

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LABOUR DIVISION)**

AT ARUSHA

MISC. LABOUR APPLICATION NO. 28 OF 2019

(Originating from Execution No. 1 of 2017 in the High Court at Arusha)

DANIEL MWAKITALIMA APPLICANT

VERSUS

TROPICAL PESTICIDES RESEARCH

INSTITUTE.....RESPONDENT

RULING

15/06/2020 & 03/08/2020

GWAE, J

The applicant's application for setting aside a dismissal order made on 16th April 2019 is referred under Rule 24 (1) (2) (3) & 11 (11) © Rule 36 and 55 (1) of the Labour Court Rules, G.N No. 106 of 2007. The former application which is said to have been dismissed was intended to enforce the award of the Commission for Mediation and Arbitration for Arusha at Arusha vide CMA/ARS/ARB/132/2015 (CMA) which was to the effect that, the applicant be reinstated to his employment.

According to the parties' affidavits, the applicant's employment was terminated by the respondent. The labour dispute was then referred to CMA.

Following an award procured by the CMA, the applicant filed an application for execution in this court (Execution Application No. 1 of 2017) meanwhile the respondent successfully filed an application for stay through Misc. Application No. 11 of 2017). The application for execution was then stayed pending determination of Respondent's Application No. 90 of 2016 which was however withdrawn in the year 2019, March at the instance of the respondent's representative whereas the application for execution duly filed by the applicant is said to have purportedly dismissed for want of prosecution on 19.4.2019.

During hearing of this application, **Mr. John Shirima** (advocate) and **Mr. Musalama Mkama** (SA) represented the applicant and respondent respectively. The parties' representatives merely sought adoption of their respective affidavits. Mr. Shirima however verbally argued this court be pleased to restore the applicant's application as the same was pending in court to await for the result of the revisional application.

On the other hand, the learned state attorney seriously argued that, the applicant's application had been overtaken by event since he had resigned since 21.5.2019 and the fact that the applicant's salaries and any benefits from the date of termination to the date of his resignation were referred to the Treasury Registrar for the payment in compliance with the CMA's award. He thus urged this court to be pleased to hold that, the applicant's application is overtaken by events. He embraced his arguments by making reference to judicial decisions in **Bahadur Ebrhim Shamji v. Alnoor Sharif Jamal** and three others, Civil Application No. 129 of 2006 (unreported-H.C at Tanga) and **Separatus Katambula v. Salum**

Mohamed, Misc. Land Application, No. 170 of 2017 (unreported-H.C at DSM)

Mr. Shirima rejoined the respondent's submission by stating that the issue whether or not the applicant's application is overtaken by events is premature.

I am in agreement with the learned advocate for the applicant that the submission that the enforcement of the award is overtaken by event is premature as the same assertion would be usefully and properly raised in the application for execution of the award and not in this application for re-admission. The judicial authorities cited by Mr. Mkama are therefore not applicable in this application.

In **Shamsudin Jiwan Mitha v. Abdulaziz Ali Ladak** (1960)¹ E.A. 1054 where it was held inter alia that; in order to succeed in an application for reinstatement of a suit or appeal, the applicant has to show that he did not appear and that he was prevented from appearing by sufficient cause. The reason for failure to appear to prosecute the execution application is found to have pertained with a valid reason that is, the application for execution was adjourned till determination of the respondent's application for revision by this court.

Having gone through the parties' pleadings and the submissions by the parties' representatives, I have found that, the applicant's advocate has been not serious due to his failure to attach the dismissal order since it is well known that applications for executions in Labour Court are manned by Deputy Registrars of the Court and taking into consideration that the same



had been seriously disputed by the respondent's representative as depicted herein under;


("The applicant to approach the Court Registry and to be told by the court clerk about Execution No. 1 of 2017 are best fact known by the applicant")

It is my considered view that, the applicant's advocate would have reacted immediately after the respondent's counter affidavit had been filed and supplied to him by filing a replying affidavit to establish that there was such order. Nevertheless since the dismissal order subject of this application is within the court and since I have made necessary efforts to trace it and observed that, the same was made as rightly argued by the applicant.

For the foregoing reasons, I am therefore legally justified to grant this application, the application is therefore granted. The applicant's application for execution registered as Execution No. 1 of 2017 is consequently restored.



It is so ordered.


M. R. GWAE
JUDGE
03/08/2020