

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

**REVISION NO. 188 OF 2023**

**HERIAMAN KILIMBA ..... APPLICANT**

**VERSUS**

**CRDB BANK PLC..... RESPONDENT**

**JUDGMENT**

*Date of last Order:19/10/2023  
Date of Judgment: 28/11/2023*

**B . E. K. Mganga, J.**

On 1<sup>st</sup> April 2014 respondent and the applicant entered a fixed term contract of employment. The two enjoyed their employment relationship until on 31<sup>st</sup> December 2022 when respondent terminated employment of the applicant allegedly due to sexual harassment and abuse at the workplace. Aggrieved with the said termination but being out of time, on 3<sup>rd</sup> February 2023, applicant filed an application for condonation (CMA F2) before the Commission for Mediation and Arbitration (CMA) at Ilala so that he can refer the dispute for unfair termination. Together with the said CMA F2, applicant filed his affidavit stating grounds for the delay. Respondent filed both the Notice of

Opposition and the Counter affidavit opposing the application for condonation.

On 11<sup>th</sup> May 2023, Hon. Mbunda, P.J, Mediator, having considered evidence of the parties in the affidavit and the counter affidavit and respective submissions by the parties delivered a ruling that though applicant was diagnosed with malaria, he was not excused from duty hence failed to adduce good cause for the delay and dismissed the application for condonation. Applicant was aggrieved with the dismissal of his application for condonation hence this application for revision. In the affidavit in support of the Notice of Application, applicant raised two grounds namely:-

- 1. The ruling by the Commission for Mediation and Arbitration is illogical and irrational for failure to give serious considerations to the grounds for condonation given by the applicant under special circumstances of the case.*
- 2. That, the arbitrator erred in law and facts for holding that applicant had no sufficient reason for the delay while there was sufficient reason of sickness which prevented the applicant to institute the dispute in time.*

By consent of the parties, this application was argued by way of written submissions. In his written submissions, applicant enjoyed the service of Jacqueline Augustin Manangu, Advocate while respondent enjoyed the service of Oliva Mkanzabi, advocate.

It was submissions by Ms. Manangu, advocate that applicant was late for almost 8 days because he was sick and was exempted from duties. Counsel for the applicant cited the case of ***Pius H.W Ogunde vs. Edward Elia Ngala***, Misc. Land Application No. 529 of 2020, HC, (unreported) and ***John David Kashekya vs. The Attorney General***, Civil Application No. 107 of 2012, CAT(unreported) to support her submissions that sickness is a reasonable ground for the delay and prayed the application be allowed.

In resisting the application, it was submitted by Ms. Mkanzabi, advocate for the respondent that, applicant failed to prove that he was excused from duty. Counsel for the respondent submitted further that applicant did not prove how being diagnosed with malaria led to his delay in filing the dispute at CMA. She added that since there is no such evidence, delay in filing the dispute at CMA was due to applicant's careless and lack of diligent. She further submitted that applicant did not account for each day of delay for the 8 days. She cited the case of ***Tanzania Fish Processors Limited vs. Christopher Luhangula***, Civil Appeal No. 164/1914, CAT, ***Lyamuya Constructions Company Ltd vs. Board of Registered Trustee of Young Women's Christian Association of Tanzania***, Civil Application No. 2 of 2010,

CAT and ***Ezekiel Kiango vs. Lake Oil Co. Ltd***, Revision No. 369 of 2019, HC(unreported) to bolster her submissions that applicant was supposed to account for each day of the delay. She further cited the case of ***Benedict Mumello vs Bank of Tanzania***, Civil Appeal No. 12 of 2002, CAT (unreported) and concluded that applicant had no good cause for the delay.

In rejoinder, counsel for the applicant maintained that applicant was sick and that sickness is a good ground for extension of time. To bolster her submissions, she cited the case of ***Director Ruhonge Enterprises vs. January Lichinga***, Civil Application No. 1 of 2006, CAT(unreported). She further cited the case of ***Murtaza Mohamed Raza Virani and Another vs. Mehboob Hassanali Versi***, Civil Application No. 488/01 of 2020, CAT(unreported) and submit that applicant accounted for the delay.

I have examined the CMA record and considered submissions by the parties and find that it is undisputed by the parties that, on 27<sup>th</sup> December 2022 respondent served applicant with termination letter stating that termination was due to sexual harassment and abuse at the workplace and that the said termination was with effect from 31<sup>st</sup> December 2022. Therefore, in terms of Rule 10(1) of the Labour

Institutions (Mediation and Arbitration) Rules, GN. No. 64 of 2007, thirty (30) days within which applicant was supposed to file the dispute relating to fairness of termination expired on 30<sup>th</sup> January 2023. As pointed out hereinabove, applicant filed the application for condonation on 3<sup>rd</sup> February 2023 while out of time for four(4) days and not eight(8) days. I am of that view because termination was on 31<sup>st</sup> December 2022 and not on 27<sup>th</sup> December 2022.

