

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

**MISCELLANEOUS APPLICATION NO. 197 OF 2022**

**DAUD GODLUCK SOLLO..... APPLICANT**

**VERSUS**

**DAR ES SALAAM INSTITUTE OF**

**TECHNOLOGY SACCOS LTD ..... RESPONDENT**

**RULING**

*Date of last Order: 29/08/2022*

*Date of Ruling: 09/09/2022*

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

This is ruling in respect of an application for re enrolment of Application for execution No. 72 of 2021 which was struck out on 10<sup>th</sup> February 2022 by Hon. Kassian E.M. Deputy Registrar for want of prosecution. The applicant filed the present application urging this court to re-enrol the said application on the reason he failed to appear because he was sick. To oppose the application, respondent filed the counter affidavit of Patrick Honest Anthony, his Principal Officer together

with a notice of preliminary objection that the application was time barred.

When the matter was scheduled for hearing, I called upon the parties to address the court on both the preliminary objection and the application on merit.

Submitting for the preliminary objection that the application is time barred, Mr. Armando Swenya Counsel for the respondent argued that, applicant is seeking to enroll application for Execution No. 72 of 2021 that was struck out on 10<sup>th</sup> February 2022 for non-appearance. He went on that applicant filed this application on 01<sup>st</sup> June 2022 and further that the labour Court Rules GN. No. 106 of 2007 is silence on regard to time limit within which to file an application for re-enrollment. He argued that the recourse is on Item No. 21 Part III of the Law of Limitation Act, [Cap. 89 RE. 2019] that provides 60 days. He argued further that, applicant filed this application out of sixty (60) days. He thus prayed this application be struck out so that applicant can refile an application for extension of time. To bolster his argument, he referred the Court to the case of ***Musabi Marwa Mahende V. Grumeti***

**Reserves Limited**, Misc. Labour Appl. No. 11 of 2020, HC (unreported).

On the other part, Ms. Beatrice Soka, advocate for the applicant, submitted that the application is for enrolment of Execution No. 72 of 2021 that was struck out on 10<sup>th</sup> February 2022 for want of prosecution. She argued that after the application was struck out, on 02<sup>nd</sup> March 2022, applicant filed a new application for Execution No. 74 of 2022 but the same was again struck out on 19<sup>th</sup> April 2022 on the ground that applicant was supposed to enrol the 1<sup>st</sup> application after filing an affidavit giving reason for non-appearance. She went on 20<sup>th</sup> May 2022, applicant filed this application through the e-filing system.

Ms. Soka submitted further that, Rule 55 of the Labour Court Rules, GN. No. 106 of 2022 provides that where the rules are silent, the Court may adopt other procedure. Therefore, the Law of Limitation Act, Cap. 89 RE. 2019, Part III column 21 that provides 60 days comes into play hence the 60 days has not elapsed. She prayed that the preliminary objection be dismissed.

In rejoinder Mr. Swenya reiterated his submission in chief.

Submitting on the merit of the application, Ms. Soka argued that applicant is applying for enrolment of Execution No. 72 of 2021 that was struck out for want of prosecution on 10<sup>th</sup> February 2022 by Hon. Kassian, Deputy Registrar. She went on that on 10<sup>th</sup> February 2022 when the matter was called for hearing, the decree holder i.e., applicant failed to appear because he was sick and was admitted in hospital, thus the situation was out of his control. Ms. Soka submitted that if the application will not be granted, then, the award will not be executed. She added that if the application will be granted, respondent will not be prejudiced in any way. To strengthen her submission, Counsel cited the case of ***Nyanza Road Works Limited v. Festo Adam***, Misc. Labour Appl. No. 2 of 2021 HC (unreported) where this Court held that, a matter can be enrolled upon applicant showing reasons that prevented him from entering appearance. She prayed that the application be granted.

In rebuttal, Mr. Swenya contended that the allegation that applicant was sick is not correct. He argued that the E.D. allegedly issued to the applicant does not show the name of the Doctor who issued it and that it is handwritten and stamped with a stamp of Nuru

Polyclinic and not Nuru Dispensary. Upon reflection, Counsel conceded that there is no evidence to prove that the two do not co-exist and further that they are not at the same place and owned by the same person. Counsel for the respondent distinguished **Adam's case** (supra) on the reason that facts are not similar with the application at hand. He argued further that, in **Adam's case**, it was the Counsel who got car breakdown and not the applicant. During submissions, Counsel conceded that respondent will not be prejudiced if this application will be granted and that if this application will be dismissed, applicant will not be able to enforce the award hence applicant will suffer injustice. Mr. Swenya also conceded that the award can be enforced within 12 years which has not elapsed and further that the intention of the parliament to provide that period of limitation is focused on justice to the parties. With all these, counsel for the respondent prayed that the application be dismissed.

