

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF DODOMA**  
**AT DODOMA**

**MISC. LABOUR APPLICATION NO. 01 OF 2022**

*(Arising from the High Court of Tanzania at Dodoma in Misc.  
Labour Revision No. 09/2018)*

**JOYCE NDAIGA.....APPLICANT**

**VERSUS**

**NATIONAL BANK OF COMMERCE.....RESPONDENT**

**RULING**

*Date of Ruling: 20/07/2022*

**Mambi, J.**

The applicant filed an application for an order of this court to set aside dismissal order in Misc. Labour Revision No. 09 of 2018. An order for dismissal was made on the 22<sup>nd</sup> Feb. of 2021. It is on the record that the applicant filed an application for revision of an award of the CMA vide Labour Revision No.09 of 2018. However, her application was dismissed for want of prosecution. The applicant has now filed her application No.01 of 2022. In her application the applicant has prayed to this court to set aside the dismissal order. The application is supported by an affidavit of the applicant where she has stated her reasons for her

non-appearance. The applicant's affidavit was countered by Gladness Mugisha who is the respondent's principal officer.

This matter was disposed by way of written submissions. The applicant appeared represented by Jamel Ngowo from a trade union namely TUICO, while the respondent appeared under the service of the learned counsel Wivina Kalori.

Mr. Ngowo in his submission briefly argued that the applicant has indicated her reasons for failure to appear before the court as indicated in the applicant's affidavit. Mr. Ngowo contended that failure to appear by the applicant or her representative before this Court when the matter was coming for hearing was due to the fact that she was not aware of the date and her representative did not inform her of the said date. He averred that despite the trade union, TUICO writing a letter to the court informing it that the representative who was conducting the case was attending his father who was critically ill and admitted at Jakaya Kikwete Cardiac institute still the court unjustifiably went ahead in dismissing the case for want of prosecution.

Submitting in reply, the respondent's counsel contended that the application lacked merit for failure to show good cause.

Having considerably gone through the parties' affidavits, their submissions in support and against the application and the records before me let me now revert to address the key issue. The main issue to be determined is whether the applicant has advanced sufficient reasons for this court to consider her application as prayed. In other words, the question to be determined is whether the applicant has properly moved this court in her application and whether there are any good causes

for her non-appearance on the hearing day. It is trite law that any party may seek an order for setting aside any dismissal order and the court has the discretion to grant such orders where there are sufficient grounds. This is the position of the law and case studies.

In determining an application for setting aside the dismissal order, the court has to determine if the applicant has established some material facts amounting to sufficient cause or good cause as to why the sought application is to be granted. The court needs to consider the issue as to whether the applicant in her affidavit has disclosed good cause or sufficient reasons for her non-appearance when the matter was fixed for hearing. Indeed the applicant reasons are found under paragraphs 9 to 15 of her affidavit.

The applicant has clearly indicated that she had sufficient reasons for her non-appearance. Mr. Ngowo has submitted that the applicant was not aware of the date for the hearing. Indeed the records shows that TUICO informed this Court vide a letter dated 19/02/2021 that the representative who was in conduct of Labour Revision No. 09/2018 representing the respondent was attending his sick father, seeking for an adjournment.

I am of the considered view that this application has merit and this court finds proper the applicant be granted an order to set aside dismissal order. This Court is satisfied that failure of the parties to appear on the hearing day especially the applicant was due to the fact that she was not aware of the particular day and her representative duly informed the court prior to the hearing date that he would not attend as he was attending his

admitted father. That being the case and for interests of justice this Court vacates its dismissal order of 22<sup>nd</sup> Feb, 2021 in Labour Revision No. 09 of 2018 for the matter to be determined on its merits. Order accordingly.



**A. J. MAMBI**  
**JUDGE**  
**20/07/2022**

Ruling delivered in Chambers this 20<sup>th</sup> day of July, 2022 in presence of both parties.



**A. J. MAMBI**  
**JUDGE**  
**20/07/2022**

Right of appeal explained.



**A. J. MAMBI**  
**JUDGE**  
**20/07/2022**