

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

REVISION NO. 92 OF 2021

*(Arising from the Commission for Mediation and Arbitration at Arusha in
CMA/ARS/ARS/47/19)*

BILILA LODGE INVESTMENT LIMITED

t/a FOUR SEASONS SAFARI LODGEAPPLICANT

VERSUS

OKULI KINABO KIMARO RESPONDENT

RULING

08/09/2022 & 09/09/2022

KAMUZORA, J.

The Applicant in this matter **Bilila Lodge Investment LimitedT/A Four Seasons Safari Lodge** brought before this court an application for revision against the award issued by the Commission for Mediation and Arbitration at Arusha in CMA/ARS/ARS/47/19. When the matter was called for hearing on 28/07/2022, the counsel for both parties appeared in court and they were ordered to argued the application by way of written submissions and the matter was scheduled for mention on 08/09/2022. On the date of mention Mr. Munis Pendaeli appeared holding

brief for Mr. John Mushi, counsel for the Applicant and Mr. Materu appeared for the Respondent.

When asked to address the court, Mr. Materu counsel for the Respondent informed the court the Respondent has filed a submission to move this court to dismiss the application after the Applicant's failure to file written submission in lieu of hearing. He insisted that, failure to file written submission in support of application is similar to failure to prosecute the application and the remedy available is to dismiss the application for want of prosecution.

In his written submission to this matter, Mr. Materu referred different High Court cases supporting his argument; the case of **Perdeep Singh Hans Vs. Meroy Ally Saleh and 3 others**, Land Case No. 34 of 2016, the case of **Tanzania Breweries Limited Vs. Edson Dhobe and 19 others**, Misc. Civil Application No. 96 of 2000, the case of **Sefi Tete Vs. Mwanjelwa SACCOSS**, Civil Application No 22 of 2018, the case of **Swabaha Mohamed Shosi Vs. Saburia Mohamed Shosi**, Misc. Probate Application No. 67 of 2016 and the case of **Fredrick A.M Mutafurwa Vs. CRDB 1996 Ltd and others**, Land Case No. 146 of 2004.

He also referred the Court of Appeal cases; the case of **National Insurance Corporation of (T) Ltd and another Vs. Shengena**

Limited, Civil Application No. 20 of 2007, the case of **Jassie and Company Ltd Vs. Cement Distributors (EA) Ltd**, Misc. Civil Application No. 133 of 2021 which was referred in the case of **P.3525 LT Idahya Maganga Gregory Vs. Judge Advocate General**, Court Martial Criminal Appeal No. 2 of 2022.

Mr. Munis Pendaeli submitted that Mr. Mushi who is representing the Applicant was unable to comply to the submissions schedule or even appear in court on the date of mention as he has been sick for sometimes and he is at Dar es salaam for medical purposes. He added that he was informed by Mr. Mushi that he has been communicating with Mr. Omben Kimaro who works in the same firm with Mr. Materu, the counsel for the Respondent to inform him on his health status. He also added that Mr. Mushi expected to be present on the mention date but due to medical advice he was retained for five more days before being discharged.

Mr. Pendael was of the view that, failure to file the submission was not occasioned by negligence on the advocate part and it was not a deliberate move not to prosecute the application. He informed this court that Mr. Mushi is seeking for extension of time for at least 10 days to file the submission after being discharged. That, after being discharged, Mr. Mushi will also be in a position to submit medical report proving that he

was not in Arusha for health reasons and that is why he failed to file the submission on time.

Mr. Pandaeli is in agreement on the consequence of failure to file submission but he submitted that, the circumstances in this case may be different from the cases referred to in the Respondent's submission thus prays this court to grant ten days extension for the Applicant to file the submission as the Respondent will not be prejudiced by the grant of that prayer.

In rejoinder, Mr. Materu added that, the Applicant's counsel was fully aware of the submission order thus the argument that the counsel is sick is a weak argument as no proof of sickness was brought to court. He was of the view that, if they were serious with the matter, evidence proving sickness could have been brought to court on the date scheduled for mention which they were aware of.

On the argument that Mr. Mushi communicated with Mr. Ombeni Kimaro Mr. Materu attacked that argument and submitted that, there is no proof for the same. He insisted that, the counsel could have issued a letter to the Respondent and to the court on his health condition. He contended that, the Respondent is prejudiced as he is affected by the termination and the fact that his rights stands pending by the existence

of this application. He insisted that, court's order must be adhered to thus the application be dismissed.

I have considered the argument by both counsel in this matter. There is no dispute that the hearing of this application was ordered to proceed by way of written submission. It is also not in dispute that the Applicant was unable to timely file the submission in chief supporting her application hence the prayer for extension of time to file the same. The issue is whether there is good reason for such failure which justify the grant of 10 days prayed for.

I agree with Mr. Materu that, there is no good and sound reason warranting the grant of the prayer by the counsel for the applicant. I say so because, the allegation that the counsel for the Applicant one Mr. Mushi is sick is a mere statement from Mr. Pendael not supported by any proof. I understand that Mr. Pendael was holding brief for the applicant's counsel, but he was to come with a clear justification of his statement convincing the court as to why the Applicant's counsel could not file the submission on time or appear in court. The Applicant's counsel was aware of this matter; the order for written submissions and the order for the date of mention. Knowing that they have not complied to the submission schedule, I expected them to come with justification for such failure and not bare statement that the counsel is sick.

The law, practice and procedures are very clear and requires parties to adhere to courts orders and or properly inform the court on any matter affecting the proceedings of the court. If the court will condone the behaviour of not adhering to its orders, there is great danger for inaction that may resulting into miscarriage of justice. The court is bound to perform its duties of timely dispensing justice and in doing so it has to control its proceedings and do away with any attempt by the parties to abrogate timely justice.

In the case of **Olam Tanzania Limited Vs. Halawa Kwilabya**, DC Civil Appeal No. 17 of 1999 (unreported) that was cited by this court in **Jassie and Company Ltd** (supra), the Court of Appeal held that;

"Now what is the effect of a court order that carries instructions which are to be carried out within a pre-determined period? Obviously, such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is convenient for them. In addition, an order for filing submission is part of hearing. So, if a party fails to act within prescribed time, he will be guilty of in-diligence in like measure as if he defaulted to appear.... This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn will invite chaos."

All being said and in considering the above decision, I find that the Applicant's counsel did not substantially convince this court on his failure to timely file the submission on support of application. As well agreed by both counsel the remedy is to dismiss the application which I proceed to do. No orders for costs as the matter originate from labour dispute.

It is so ordered.

DATED at **ARUSHA** this 09th Day of September 2022



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora".

D.C. KAMUZORA

JUDGE

[Faint, illegible text]