In rejoinder Ms. Soka submitted that the difference in stamps on the E.D was a result of a transition from Dispensary to Polyclinic and argued further that the E.D contains a signature of the Doctor who attended the applicant.

Having considered submissions made on behalf of the parties both on the preliminary objection and the main application, I am called upon to determine the whether the application is time barred, and whether, applicant has sufficient cause to suffice the grant of the application.

To begin with the 1<sup>st</sup> issue, I find it worth to reproduce the preliminary objection raised by the respondent, I quote.

*"That the application for re enrolment is time barred by virtue of Rule 38(2) of the Labour Court Rules GN.No.106/2007 on the sense that, by virtue of paragraph 10 of his affidavit the applicant became aware of the order of the striking out of the application for execution No.72 of 2021 on 2<sup>nd</sup> March,2022, However, he filed this application on the 1<sup>st</sup> June which amounted to a delay of 77 days."*

As stated by both Counsels, labour laws are silent as to time limit within which to file an application for re-enrolment of application for execution. That lacuna can be cured by recourse to the provisions of Rule 55(1) of the Labour Court Rules, 2007 that requires adoption of any procedure that the Court deems appropriate where a situation arises in proceedings or contemplated proceedings which the rules do not provide. In our case, Item No. 21 Part III of the Law of Limitation is

relevant. The same provides for the 60 days' time limitation to file an application where no period has been provided for under the law.

The record reveals that, on 10<sup>th</sup> February 2022 Hon. Kassian E.M, Deputy Registrar struck out the application for execution No.72 of 2021 for want of prosecution. Applicant filed another application for execution which was struck out with leave to refile on 19<sup>th</sup> April 2022. Thereafter on 20<sup>th</sup> May 2022, applicant filed this application imploring this court to re-enrol application for execution No.72 of 2021. Now, counting from the date when applicant was granted leave to refile to the date this application was filed online as evidenced by the printout it is about 30 days. That being the position, I find the preliminary objection with no merit and dismiss it.

On regard to the reasons for failure to enter appearance, Rule 36 of the Labour Court Rules, GN. No. 106 of 2007 requires applicant to adduce satisfactory reason for his non-appearance on the date when the matter was scheduled for hearing. It was submitted that applicant failed to appear on the date his application for execution was dismissed because he was seriously sick and that he was admitted at hospital due to the said sickness. There is no evidence rebutting that evidence. I am

therefore convinced that he was sick and that he had sufficient cause for his non-appearance. It can be recalled that applicant is seeking right to be heard in an intended application for execution to give effect the award issued by the CMA. I therefore hereby allow the application for re-enrolment of Execution Application No.71 of 2021. I have also considered the nature of the matter that was dismissed for want of prosecution, namely, execution application. It is undisputed that there is unchallenged CMA award that applicant intends to execute. The said award determined the rights of the parties, and it is an order that need to be enforced like any court order. In the case of **TBL v. Edson Dhobe**, Miscellaneous Civil Application No. 96 of 2006, it was held that:-

***"Court orders should be respected and complied with. Courts should not condone such failures, to do so is to set bad precedent and invite chaos"***

Since the CMA award is unchallenged and must be enforced, then, I find that failure to grant this application will make the said award an empty egg that cannot bring life to chickens. The respondent will be happy if the application will be dismissed knowing that the award will not be enforced. This court is not prepared to see unchallenged awards becomes empty orders that cannot be enforced. To give effect, the

award that is enforceable by this court, and for all said hereinabove, I allow the application and restore Execution No. 72 of 2021.

It is so ordered.

Dated at Dar es Salaam this 09<sup>th</sup> September 2022



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

Ruling delivered on this 09<sup>th</sup> September 2022 in chambers in the presence of Beatrice Soka, Advocate for the applicant and Kambibi Kamugisha, Advocate for the respondent.



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