

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
LABOUR DIVISION  
(BUKOKA DISTRICT REGISTRY)  
AT BUKOKA**

**MISC. LABOUR APPLICATION NO. 04 OF 2022**

*(Arising from Labour Revision No. 02 of 2021 in the High Court of Tanzania Labour division Bukoba Registry at Bukoba)*

**BETWEEN**

**AMANI JACOB MATHEW.....APPLICANT**

**AND**

**MARA CREDIT COMPANY LIMITED.....RESPONDENT**

**RULING**

**Date of Last Order: 07/09/2022**

**Date of Ruling: 07/09/2022**

**A.E. Mwipopo, J.**

Amani Jacob Mathew, the applicant herein, filed the present application for re – enrollment / re – admission of Labour Revision No. 02 of 2021 before this Court. The said revision was dismissed by this Court on 06<sup>th</sup> June, 2022 for non-appearance of the applicant. The application is made by Chamber Summons supported by the Affidavit sworn by Mr. Remedius Gosbert Mbekomize who is the advocate for the applicant. The respondent namely Mara Credit Company Limited

opposed the application through Counter Affidavit sworn by Mr. Rogate Eligi Asey, advocate for the respondent.

On the hearing date the applicant was present in person and had representation of Ms. Salome Kagoha, advocate, whereas, the respondent had representation of Mr. Rogate Assey, advocate.

The counsel for the applicant said that the Labour Revision No. 02 of 2021 before this Court was dismissed for want of prosecution on 06.06.2022. The reason for failure to appear in court is that applicant was sick on the date of hearing. The applicant has attached the Hospital documents which proved that he was admitted at Zamzam Health Centre on the 05.06.2022 and was discharged on 06.06.22. Further, the advocate engaged by the applicant namely Mr. Remedius Gosbert Mbekomize got the emergence as his father was sick and he had to attend him. If the application will not be granted the applicant will suffer irreparable loss and will be prejudiced.

The counsel for respondent opposed the application. He said that the reason for delay stated by the applicant is that he was sick and was admitted at Zamzam Health Centre on 05/06/2022 and was discharged on 06/06/2022. As on the date of hearing the applicant was discharged from hospital, he was supposed to come and appear before the Court. The applicant failed to notify the court that he was sick and even his advocate did not notify the court that his father was sick. The

advocate for the applicant was not sick and if he had any emergency he was supposed to notify the court about the emergency. The case was fixed for hearing date. Before the matter was dismissed, the applicant failed to appear twice on the previous hearing dates. It is clear that the applicant abandoned his case and has no need to prosecute it further. For that reason, the application has no merits and the applicant is delaying the right of the respondent in this case.

In rejoinder the counsel for the applicant said that the applicant was not discharged in the morning as result it was not possible to appear in court after he was discharged. On the issue that Advocate Mbekomize was supposed to notify the court of his absence, the illness of his father was an emergency which the advocate had to attend immediately. After taking his father to the hospital, he came to court only to find that the case has already been dismiss. The applicant has never missed to appear in his case when it was coming to court. Thus, it is not true that he was absent on other hearing or mention dates.

From the submissions, the only issue for determination in this application is whether the application has merits.

The Labour Court Rules, 2007 is silent on re enrollment of application which has been dismissed for want of prosecution. Rule 36 (1) of the Labour Court Rules cited by the applicants provides for re-enrolment on matters which have been struck out. This Court has discretion to re- admit the case which was dismissed for

non- appearance of the plaintiff. The discretion is delivered from rule 55 (1) of the Labour Court, 2007, which provides that where a situation arises in proceedings or contemplated proceedings which the rules do not provide the Court may adopt any procedure that it deems appropriate in the circumstances. For that reason, this Court adopt procedure for enrollment or re-admission provided under Order VIII B Rule 20 (2) of the Civil Procedure Code Act, Cap. 33, R.E. 2019. The said provision of the Civil Procedure Code Act provides that, I quote:-

*"20 (2) An order made by the court in the absence of a party concerned or affected by the order may be set aside by the court, on the application of that party within fourteen days from the date of the order, on such terms as it considers just."*

From above cited provision, this Court has discretion to re-admit the case dismissed for non-appearance where the applicant has provided just or sufficient explanation for the failure to appear on the date the matter was dismissed.

In determining an application for setting aside a dismissal order, the test involved is whether the non- appearance by the applicant on the date of the dismissal was justified as it was held by this Court in the case of **Hassan Hamis Nzomari vs. Edmund Thomas Lusebe and 3 Others**, Misc. Land Application No. 351 of 2019, High Court Land Division at Dar Es Salaam, (Unreported). In the case of **Nasibu Sungura vs. Peter Msechu**, Civil Appeal No.24 of 2017, this Court held that:-

*"In an application to set aside the order dismissing the suit for non-appearance, the importance question is whether the case for the applicant is soundly maintainable and meritorious, but whether the reasons furnished are sufficient to justify the applicant's non-appearance on the date the suit was dismissed"*

From above cited cases, the applicant has to furnish sufficient reason for his non- appearance on the date of the dismissal. Thus, in the present case I will consider the applicant reasons for non-appearance on the date of dismissal if they are justified.

