

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

AT SHINYANGA

LABOUR APPLICATION NO 4 OF 2022

*(Arising from an order of the High Court in Revision Appl. No 8/2021 Hon. A. Matuma J
dated the 28th February 2022)*

SHINYANGA MUNICIPAL COUNCIL..... APPLICANT

VERSUS

ESTER HILU.....RESPONDENT

RULING

16th May & 24th June 2022

MKWIZU J

In application No 08 of 2021, the applicant was seeking for revision against the CMA award in Labour Dispute No CMA/SHY/191/2018. The revision application was called for hearing on 28/2/2022 but the applicant could not attend the proceedings. She was recorded absent without leave leading to the dismissal of the revision application for want of prosecution.

The applicant is now moving this court for re-enrollment of the dismissed revision in terms of section 94(1) (e) of the ELRA, Rule 24(1)(2)(3)(11)(a) and Rule 36 (10 (2) and (3) of the Labour Courts Rules, 2007 supported by an affidavit sworn by **MUSA IDD MPOGOLE** The Learned State Attorney. The said application was strongly resisted by the respondent.

In this application, the applicant was represented by two learned State

Attorneys, namely, Mr. Lwenge, Senior State Attorney and Musa Mpogole State Attorney while the respondent had the services of Mr. Frank Samwel learned advocate. There was filed by Mr. Frank a notice of preliminary objection based on three grounds to wit:

- 1. That the application is incompetent for being brought under the wrong provision of the law*
- 2. That this court has no jurisdiction to entertain the application*
- 3. This application is incompetent for failure to comply with the provisions of Rule 43(1) (a) and (b) of the LABOUR COURT RULES, 2007 GN NO. 106 published on the 18th of May 2007'*

This court opted to hear both, the preliminary points of objection and the main application together with an order that the determination of the main application will only be subject to the outcome of the preliminary objections raised. Before hearing, Mr. Frank Samwel chose to abandon the third preliminary objection and argued the remaining two points.

In elaboration of the preliminary objections, respondent counsels contended that, section 94 (1) (e) of the ELRA deals with review powers of the Labour Court, and that since the application at hand is for re-enrolment therefore the section is not applicable. Rule 24 of the labour Courts Rules is a prescribing rule, while Rule 36 (1) (2) and (3) deals with matters struck off the file and therefore not applicable as well. He argued that, after the dismissal of the revision, the remedy available to the applicant was only to appeal to the Court of Appeal. He on that ground pressed that this court lacks jurisdiction to entertain the matter.

The learned State Attorney maintained that section 94(1) (e) of the ELRA

provides for an exclusive jurisdiction to the labour Court on matters reserved before it for a decision and Rule 36 of GN No 106 of 2007 provides for re enrollment of matters struck off for nonappearance of a party on the hearing date. He stressed that, the reason for the dismissal of Revision No 8 of 2021 was absence of the applicant and therefore this application falls squarely on the cited provisions of the law vesting this court with jurisdiction to entertain the matter. He supported his submissions by the decision of **Daudi Godfrey Macha V Mec One General Traders**, Misc. Application No 387 of 2019 and **Conviva Technologies Ltd V Venance Edson**, Misc. Appl. No 508 of 2018 praying for the application to be allowed

The Respondent's rejoinder submissions were just insistent of his earlier submissions.

As intimated earlier, I will first determine the preliminary points of law and proceed to the merit of the application if need be. I have given the parties submissions a worthy scrutiny. Truly, the preliminary objections raised are undeserved. The first point is that the application is predicated under the wrong provision of the law. Rule 24 of the Labour Court Rules GN.No.106 of 2007 deals with the form and manner for lodging a labour dispute application and therefore its citation in this application was necessary to show why the application was designed the way it looks like. Rule 36(1) of the Labour Court Rules, 2007 on the other hand provides for the enrollment of the struck off matter. This provision empowers the Court to re-enroll the matter upon sufficient reason by the applicant. The provision reads:

“36(1) Where a matter is stuck off the file due to ***absence of a party who initiated the proceedings***, the matter may be re-enrolled if that party provides the **Court** with satisfactory explanation by an affidavit, for his failure to attend the Court.”

And rule 2 of the same rules, defines the “**Court**” to mean the Labour Court.

