

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION  
AT DAR ES SALAAM  
MISC. LABOUR APPLICATION NO.144 OF 2014**

**SALAAM HEALTH CENTRE.....APPLICANT**

**VERSUS**

**MARY KAJEBA.....1<sup>ST</sup> RESPONDENT**

**KURUTH JUMA BALIBWILE.....2<sup>ND</sup> RESPONDENT**

**RULING**

*11/9/2014 &19/9/2014*

**Aboud, J**

This is an application to set aside the dismissal order issued on 29thh May, 2014 in Revision No.244 of 2013 which was struck out due to the absence of the applicant. It is made under Rule 24 (1) (2) (3), 36 (1) (2) (3), and 56 (1), (2) of the Labour Court Rules, GN. No.106 of 2007 and any other enabling provision of the law.

Shortly are the facts of the case. The applicant filed an application for revision No.244 of 2013 against the CMA award. The application for revision was dismissed by the court for want of prosecution. The applicant filed the present application to set aside the dismissal order

At the hearing the applicant was represented by Mr.Martin Rwehumbiza, Advocate. The respondent defaulted to file the counter affidavit and appearance before the court, thus the matter proceeded ex-parte.

Mr. Rwehumbiza submitted on behalf of the applicant that, Revision No. 244/2013 was dismissed in this court for non-appearance. It was his submission that, on 22/5/2014 he made follow up of the matter before Hon. Gwae Registrar (as he then was) who informed him that the application for revision will be scheduled to be held in Mwanza where the cause of action arose. He supported his argument with the affidavit sworn by Hon. Gwae Registrar(as he then was). He said that, while making follow up of the date and summons for the hearing for Mwanza Session his legal officer found that the matter was dismissed for want of prosecution on 29/5/2014. He prayed for the application for restoration of the dismissed application be allowed and the matter be transferred to Mwanza.



It is an established principle under the law that sufficient reasons has to be adduced for the court to set aside the dismissal order as provided under Order IX Rule 4 of the Civil Procedure Code, that;

***"Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit."***

Basing on the position of the law, it is without doubt that the reason adduced by the applicant suffices the grant of his prayer to set aside the order made by the court.

The reasons advanced by the applicant, that he was told that the matter will be scheduled at Mwanza is supported by the affidavit of Hon. Gwae filed in this court on 25<sup>th</sup> July, 2014, who admitted to have informed Mr. Rwehumbiza on 22<sup>nd</sup> May, 2014 that the application for revision would be heard in next session to be held in Mwanza. Thus it is clear when the matter came for hearing Mr. Rwehumbiza was unaware.

Under the circumstance I found that the applicant adduced sufficient reason to warrant the court to grant the application to set aside the dismissal order of 29/5/2014. In the result the application is allowed.

It is so ordered.



**I.D.ABOUD**

**JUDGE**

**19/09/2014**

**Date: 19/9/2014**

Coram: Hon. I.D.Aboud,J

Applicant:

For Applicant: Mr. Delphinus Mushumbusi, Advocate

Respondent: } Absent

For Respondent: }

CC: G. Mushi

**Order:** Ruling delivered on 19/9/2014 in the presence of Mr. Delphinus Mushumbusi, Advocate for the Applicant and the Respondent is absent.



I.D.Aboud

**JUDGE**

19/9/2014