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

AT MUSOMA

MISC. LABOUR APPLICATION NO. 1 OF 2021

AND BEYOND TRAVEL LIMITED..... APPLICANT

VERSUS

DIDAS JAMES..... RESPONDENT

(Arising from Labour Revision Application No. 21 of 2020)

RULING

3rd and 12th May, 2021

KISANYA, J.:

This application traces its genesis from Labor Revision Application No. 21 of 2020 filed by the applicant; And Beyond Travel Limited to challenge the decision of the Commission for Mediation for Arbitration for Mara at Musoma in Labour Dispute No. CMA/MUS/234/2018. The applicant failed to appear when the said application was called on for hearing on 30th October, 2020. In the consequence, the said Labour Revision Application No. 21 of 2020 was dismissed for want of prosecution.

Therefore, applicant has filed the present application for re-enrolment of Labour Revision Application No. 21 of 2020. The application is supported by an affidavit of Gaspar Majaliwa, learned advocate for the applicant. On the other hand, the respondent filed a counter-affidavit to contest the application.

When this matter was called on for hearing, Mr. Erick Kimaro, learned advocate appeared for the applicant while Mr. Daudi Mahemba, learned advocate entered appearance for the respondent.

At the outset, Mr. Kimaro adopted the affidavit in support of the application. Thereafter, he submitted to the effect that the applicant's counsel failed to appear on 30th October, 2020 due the accident that occurred on 18th October, 2020 thereby causing injuries to the said counsel. The learned counsel contended that both counsel for the applicants attended medical clinic at Mount Meru Hospital. He tendered in evidence the Particulars of Road Accident (PF 90) and letters from Mount Meru Hospital (Exhibit AB1) to prove that fact.

Therefore, Mr. Kimaro urged me to re-enroll Labor Revision No. 21 of 2020 on the ground that the applicant is entitled to the right to be heard and that the respondent will not be prejudiced. In support of his prayer, the learned counsel cited the case of **Elizabeth Mpoki and 2 Others vs Maf Europe Dodoma**, Civil Application No. 436/1 of 2016, CAT at DSM (unreported) where it was held that proceedings conducted in violation of the right to be heard are a nullity.

Mr. Mahemba resisted the application. Regarding the reason of sickness, the learned counsel argued that it was not proved by medical evidence. He

contended that the letters from Mount Meru Hospital do not show the dates when the applicant's counsel were admitted and discharged. Mr. Mahemba added that PF90 does not show the extent of injuries sustained by the applicant's counsel.

In regard the applicant's argument that the respondent will not be prejudiced if the application is granted, Mr. Mahemba argued that the delay will affect the applicant. He was of the view that the case of **Elizabeth Mpoki** (supra) is distinguishable from the circumstances of this Court. In conclusion, the learned counsel urged me to dismiss the application for want of merit.

In rejoinder, Mr. Kimaro reiterated what he submitted earlier. He called upon the Court to consider the letters from Mount Meru Hospital as evidence of medical report. He went on to reply that the extent of injuries suffered by the applicant's counsel was also stated in PF90.

I have dispassionately considered the rival submissions. The issue for determination is whether the application is meritorious. In determining this issue, I am guided by rule 36(1) of the Labour Court Rules, 2007 which provides that, a matter struck out due to absence of a party who initiated it may be re-enrolled if that party "provides a court with a satisfactory explanation by affidavit."

The term satisfactory explanation is not defined in the Rules. In my view, it is considered depending on the circumstances of each case. In any case, the applicant is expected to prove that he was prevented from appearing due to the reason beyond his control.

The explanation deposed in the case at hand is reflected in paragraph 4 of the affidavit in support application. It was stated on oath that the appellant's counsel namely, Gaspar Majaliwa and Erick Balthazar Kimaro failed to appear on the date of hearing because they were seriously sick due to accident that occurred on 18th October, 2020. The law is settled that sickness is a sufficient cause beyond human control. See **Emanuel R. Maira vs The District Executive Director of Bunda,** Civil Application No. 66 of 2010 (unreported) where it was held that:

> *"Health matters in most cases are not the choice of a human being; cannot be shelved and nor can anyone be held to blame when they strike."*

It is also trite law that a person alleging existence of certain fact is duty bound to prove that fact. In that regard, the applicant who pleads sickness as ground for failure to take the necessary action is duty bound to prove it by medical proof.

