nassoro Humbwaga Vs. Jesse Lucas John**, Misc. Land Application No. 70/2013 and **Usangu General Traders Vs. Kagera Tea Company**, Commercial Case No. 55/2005.

- (iii). That the reason for overwhelming chances of success as held in the case of **Samson Gabba** (supra) cannot stand alone but has to be collaborated with good cause for the delay as it was held in the case of **Iron and Steel Limited Vs. Martin Kumalija & 117 Others**, Misc. Appl. No. 110/2019.
- (iv). That not every claim of illegality is a good cause for termination as it was held in the case of **Tanzania Cigarette Company (TCC) Vs. Hassan Murua**, Civil Appeal No. 49/01 of 2018. That the ground of illegality has to be explained as was held in the case of **Lvamuva Construction Co. Limited Vs. Board**

**Association of Tanzania**, Civil Case No. 2 of 2010. That others grounds have to be looked into as well including the promptness in filing the same.

That since the application has not been promptly filed and the delay has not been accounted for each and every day then there are no justifiable reasons herein adduced and so the application has to be dismissed.

There is no doubt that the applicant knocked the doors of CMA late as provided for under Rule 10(1) of which provides that:-

*"Rule 10(1) Disputes about the fairness of an employee's termination of employment **must be referred to the Commission within thirty days from the date of termination or the date the employer made a final decision to terminate or uphold the decision to terminate"***

*[Emphasis is mine].*

On realizing that, the applicant filed an application for condonation under the provisions of Rule 31 which provides that:-

***"Rule 31 The Commission may condone any failure to comply with the time frame in these rules on good cause."***

*[Emphasis is mine].*

Having heard both parties, CMA found there was no good cause adduced by the applicant thus dismissed the application. Aggrieved the applicant has now knocked at the doors of this Court.

Having heard both parties, I believe my only duty is to either revise the said ruling and set it aside or dismiss the application for want of merit.

I do join hands with the respondents that there was lapse of sometime after the death of the applicants father which was on 04/07/2017 to the filing of this matter at CMA. But again we do not know as for how long the applicant was permitted to attend the funeral of her father.

I am also optimistic to state that the applicants mother's sickness could not be the cause of the delay in that someone else could take care of the sick mother. These are family matters and there needs to be more

evidence then the mere allegations and assumptions which we have on record to rule out on that.

But assuming that all these reasons are insufficient, there is the ground of illegality of the termination. Both parties are in agreement that illegality is a sufficient cause to grant one an extension of time but only that the applicant has failed to explain on the same as held in the cases of **Tanzania Cigarette Company (TCC) Vs. Hassan Murua** (supra) and **Lyamuya Construction Co. Limited Vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania** (supra).

However going through the record, I believe the applicant has extensively stated as to why she believes that her termination is based on illegalities in that there was no valid reason adduced for termination and the procedures for terminating her were not adhered to. These I believe are sufficient to explain the illegality of the said termination.

It has been held in the case of **VIP Engineering and Marketing Limited & 3 Others V Citibank Tanzania Limited**, Consolidated Civil References No. 6, 7 and 8 of 2006 that where the ground of illegality has



been raised one does not need to account for the delay of each and every day. This was so held in the case of **JHPIEGO Vs. Emmanuel Mmbaga**, Misc. Labour Application No. 238/2019.

In the case of **Hezron Magessa Mariogo Vs. Kassim Mohamed Said**, Civil Application No. 227/2015 (unreported) it was held that:-

***"A claim of illegality of the challenged decision constitute sufficient reason for extension of time regardless of whether or not a reasonable explanation has been given by the applicant to account for the delay."***

*[Emphasis is mine].*

It is for this reason that I allow the application, set aside the Arbitrators Ruling and Order that the applicants application be heard on merit inter parties. It is so ruled.

S.A.N. Wambura  
**JUDGE**  
29/05/2020

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**PHOENIX OF TANZANIA ASSURANCE CO. LTD ..... RESPONDENT**

**Date: 29/05/2020**

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

Applicant:

For Applicant: Mr. Victor Kessy Advocate

Respondent:

For Respondent: } Absent

CC: Lwiza

**COURT:** Judgment delivered this 29<sup>th</sup> day of May, 2020.

  
S.R. Ding'ohi  
**DEPUTY REGISTRAR**  
29/05/2020