

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

AT MUSOMA

MISCELLANEOUS LABOUR APPLICATION NO. 02 OF 2021

(Arising from Labour Revision No. 38 of 2020)

NYANZA ROAD WORKS LIMITED..... APPLICANT

VERSUS

FESTO ADAM RESPONDENT

RULING

17th and 17th March, 2021

KISANYA, J.:

In this application, Nyanza Road Works Limited has moved this Court to re-enroll Labour Revision No. 38 of 2020 which was dismissed for want of prosecution on 25th January, 2021. The reasons for failure to appear on that day are reflected in the affidavit of Geoffrey James Machae, learned counsel for the applicant, which was filed in support of the application. Upon being served, the respondent, Festo Adam contested the application by filing a counter-affidavit.

When the matter came up for hearing today, Mr. Ludovic Joseph, learned advocate appeared for the applicant while, the respondent appeared in person.

It was submitted by Mr. Ludovick that the applicant's counsel failed to appear when Labour Revision No. 38 of 2020 was called on for hearing due to the

reason advanced in paragraphs 4, 5 and 6 of the affidavit in support of the application. The learned counsel submitted that the said reason was beyond control of the counsel for the applicant and that the applicant was prompt to take action by filing this application two days after dismissal of the application. Mr. Ludovick asked the Court to consider the applicant's previous conduct that, she had not defaulted to enter appearance. He submitted that, the interest of justice requires the parties to be heard on merit and that the respondent would not be prejudiced if the application is granted. He supported his argument by citing the case of **Karoli Sokia Obinga vs Adika Alila**, Misc. Land Application No, 73 of 2020, HCT at Mwanza (unreported), **Fredrick Solenga and Another vs Agness Masele** [1983] TLR 99, **Mwanza Director, M/S New Refrigeration Company Limited vs Mwanza Regional Manager of Tanesco and Another** [2006] TLR 335 and **Jesse Kimani vs McCornel and Another** [1966] E.A. 547. For the foresaid reason, Mr. Ludovick urged me to grant the application and re-enroll Labour Revision No. 38 of 2020.

Responding, Festo Adam (the respondent) submitted that paragraphs 4, 5 and 6 of the affidavit in support of the application were meritless. His submission was based on the assertion that the applicant was aware of the date and time of hearing but the applicant's counsel failed to appear on time in order to delay his right. He went on to submit that, the applicant's conduct had affected him and

his family economically. He therefore asked the Court to dismiss the application with costs.

In rejoining, Mr. Ludovick submitted that the matter related to economic hardship was not averred in the respondent's counter-affidavit. He reiterated his submissions that, the interest of justice demands the parties to be heard on merit.

I have carefully weighed the competing argument advanced by both parties. The issue for consideration is whether the applicant has provided the Court with a satisfactory explanation for defaulting to appear when the matter subject to this application was called on for hearing. That issue is premised on the provision of rule 36(1) of the Labour Court Rules, 2007 which empowers the Court to re-enroll the matter, if the person who initiated the proceedings "provides the court with a satisfactory explanation". In that regard, the applicant is expected to state in the affidavit, the reason(s) which prevented him from appearing when the matter was called on for hearing. The said reason(s) should be beyond control of the applicant.


In terms of the affidavit in support of the application, the reason for failure to appear is the car breakdown when the applicant's counsel was travelling from Mwanza to Musoma on hearing date. He arrived at the Court premises at 2.30 pm and found the matter already dismissed for want of prosecution. The

respondent is of the view that the said reason is meritless. With respect, I am of the considered opinion that, car breakdown due to bad weather condition is a reason beyond control of either party to the case. It can affect either party from appearing in Court on time. Therefore, the applicant has provided the Court with a satisfactory explanation. I have considered further that the applicant's had never defaulted to appear in this case and found it just for the parties to be heard on merit. These factors were also considered by this Court in **Karoli Sokia Obinga vs Adika Alila** (supra).

For the reasons I have endeavored to explain, I find merit in this application. In consequence, Labour Revision No. 38 of 2020 is hereby re-enrolled. It is on record that, this Court had through, Misc. Application No. 23 of 2020 stayed the execution proceedings that commenced via Execution No. 30 of 2020, pending hearing and determination of Labour Revision No. 38 of 2020. Now that Labour Revision No. 38 of 2020 has been re-enrolled, I find it just to order stay of the execution proceedings (Execution No. 30 of 2020) pending hearing and determination of Labour Revision No. 38 of 2020. I make no order as to costs due to the nature of this case.

DATED at MUSOMA this 17th day of March, 2021.




E. S. Kisanya
JUDGE

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DRAWN ORDER

WHEREAS the applicant filed an application praying for the following orders:

(a) That this Honourable Court may be pleased to set aside dismissal order dated 25/01/2021 and to re-admit the Misc. Application for Revision No. 38 of 2020.

(b) Any other order(s) the Court may deem fit and just to grant in the circumstances.

(c) Costs may be ordered in due course.

AND WHEREAS, the application is coming for final disposal on 17th March, 2021 before **Hon. E.S. Kisanya, Judge**, in the presence of Mr. Ludovic Joseph, learned advocate for the applicant and Mr. Festo Adam (the respondent).

THIS COURT DOTH HEREBY ORDER THAT:

1. The application has merit.
2. Labour Revision No. 38 of 2020 is re-enrolled.

3. The execution proceedings that commenced via Execution No. 30 of 2020 is stayed pending hearing and determination of Labour Revision No. 38 of 2020, as ordered by this Court in Misc. Application No. 23 of 2020.
4. Costs not awarded due to the nature of this case.

GIVEN under my Hand and Seal of the Court this 17th day of March, 2021.



E. S. Kisanya
JUDGE

Extracted this 18th day of March, 2021.



E. S. Kisanya
JUDGE