That is the legal position. The above provision was not cited in the applicant’s application for decoration purposes. It is an enabling provision of the law empowering this court to determine the applicant’s prayers. This position was also held in **Daudi Godfrey Macha V Mec One General Traders**, and **Comviva Technologies Ltd V Venance Edson (Supra)** . While dealing with a similar issue, this Court in the latter case citing the case of **Tanzania Postal Bank Dar Es Salaam v. Thomas Edward Gambo**, Miscellaneous Application No. 152 of 2012, High Court Labour Division, at Dar Es Salaam held that

“it is true that a matter dismissed for want of prosecution can be stored but only if the party adduces sufficient grounds for the alleged absence.”

The second preliminary objection questioning the jurisdiction of this court also crumbles. Both preliminary points of objection are therefore overruled.

This takes me to the merit of the application. As explained above, this is an application for re-enrollment after the dismissal of the revision for no appearance of the applicant on the date the matter was scheduled for the hearing. Submitting in support of the application, Mr .Mpogolo State Attorney first adopted his affidavit in support of the application stating that on 10/6/2021 both parties were absent before the judge but with notice. The application was then scheduled for hearing on 26/11/2021 but before the Registrar. Applicant's counsels were also absent but with notice. It was then called before Matuma J on 18/1/2022 in the absence of both parties and scheduled for hearing on 28/2/2022. Parties had on this date two matters, Execution Application No 20 of 2021 and Revision No 8 of 2021 between the same parties. The State Attorney in attendance, Mr. George Kalenda had expected all matters would be mentioned before the Deputy Registrar after the transfer of the trial Judge as they were not aware of the re assignment. This however was not the situation, they, both parties appeared first before the Deputy Registrar where only one matter, Execution Application No 20/2021 was mentioned without the other. On following up the matter he learnt of the dismissal order subject of this application.

Mr. Mpogole contended further that, the non-appearance before the Judge was not due to negligence, but a confusion created by not knowing before whom the matter was scheduled on that date. Citing the cases of **Daudi Godfrey Macha V Mec One General Traders**, and **Conviva Technologies Ltd V Venance Edson(supra)** he invited the court to find that applicant has adduced sufficient reason on why they were not in attendance when the application was dismissed.

Mr. Frank Samwel did oppose the application. Adopting his counter affidavit, Mr. Frank said applicant has failed to show sufficient reasons on why they were absent in court on 28/2/2022. While admitting that the applicant was before the registrar attending Execution application on the same date, Respondent Counsel was of the view that, applicant has failed to say why they missed the hearing of Revision proceedings which were to proceed within the same court building on that date. He prayed for the dismissal of the application.

In rejoinder, the learned State Attorney insisted that the matter was dismissed due to confusion as also indicated in the dismissal where respondent's counsel had tried to inform the judge the possibility of confusion on the party of the applicant.

I have cautiously considered the application and parties rival submissions. The application of this nature is governed by rule 36(1) of the Labour Court Rules, 2007 where for the application to be granted, applicant must adduce sufficient reasons on why he was unable to attend the court when the matter was scheduled for hearing.


The learned State Attorney associates the non-attendance with a confusion created by the re-assignment of the case without notification to the parties. This is clearly indicated in both the affidavit in support of the application and the State Attorney's oral submissions before this Court. As clarified, both parties were present in the Court building and they attended an execution proceeding between the same parties before the Registrar on that very date. This fact is also confirmed by the respondent's

counsel in his submissions wondering why the applicant was able to attend the execution proceedings before the registrar but failed to attend the revision before the Judge. It is also undisputed that, that matter was prior to that date, mentioned before the Registrar after the change of the working station of the judge who was initially handling the matter and there was no formal notice to the parties on the re assignment.

I think there is a well demonstrated confusion amounting to a sufficient reason for absence of the applicant on the date the application was dismissed.

That said, I find the application deserving. Applicants' reasons are sufficient to warrant this court allow the prayers sought for. Consequently, the application is allowed and Labour Revision No. 8 of is re -enrolled as prayed for by the applicant. This order is without costs.

DATED at **SHINYANGA** this 24th day of June 2022.


E.Y. MKWIZU
JUDGE
24/6/2022