In the present matter, the counsel for the applicant said that reason for non-appearance is sickness of the applicant and sickness of father of the counsel for the applicant. He said applicant was sick and was admitted at Zamzam Health Center on 05/06/2022 and was discharged on 06.06.2022. For that reason, applicant was not able to appear in Court on the hearing date. He said that applicant informed his counsel namely Remedius Mbekomize that he was sick but the counsel got emergency on the hearing date as his father was sick. The counsel has to rush and take his father to hospital and when he came to Court only to find that the revision has already been dismissed for want of prosecution.

Although I admit that sickness is good cause for failure of the party to appear in Court on the scheduled date, the said sickness has to be the actual reason which stalled the applicant from appearing in Court. This Court was of

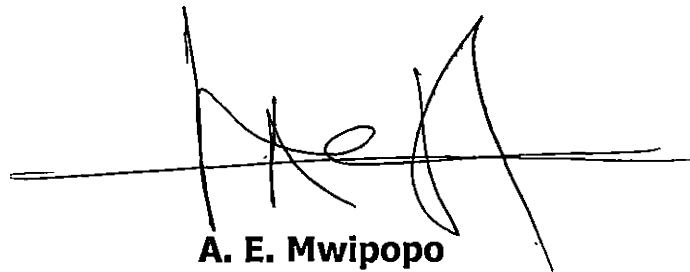
similar position in the case of **Fredrick Mdimu vs. Cultural Heritage Ltd**, Revision No. 19 of 2011, High Court Labour, Division at Dar Es Salaam, (Unreported); and in **Frank Mngoma vs. Everina Yakobo**, Misc. Land Application No. 35 of 2019, High Court of Tanzania, at Tanga, (Unreported). In the case of **Shembilu Shefaya vs. Omari Ally [1992] TLR 245**, the Court of appeal stated that the applicant has to provide thorough explanation regarding the sickness.

The applicant has submitted the medical document of Zamzam Health Centre which shows that he was admitted for sickness on 05.06.2022 and was discharged on 06.06.2022. This is good reason for his failure to appear in Court since it is not expected he will come to Court straight away from hospital and also usually patient are discharged from hospital later in the morning or in the afternoon. The applicant engaged advocate Remidius Mbekomize to represent him in the respective case. The applicant said he informed the counsel of his sickness. The record of this Court in Labour Revision No. 02 of 2021 shows that the applicant or his advocate failed to appear on the last two scheduled dates before they failed to appear when the matter was dismissed on 06.06.2022. The applicant or his counsel did not appear in Court on 07.03.2022 and on 27.04.2022. The advocate engaged by the applicant deponed in the affidavit that his father was sick on the hearing date and he had to attend him first before coming to Court. However,

apart from counter affidavit sworn by the said advocate Remedius Mbekomize, there is nothing in record to prove that advocate Mbekomize's father was sick. The advocate for the applicant was supposed to inform the Court if he has any emergency which stalled him from appearing in Court on the hearing date. Unfortunately, he did not do that.

Despite the claims that his advocate had an emergency, the said advocate had duty to inform the Court that he has failed to appear in Court. The applicant's advocate was negligent on how he handled the matter. Thus, I find that despite the fact that the applicant was sick on the hearing date, his advocate who was informed of the sickness of the applicant was negligent to inform the Court on the hearing date that the applicant is sick and that he (advocate) has got emergency and he will not appear.

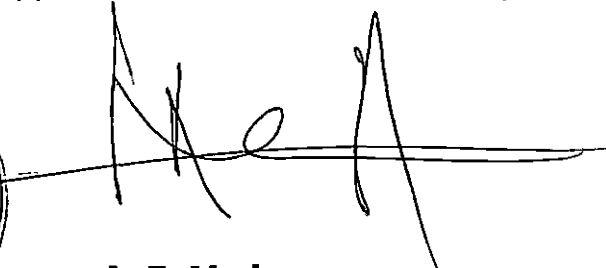
Therefore, the reason for non – appearance of the applicant on the hearing date is not sufficient and the Court dismiss this application for want of merits. This being a labour matter, each party shall take care of his own cost. It is so ordered accordingly.

A handwritten signature in black ink, appearing to be 'A. E. Mwipopo', written over a horizontal line.

**A. E. Mwipopo**  
**Judge**  
**07/09/2022**

**Court:** The ruling was delivered today 07/09/2022 in the presence of the applicant, counsel for the applicant and counsel for the respondent.



  
**A. E. Mwipopo**  
**Judge**  
**07/09/2022**