

**IN THE HIGH COURT OF TANZANIA**

**LABOUR DIVISION**

**AT MWANZA**

**LABOUR REVISION No. 50 OF 2019**

**CONSTANTINE MUHINDI .....APPLICANT**

**VERSUS**

**MANAGING DIRECTOR NORTHERN**

**ENGINEERING WORKS LIMITED ..... RESPONDENT**

**JUDGMENT**

3<sup>rd</sup> June, 2021

**TIGANGA, J**

In this application, the Court has been requested by the applicant to revise the award of the Commission for Mediation and Arbitration for Mwanza in CMA/MZ/NYAM/369/2018 dated 03/12/2018 by Hon. Msuwakolo, the Arbitrator. This Court has also been asked to issue any further relief that this honourable Court may deem fit and just to grant.

The application was filed by a Notice of application, chamber summons and an affidavit sworn and filed by Sarapion Matiku, Advocate. The decision, for which the order for revision is sought, was issued on 03/12/2018 dismissing the application filed by the applicant before the



Commission for Mediation and Arbitration, challenging the termination of the employment done by his employer against the applicant.

On the date, when the application was dismissed, the arbitrator held that the matter was dismissed because the applicant had defaulted appearance for about 39 days therefore the applicant had lost interest to prosecute the application before the Commission.

Following that order, the applicant filed these revision proceedings asking for above referred order. Although the respondent filed the counter affidavit objecting the application, nevertheless, when the application was called for hearing Mr. Zuberi Mkakatu, Principal Officer of the respondent who throughout these proceedings represented the respondent, conceded the application on the grounds that, on the date when the said application was dismissed, the applicant had already taken necessary steps including to serve the respondent who on that date had asked for leave of absence via a letter written and filed in the Commission for Mediation and Arbitration, as well as served to the other party (the applicant).

In his opinion, it was not proper for the Arbitrator to rule that the applicant had lost interest in the case/application for he had already taken

necessary steps to show that he had interest in the case. He urged the Court to allow the application so that parties can be heard on the merit of the complaint before the Commission for Mediation and Arbitration.

Having heard the parties in respect of this application, and passed through the record, I find no reason to differ with the submission by both parties' representatives. I find the dismissal of the application No. CMA/MZ/NYAM/369/2018 to be made in error by the Arbitrator, consequently the application at hand is allowed; the order which dismissed application CMA/MZ/NYAM/369/2018 is therefore revised and set aside.

Following this order, the original record is remitted back to the Commission for Mediation and Arbitration, to proceed with hearing before another Arbitrator with competent jurisdiction, from where it had reached at the time when it was dismissed. As the matter is a labour dispute, no order as to costs is made.

It is so revised and ordered.

**DATED at MWANZA** this 03<sup>rd</sup> day of June, 2021





**J. C. Tiganga**

**Judge**

**3/06/2021**

Judgment delivered in open chambers in the presence Mr. Frank Kabula, for applicant and Mr. Zuberi Mkakatu, Principal Officer of the respondent through audio teleconference.



**J. C. TIGANGA**

**JUDGE**

**03/06/2021**