

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT ARUSHA

LABOUR DIVISION

MISC. LABOUR APPLICATION NO. 54 OF 2021

(C/F Labour Revision No. 58 of 2020)

GENUINE COMPANY LIMITED.....APPLICANT

VERSUS

JULIAN ELIREHEMA MABINGA.....RESPONDENT

RULING

18/07/2022 & 15/08/2022

GWAE, J

The applicant, Guinuine Company Limited, brought this application under the provision of Rule 24 (3) (a), (b), (c) and (d) and Rule 24 (11) (a), (b) (c) of the Labour Court Rule G.N 106 of 2007 where this Court is moved to set aside the dismissal order in Revision No. 58 of 2020 dated 1st day of November 2021 and restore the same. The application is further supported by the sworn affidavit of the applicant's advocate one Issa Rajabu Mavura and opposed by the counter affidavit duly sworn by the respondent.

Reasons for this application are set forth in the applicant's affidavit which goes as follows; that on the material date the applicant's advocate who was in conduct of the case (Labour Revision No. 58 of 2020) felt sick and was rushed to Meru District Hospital. As he was rushed to the hospital his mobile phones were left at home and therefore, he could not be able to communicate his sickness to anyone. Following his non-appearance, the suit was dismissed for want of prosecution.

The applicant prayed this court to set aside the dismissal order in Revision No. 58 of 2020 as he had been diligent in prosecuting the dismissed suit. The applicant also attached the copy of the medical chit from Meru District Hospital which shows that, the applicant was suffering from acute abdomen.

The respondent on the other hand contended that the applicant's counsel had no formal notice of representation and that there was no electronic receipts nor doctor's affidavit to prove that he attended the applicant's counsel. The respondent added that the applicant's application is intended to delay the execution of the award of the CMA which is pending in this court.

When this application was called on for hearing, Mr. Issa Rajabu Mavura appeared for the applicant, the respondent on the other hand did

not enter appearance and therefore the matter was ordered to proceed ex-parte.

Supporting the application, Mr, Mavura stated that on that material date, he was sick and by then he was a sole advocate in his office. He supported his application with the case of **Emmanuel R. Maira vs The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010 (unreported) at page 5, where the Court of Appeal held that health cases are not the choices of human being and they cannot be shield and no one can be blamed. The learned counsel also contended that they have been diligent in filing this application and therefore prayed for the grant of the application.

It is settled principal of law that in an application seeking to set aside a dismissal order for non-appearance the applicant has to adduce ground for failure to enter appearance. In **Shamsudin Jiwan Mitha v. Abdulaziz Ali Ladak** (1960)¹ E.A. 1054 it was held inter alia that;

"In order to succeed in an application for reinstatement of a suit or appeal, the applicant has to show that he did not appear and that he was prevented from appearing by sufficient cause."

In the matter at hand the applicant's counsel has alleged sickness to the reason of his non-appearance on the material date when the matter

was dismissed for want of appearance. This court is aware that sickness is a condition which is experienced by the person who is sick and that it is not a shared experience except for a sick person who is in a position to express her/his feelings (See the decision of the Court of Appeal of Tanzania in the case of **John David Kashekya vs The Attorney General**, Civil Application No. 1 of 2012 (Unreported)).

However, for sickness to be a sufficient reason the same must be sufficiently proved. In our case Mr. Mavura who has been in conduct of the dismissed application and he has attached medical chits which reveal that on the material date he was attended at Meru District Hospital suffering from abdomen pains. In the case of **Emmanuel R. Maira vs The District Executive Director Bunda District Council**, Civil Application No. 66 of 2010 (Unreported) the Court of Appeal of Tanzania stated as follows;

"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."

Guided by the above authorities, this court does not see the reason as to why this application should not be granted. I have also taken into consideration the fact that, the applicant's counsel had not defaulted to

enter appearance on the previous dates save on the particular day when the matter was dismissed.

That being said, this court is fully satisfied that the applicant has sufficiently demonstrated good cause to have the order sought granted. Consequently, the dismissal order in Revision No. 58 of 2020 dated 1st November 2021 is hereby set aside and the matter is restored for hearing on merit.

It is so ordered.



M. R. GWAE
JUDGE
15/08/2022

Orders:

1. Hearing of the main application on 29/08/2022 at about 09:30 hrs
2. Parties to appear and be able to proceed with the hearing



M. R. GWAE
JUDGE
15/08/2022