

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LABOUR APPLICATION NO. 16 OF 2020
(Emanating and Relating to Labour Revision No. 26 of 2019).

HAMIS RAMADHANI KAMESA.....APPLICANT
VERSUS
TANESCO KAHAMA.....RESPONDENT

RULING

9th March 2021 & 19th March 2021

MKWIZU J:

The applicant, in this application was the applicant in Labour Revision No. 26 of 2019, which was dismissed after he had defaulted appearance on 27/04/2021 when the matter came for hearing. He, in view of executing his intention to challenge the CMA award before this court, applicant filed before this court and application for re-admission of the dismissed revision. The application is made under 24 (1) (2) (a), (b), (c), (d), (e) and (f), (3) (a) (b) (c) and (d) and Rule 36 (1), (2) and (3) of the Labour Court Rules, G N. No. 106 of 2007. It is supported by the affidavit sworn by Mr. Gervas Gabriel Geneya, applicant's advocate on 6th May, 2020.

When the matter came for hearing, applicant was represented by Mr. Gervas Geneya Advocate and Ms. Juliana Willliam Advocate stood for the respondent/ TANESCO Kahama.

Mr. Geneya, first prayed to adopt the affidavit in support of the application to form part of his submissions. On the reasons for the application, Mr. Geneya stated that he was acting as applicant's representative in Labour Revision No 26 of 2019 and on the material date, that is the date when the matter was dismissed, he was in court with two matters before two different Judges, one, before Hon Mkwizu J, and another one before Hon G.J Mdemu J. While awaiting to be called to attend the proceedings in Labour Revision No 26 of 2019, he was told that the matter has been dismissed for failure to attend. Mr. Geneya explained that while appearing in civil Appeal No 4 of 2020 between Ally Juma vs Pamba Festus Civil Appeal No. 4 of 2020 which was adjourned by Rujwahuka Deputy Registrar, Labour revision No 26 of 2019 was dismissed before Hon. Mdemu J.

On being informed of the dismissal order, applicant's advocate, he sought and granted audience with Hon. Mdemu J and explained to him the ordeal.

Hon Presiding judge advised him to file the present application. Citing the cases of **Sandru Mangalji vs. Abdul Azizi & 2 Others**, Msc. Appl No. 126 of 2016 (Unreported) and **Underson Msumba (The Chief Director Kahama Town Council) & vs Sabina Paulo Makula**, Misc. Labour Appl. No. 50 of 2019 (Both unreported) stating that it is the interest of justice and interest of this court that unless there are special reasons to the contrary suit are determined on merit. Mr. Geneya was of the view that applicant has exhibited sufficient reason to warrant the court to grant the prayer sought.

The application was strongly opposed by the respondent. Respondent's counsel submitted that, in dismissing the revision for nonappearance presiding Judge took into account applicant's attendance on the proceedings. Ms. Juliana argued that if at all the applicant's representative was appearing before another court he could have signaled the court or the opposite part.

Mr. Juliana contended further that, the matter in which applicants was appearing, was for adjournment, leaving behind the matter which was

scheduled for hearing. She suggested that there are no sufficient grounds adduced to justify the grant of the prayers in the chamber summons.

In rejoinder, counsel for the applicant agreed that he had not appear in several occasion but it was when the matter was being adjourned before the Deputy Registrar.

The issue for determination in this application is whether applicant have provided the Court with satisfactory explanation for the court to allow the matter be re-enrolled. I have considered the parties submissions and the grounds in the affidavit and the counter affidavit. It is a settled law **Rule 36 (1) of the Labour Court Rules, 2007** that;

(1) – where a matter is stuck off the file due to the absence of a part who initiated the proceedings, the matter may be re enrolled if that party provides the court with a satisfactory explanation by an affidavit for his failure to attend the court.

Gleaned from the above provision is that the dismissed matter can only be re-enrolled where it is to the satisfaction of the court the not attendance

by the applicant when the matter was dismissed was with a reasonable cause.


The explanation given in this matter is that applicant's representative had two matters before different courts in the same building and learnt of the dismissal order after he had attended one of the matters. The affidavit contains no proceedings in Civil appeal No 4 of 2020 in which applicant's representative alleged to have been in attendance when labour application No 26 of 209 was dismissed. Being a court records, this court had taken a judicial notice, and perused the proceedings. It is true that applicant's representative was representing another party in Civil Appeal No 4 of 2020 which was adjourned in his presence before Rujwahuka Deputy Registrar on 27th April, 2020. It is also on the records that on the same date Labour revision was appearing before Hon. Mdemu J, and that it was dismissed on the non-appearance of the applicant's representative. Taking into account the general nature of the application and the applicant's conduct on the material date, I find the reasons adduced audible. This is in line with the decision in **Sandru Mangalji vs. Abdul Azizi & 2 Others** Msc. Appl No. 126 of 2016 (Unreported) at page 4 that;

The applicant's conduct before the alleged non-appearance should be taken into consideration in application of this nature. I have also considered the fact it is in the interest of justice and the practice of this court that, unless there are special reasons to the contrary, suit is determined on merits.

That said, I find the application justified. I hereby order for the re-enrollment of Revision Application No. 26 of 2019 as prayed with no order as to costs.

Order accordingly.

DATED at SHINYANGA this 19th day of March, 2021



E.Y. MKWIZU
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JUDGE
19/03/2021