In paragraphs 7 and 8 of his affidavit in support of the application for condonation, applicant stated:-

*"7. That, I have tried to make an effort to resolve the matter with the respondent amicably without any success..."*

*8. that I failed to refer the matter at the prescribed time due to the main reason that I suffered from severe malaria and was medically advised being under enough resting period before any further usual movements. And during that time I still was trying (sic) to reach out to the respondent verbally with intention to resolve the dispute, however that was unsuccessful thus decided to file a case before this Honourable Commission..."*

From the quoted paragraph 7 and 8 of the applicant's affidavit which are the only paragraphs in relation to application for condonation, applicant gave two reasons namely, (i) aborted attempt to settle the matter amicably and (ii) sickness. In his affidavit in support of the application for condonation, applicant did not mention the name of the

hospital or dispensary where he was diagnosed with malaria. It is undisputed that, applicant only attached a document titled "JAMHURI YA MUUNGANO WA TANZANIA, WIZARA YA AFYA NA USTAWI WA JAMII, OUTPATIENT RECORD" showing that on 18<sup>th</sup> January 2023, he was diagnosed with malaria and was treated. The said document was stamped with a stamp on behalf of the doctor in charge, but the name of the dispensary or hospital is not readable. I have examined the said document and find that claims by the applicant that he was advised to have enough rest before any further movement are nowhere to be seen. In short, the claim by the applicant in relation to time to rest or restriction of movement is not supported by the said document. I am alive that sickness is a good ground for extension of time if well explained and documented. For sickness to be a ground for extension of time, the same must have caused the applicant not to file a case or dispute within time as it was held by the Court of Appeal in the case of *Nyanza Roads Works Limited vs Giovanni Guidon* (Civil Appeal 75 of 2020) [2021] TZCA 396(unreported). It is not enough just for the applicant to state that he was sick, and the court take it wholesome and extend time.

In the application at hand, nothing was stated by the applicant showing how malaria prevented him from filing the dispute at CMA within 30 days from the date of termination of his employment. As pointed out, the document that applicant attached to his affidavit in support of condonation does not show that applicant was restricted to make movements or that he was advised to rest. More so, it does not state for how long he was sick. As pointed out, the said document is dated 18<sup>th</sup> January 2023 but 30 days within which applicant was supposed to file the dispute was expiring on 30<sup>th</sup> January 2023. There are no explanations as to what happened to the applicant from 18<sup>th</sup> January 2023 to 30<sup>th</sup> January 2023 and from 30<sup>th</sup> January 2023 to 3<sup>rd</sup> February 2023, the date he filed the application for condonation. In short, applicant did not account for each day of the delay. In the application for condonation, applicant was required to account for each day of the delay as it was held in the case of [Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania](#) (Civil Application 2 of 2010) [2011] TZCA 4, [Rose Irene Mbwete vs Phoebe Martin Kyomo](#) (Civil Application No. 70 of 2019) [2023] TZCA 111 (unreported) and [Elfazi Nyatega & Others vs Caspian Mining Ltd](#) (Civil Application 44 of 2017) [2018] TZCA 217(unreported) to mention but a few.

It is my view that sickness was not the cause for the delay rather, negotiation to resolve the dispute amicably with the respondent as stated in paragraph 7 and partly in paragraph 8 of the applicant's affidavit in support of the application for condonation. Whether it is true or not that the parties were negotiating with a view of resolving the dispute, that also cannot be a ground for extension of time or grant an application for condonation. Applicant entered in the said negotiation at his own risk. In fact, in the case of [M/s. P & O International Ltd v. the Trustees of Tanzania National Parks \(TANAPA\)](#), civil Application No. 265 of 2020, CAT (unreported) the Court of Appeal held:-

*"It is trite that pre-court action negotiations have never been a ground for stopping the running of time...the statute of limitation is not defeated or its operation retarded by negotiations for a settlement pending between the parties...negotiations or communications between the parties...did not impact on limitation of time. An intending litigant, however honest and genuine, who allows himself to be lured into futile negotiations by a shrewd wrong doer, plunging him beyond the period provided by the law within which to mount an action for the actionable wrong, does so at his own risk and cannot front the situation as defence when it comes to limitation of time."*

For the foregoing, I hold that there was nothing material in the applicant's affidavit to enable the arbitrator to exercise his discretion and grant the application for condonation. In short, the arbitrator was



justified to dismiss the application for condonation. I therefore find that all the above-mentioned grounds filed by the applicant are devoid of merit and forthwith dismiss this application.

Dated at Dar es Salaam on this 28<sup>th</sup> November, 2023.



B. E. K. Mganga  
**JUDGE**

Judgment delivered on this 28<sup>th</sup> November 2023 in chambers in the presence of Jaqueline Augustino Manangu, Advocate for the Applicant but in the absence of the Respondent.



B. E. K. Mganga  
**JUDGE**