In the present case, the applicant tendered in evidence the Particulars of a Road Accident (PF90) and two letters from Mount Meru Referral Hospital to

prove the accident and sickness. Those documents were also appended to the affidavit in support of the application.

The Particulars of a Road Accident (PF90) was to the effect that the accident occurred on 18th October, 2020 and caused death of Evarest Moses Mkumbo (the driver) and injuries to Erick Kimaro and Gaspar Majaliwa. It is stated therein, PF90 is not a copy of police report but an abstract of such particulars. As rightly argued by Mr. Mahemba, the extent of injuries sustained by the said Erick Balthazar Kimaro and Gaspar Majaliwa was not stated in PF90. It is common knowledge that a person sustaining injuries due to car accident receives medical treatment after obtaining the Medical Treatment Report (PF3). However, as deposed in the respondent's affidavit in reply, the PF3 was not tendered in evidence. The PF90 shows that "NO FURTHER ACTION".

Even if it is taken that Erick Kimaro and Gaspar Majaliwa were admitted to the hospital without obtaining the PF3, the extent of injuries sustained was required to be proved by medical evidence. The applicant tendered in evidence two letters dated 3rd November, 2020 signed by Dr. Heri Babu of Mount Meru Hospital. The said Dr. Heri Babu certified that Erick Balthazar Kimaro and Gaspar Majaliwa Minja had been admitted and treated into that

hospital. However, the discharge forms or other medical proof were not tendered in evidence.

Reading further from the said letters, I have noted that the contents thereto raise doubt on the date of accident. It is on record that both letters were authored **17 days** from **18th October, 2020** deposed in paragraph 4 of the affidavit as the date of accident. However, the letters are to the effect that Erick Balthazar Kimaro and Gaspar Majaliwa had been admitted and treated into the hospital for **three weeks** before 3rd November 2020. This implies that both counsels were admitted into the hospital on **13th or 14th October, 2020** and not **18th October 2020** as adduced in evidence. In my view, such contradiction is not minor. It goes to the root of this case; on when did the accident that led to injuries/sickness to the applicant's counsel.

Furthermore, the contradiction suggests that either the affidavit or letter deposed appended thereto has false information. The law is settled that an affidavit containing false information cannot be relied upon by the Court to decide the matter. This position has been reiterated in numerous cases including the decision in **Damas Assey and Another vs Raymond Mgonda Paula and 8 Others**, Civil Application No. 32/17 of 2018 where the Court of Appeal cited with approval its decision in **Ignazio Messina vs Willow Investments SPRL**, Civil Application No. 21 of 2001 that:

> *"An **affidavit which is tainted with untruths is no affidavit at all and cannot be relied upon to support an application. False evidence cannot be acted upon to resolve any issue**"*
> *[Emphasis added]"*

In view of the above position, I am of the view that the affidavit in support of the application cannot be relied due the above portrayed reasons.

Although the applicant is entitled to the right to be heard, she was duty bound to exercise that right in accordance with the law. It cannot be said that the applicant is denied to the right to be heard if the matter is struck out or dismissed due to his failure to appear prosecute the same. I am at one with Mr. Mahemba that the decision in **Elizabeth Mpoki and 2 Others** (supra) cited by Mr. Kimaro is distinguishable from the current case. It dealt with the issue determined by the court without hearing the parties.

For the foresaid reasons, I find and hold that this application is unmerited and therefore decline to re-enroll Labour Revision No. 21 of 2020. Consequently, the application is dismissed. I make no order as to costs because this is a labour matter.

DATED at MUSOMA this 12th May, 2021.

E. S. Kisanya
JUDGE

Court: Ruling delivered 12th May, 2021 in the presence of Mr. Daud Mahemba, learned advocate for the respondent and also holding brief for Mr. Erick Kimaro, learned counsel for the applicant. B/C Simon present.

Right of appeal explained.

E. S. Kisanya
JUDGE
12/05/2021