

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IRINGA DISTRICT REGISTRY
AT IRINGA

MISC. LABOUR APPLICATION NO. 17 OF 2020
(Originating from Labour Revision No. 05 of 2018)

JOAN BARNABAS LETAWOAPPLICANT
VERSUS
VISION FUND MICROFINANCE.....RESPONDENT

RULING

Date of last order: 22/02/2022

Date of Ruling: 17/03/2022

MLYAMBINA, J.

The instant application has been brought by way of a Chamber Summons made under *Order IX Rule 9 of the Civil Procedure Code, Cap 33 [R.E. 2019]*. The Applicant is seeking for the main order of setting aside the dismissal order made by Honourable P.M. KENTE, J. (as he then was) dated on 23rd day of November, 2020 in *Labour Revision No. 05 of 2018*.

This chamber summons is supported by Affidavit of Ignas Amiry Charaji. The major reason advanced by the Applicant in support of the application were that: *One*, on 21st day of November, 2020 he attended medical checkup at Iringa Regional Referral Hospital whereby he was admitted for 2 days, discharged on 24th day of November and he was issued with 7 days excuse duties (E.D). *Two*, on 23rd day of November, 2020 when the matter was coming for hearing, he was admitted as a result he was unable to stand and walk thus, unable to attend before the Court. *Three*, he tried his best to give

the information to the Court through his colleague at his office but they were out of the office with other duties. *Four*, within those 7 days, he was supposed to attend medical checkup at Iringa Regional Referral Hospital.

In response, Deogratus Lyimo, the Principal Officer of the Respondent, erroneously asserted to be the Principal Officer of the Applicant. He however, disputed the substantial part of the Applicant's sworn affidavit. He averred that the Applicant wasn't present on the due date. Further, the Applicant had enough time to make preparation from 21st day of November, 2020 to 23rd day of November, 2020 as it is shown in his affidavit that he was not in a critical condition. Thus, even if so, the Applicant herself had to appear.

It was counter sworn that; the Applicant could use applicable means to notify the Court of his absence. However, neither the Representative nor the Applicant himself appeared and there is no any proof of his absence.

During hearing, Mr. Ignas Charaji had nothing substantial apart from cleaving leave of the Court to adopt his supporting affidavit.

In reply, Mr. Mpeli Advocate made reference to the decision of the Court of Appeal in the case of **Yusuph Same and Another v. Khadija Yusuph** Civil Appeal No. 01 of 2002 (unreported) in which the Court was categorical that; a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay; lack of diligence on the part of the Applicant.

Mr. Mpeli, therefore, based his arguments on lack of diligence. According to Mr. Mpeli, Mr. Charaji did not mention who are the other colleagues to whom

he tried to his best to give the information but they were out of the office with other duties.

Above all, there is nowhere in the affidavit telling the where about of the Applicant himself or which action, he took on the date the dismissal order was issued. There is no corroboration of Counter Affidavit of the Applicant. The later did not inform the Court anyhow about the absence of his Representative on sickness. To buttress such point, Mr. Mpeli cited the case of **Africa Muslims Agency v. Sheikh Hussein Kilanga and Another** Civil Appeal No. 86 of 2002 High Court of Tanzania at Dar es Salaam in which the Court insisted on attaching a corroborating affidavit to support the allegation.

I have painstakingly considered the submissions of the two Representatives. One being a personal Representative in this labour matter who regards himself as an Advocate though not and is being confused as an Advocate by the Advocate of the Respondent. That is why, in both supporting affidavit and the counter affidavit, they are asserting of mentioning or not mentioning who are the other colleagues to whom he tried to his best to give the information but they were out of the office with other duties. It leaves much doubt on whether Mr. Charaji has a law firm. If so, I should have expected other Legal Counsel from his office to have notified the Court about his absence.

In any case, there has been no any legal objection on Mr. Charaji's representation, presumably because this is a labour matter. For that reason,

I will consider whether the Applicant has advanced sufficient reason (s) warranting setting aside the dismissal order.

The major reason advanced by the Applicant's Representative of which is well supported in record is sickness. It is my found view that sickness constitutes sufficient good cause. The point is well substantiated in the case of **Aziz Abdulrasul v. Balozi Ibrahim Abubakar and Bibi Sophia Ibrahim**, Civil Application No. 79 of 2016, Court of Appeal of Tanzania at Dar es Salaam in which the Court stated:

The illness of the Applicant is sufficient to constitute good cause.

At any event, it is generally inappropriate to deny a party restoration of his dismissed application where such application will not cause the Respondent to suffer any prejudice. Needless, a party should not suffer on account of default or non-appearance of his Representative or Advocate especially where there are good reasons for his non-appearance.

In the circumstances, the application is granted as prayed. The dismissal order made by this Court on 23rd day of November, 2020 in *Labour Revision No. 05 of 2018* is hereby set aside. No order as to costs.



Y.J. MLYAMBINA

JUDGE

17/03/2022

A handwritten signature in blue ink, consisting of a series of loops and curves, positioned above the printed name and title.

Ruling delivered and dated 17th March, 2022 in the presence of the Applicant's Representative one Mr. Ignas Charaji and in the absence of the Respondent.



Y.J. MLYAMBINA

JUDGE

17/03/2022

A handwritten signature in blue ink, identical to the one above, positioned above the printed name and title.