

**IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
MISC. LABOUR APPLICATION NO. 29 OF 2020**

ABDULRAHMAN JUMA..... APPLICANT

VERSUS

CENT DOOR (TANZANIA) LIMITED.....RESPONDENT

[Arising from Award of Commission for Mediation and Arbitration, Singida]

(Massay A-Abitrator)

dated the 22nd Day of October, 2020

In

CMA/SGD/8/2019/05/2019

RULING

08th & 25th April, 2022.

MDEMU, J.:

This application of the Applicant is by way of notice of application and chamber summons in terms of Rules 24 and 28 of the Labour Court Rules, G.N No. 106 of 2007 and Sections 91 and 94 of the Employment and Labour Relations Act, Cap. 366 R.E 2019. The application is supported by the affidavit of the Applicant.

Briefly, the Applicant who was an employee of the Respondent was terminated from employment on 15th of April, 2019. His referral to the

Commission for Mediation and Arbitration (the CMA) was dismissed for nonappearance, thus this application to set aside the said dismissal order. This latter application was dismissed for want of sufficient cause. He was further dissatisfied, hence, this revision on the following grounds as deposed in paragraph 13 of the affidavit such that:

- 1. That, the honorable Arbitrator misdirected himself by holding that, the Applicant did not establish sufficient cause for non-appearance without considering the legal position that, sufficient reasons/cause differ from case to case.*
- 2. That, the honorable Arbitrator erred in law and in fact by his failure to consider and evaluate reasons for no appearance adduced by the Applicant.*
- 3. That, the honorable Arbitrator misdirected himself by holding that, the dismissal of Applicant's complaint was caused by the Applicant's negligence, while the case was for hearing of the Respondent's side.*
- 4. That, the honorable Arbitrator misdirected himself by referring the application for restoration as dispute No.*

CMA/SGD/8/2019/05/2019 instead of Misc. Application

No. CMS/SGD/01/2020.

On 10th of March 2022, through consensus, hearing of this revision proceeded by way of written submissions. The Applicant filed his written submissions on 23rd of March, 2022 through Amina Mohamed Mkungu, Advocate. The Respondent Company, through Salmin Suleiman Mwinry, Advocate, filed their written submissions on 8th of April, 2022. For avoidance of repetition, I will be making reference to written submissions in due course where necessary. I will not therefore reproduce such written submissions.

Responding to the above grounds, it is on record that on the date the Applicant's application to set aside dismissal order was dismissed for nonappearance, his advocate was present and the Applicant was still on transit. Regarding this point, it is observed as follows at page 8 of the proceedings:

Mheshimiwa, shauri limekuja kwa ajili ya kusikilizwa ushahidi siku ya leo. Kwa bahati mbaya, mlalamikaji amepata shida njiani akitokea makambako mkoani Njombe. Hivyo, ameomba shauri lianze kusikilizwa upande wa

mlalamikiwa yeye akiwa hayupo, anatarajiwa kufika Singida

saa 10:00 jioni.

The Commission however proceeded to dismiss the claim on the basis that, the said advocate had no power of attorney and that it was not possible for the Applicant travel one day from Makambako to Singida and reach the CMA offices at 0930 hours. As observed by the CMA at page 4 of the award, the crucial issue for determination is whether the Applicant has raised sufficient cause for nonappearance on 17th of March, 2020 when the matter was set for hearing. In my view, this issue appears to resolve all grounds as deposed in paragraph 13(i-iv) of the affidavit. They will thus be argued as one.

In his written submissions, the Respondent asked this application be dismissed in two fold. **One** that, the court was not moved properly for want of citing the provisions of rule 36(1) of the Labour Court Rules which require re-enrolment of the dismissed application for nonappearance upon showing sufficient cause. **Two** that, the Applicant has not shown sufficient cause. That means, notice by an Advocate that the Applicant is on the way to reach the CMA offices from Makambako is not a sufficient cause. The

Applicant was thus termed by the Respondent a negligent person to that effect.

Going by what is contained in paragraph 8 of the affidavit, and what was submitted by the Applicant in his written submissions, there was no justification for the Arbitrator to dismiss the application in circumstances where the Applicant had shown notice, not of absence, but of delay to attend the proceedings on the appointed day. It may not be also sounding to hold that the Applicant was negligent in circumstances where he asked his attorney to ask for adjournment as he was on transit. I am aware that the Arbitrator made an order on 10th of February, 2020 that if the Applicant won't appear on 17th of March, 2020, the matter will be dismissed. Had it been that the Applicant never assigned any one to present notice of delay, the issue of negligence could now hold water.


As stated by the Applicant in his written submissions when citing the case of **Meis Industries Limited & 2 Others vs Twiga Bancorp, Misc. Commercial Cause No.243 of 2015** (unreported), what constitutes reasonable or sufficient cause is a matter of courts' discretion. In my considered view, the fact that the Applicant asked his attorney to present oral notice of delay that he is still on transit, the same is a sufficient cause

and do not constitute negligence on the part of the Applicant. It also be noted that, the evidence on record is silent regarding tendency of the Applicant to miss CMA sessions save for the date he presented oral notice of delay through his advocate.

On that stance, this application is hereby allowed. Decision of the CMA refusing to set aside dismissal order is hereby quashed and set aside. The CMA at Singida is thus ordered to hear parties on merits. Each part to bear own costs.

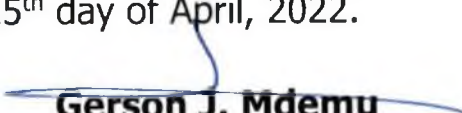
Order accordingly.




Gerson J. Mdemu
JUDGE
25/04/2022

DATED at DODOMA this 25th day of April, 2022.




Gerson J. Mdemu
JUDGE
25/04/2022