

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

AT ARUSHA

MISC. LABOUR APPLICATION NO. 57 OF 2021

(C/F LABOUR APPLICATION NO. 14 OF 2021)

(ORIGINATING FROM CMA/ARS/ARB/569/19/256/19)

RIVERTREES LIMITED.....APPLICANT

VERSUS

SAMWEL MOSHI.....RESPONDENT

RULING

04/07/2022 & 01/08/2022

GWAE, J

Neither the applicant named herein nor her advocate appeared on the 8th November 2021 and 27th September 2021 consecutively as a result this court dismissed her application for revision registered as Revision No. 14 of 2021. Following that order, the applicant is now before the court seeking restoration of her application for revision.

In moving the court, the applicant has cited Rule 25 (1), (2) (a) & (b) and (3) of the Labour Court Rules, G.N No. 106 of 2007 and any other enabling provisions of the laws.

In his affidavit, Mr. Stephen Mushi, the learned counsel for the applicant stated that on the 27th September 2021 he was attending the burial services of his younger brother and that on the dismissal date, he attended the court however before the matter was called on for hearing he felt sick (stomach unpleasant condition) which compelled him to go to Tengeru Hospital and that prior to going to hospital he requested Mr. Frank Wilbert, the learned counsel for the respondent who entered his appearance on that particular date.

On the other hand, the respondent's counsel through his sworn counter affidavit contested this application by stating that the applicant's counsel did not request him to hold his brief nor did he inform him of his sickness on 8th November 2021.

During hearing of this application, both parties had legal services from **Mr. Stephen Mushi** and **Mr. Frank Wilbert**, both the learned counsel who appeared for the applicant and respondent respectively. In essence, both advocates reiterated what is contained in their respective affidavits.

Having carefully considered the rival affidavits and arguments of the parties' advocates, I expected the applicant's advocate would have filed his

reply to the respondent's counter affidavit since the denial by Mr. Wilbert goes to the root of his reason of absence especially manners or etiquettes of the professional courtesy for advocates.

The issue of holding briefs by advocates is normal practice in our courts, it is not therefore expected of an advocate who has been requested by his or her fellow advocate to hold his or her brief not to alert the court to that effect. Equally, it is absurd, for an advocate who has not requested his or her colleague to hold his or her brief to tell the court lies. Advocates are therefore urged to keep and maintain their professional integrity.

According to the provisions of the law cited by the applicant, the applicant is required to satisfy the court that he was prevented from entering his requisite appearance and prosecuting his application due to sufficient cause. In the case of **Sebastian Ndaula vs. Grace Rwamafa (Legal Personal Representative of Joshwa Rwamafa)**, Civil Application No.4 of 2014 (unreported) it was held that;

"It is trite law that, in an application before the Court, the applicant must satisfy the Court that since becoming aware of the fact that he is out of time, he acted very expeditiously

*and that the application **had been brought in good faith** (Emphasis supplied)".*

In this application failure by the applicant's counsel to respond to the contention by the respondent's learned counsel that he was not requested by him of any sickness on the material date constitutes lack of good faith or unwarranted avowal.

I have further noted that, if this application is granted by the court, the respondent will inevitably be prejudiced since the parties' dispute arose since 2019. Therefore, it my considered view that court's grant of this application will certainly cause delay of dispensation of justice and therefore justice denied

In the basis of the above discussion, this application is found non-meritorious. It is dismissed for want of sufficient cause. Given the fact that the parties' dispute is labour, I thus make no order as to costs.

It is so ordered.

Dated at Arusha this 1st August 2022




M. R. GWAE
JUDGE
01/08/2022