

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA****THE SUB - REGISTRY OF MWANZA****AT MWANZA****LABOUR REVISION NO. 1 OF 2018**

*(Originating from CMA/MZA/NYAM/67/2014 at Mwanza)*

**BRUNO PATRICK MUKAMA ----- APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF SAINT**

**AUGUSTINE UNIVERSITY OF TANZANIA-----RESPONDENT**

**RULING**

*July 12<sup>th</sup> & 28<sup>th</sup>, 2023*

**Morris, J**

Through the chamber application, the applicant above invites this court to revise the decision of the Commission for Mediation and Arbitration for Mwanza (herein after CMA) dated 19/5/2015. The application is supported by the affidavit of the applicant. However, it is contested by the affidavit of Constantine Mutalemwa, learned Advocate for the respondent.

According to record, the applicant was employed by the respondent until 2/10/2009 when he was terminated. The termination letter was dated



1/10/2009. Following his failure to timely seek redress from CMA, the applicant lodged an Application for Condonation No. CMA/MZ/222/2010. It was, nevertheless, subsequently dismissed by Hon. Anosisye (Arbitrator) on 2/12/2011. Through Misc. Application No 14 of 2012, this court (Hon. Rweyemamu, J.) ordered the matter to start afresh at CMA before a different arbitrator.

Once again, the applicant was not close to being lucky. Hon. Esther Kimaro (Arbitrator) on 14/2/2014 struck out his application and directed him to file a fresh application by indicating proper names of the respondent. Subsequently, the applicant filed Labour Complaint No. CMA/MZ/67/2014. The same was objected to by a preliminary objection which was sustained on 21/07/2014. The applicant was again ordered to file a fresh application with correct name of the respondent within 14 days. The applicant complied by filing a fresh application on 20/02/2015. This, too, was dismissed on 19/05/2015 by Hon. Luinga, arbitrator.

Aggrieved by the foregoing dismissal, the applicant filed Revision No. 35/2016 before this Court. It did not sail through. Hon. Nyerere J. struck it out on 1/11/2017. However, he was given 60 days to file another



application, hence this application. All the same, it was previously determined by this court (Hon. Matupa J.) on the basis of being out of time. The matter escalated to the Court of Appeal vide Civil Appeal No. 196 of 2019. The appellate Court determine appeal in his favour and it was ordered that the application should be determined by this Court to finality.

When the matter was tabled for hearing, the applicant was represented by Mr. Mathew Nkanda, personal representative, while the respondent was represented by Advocate Constantine Mutalemwa. Mr. Nkanda prayed for disposal of the application vide written submissions. I granted the prayer. The filing pattern thereof was set for submissions in chief; reply submissions; and rejoinder submissions on July 14<sup>th</sup>, 2023; July 20<sup>th</sup>, 2023; and July 24<sup>th</sup>, 2023 respectively.

Paradoxically, the applicant never filed his submissions in chief. Thus, the respondent lodged a letter to the court's registry to record that he was not served with the applicant's main submissions, if any. The applicant's non-compliance notwithstanding, Advocate Mutalemwa filed the reply submissions for the respondent. From the outset, the respondent strongly advocated for dismissal of the application for want of prosecution. It was



argued that failure to file submissions should be equated to non-appearance. I was referred to the case of ***Perpetua H. Kirigini & Another v Dr. Msemo Diwani Bakari***, Land Appel No. 3 of 2005 (unreported).

For obvious reason, I will start with this aspect of non-observance of the court order by the applicant. It is trite law that court orders must be respected. See the cases of ***Laemthong Rice Co. Ltd v Principal Secretary Ministry of Finance Zanzibar***, Civil Appeal No. 259 of 2019; and ***Mary Joseph v Rachel Zephania***, Misc. Land Application No 37 of 2020 (both unreported). Non observance of courts orders cannot, thus, be condoned by any court of law.

It is also a principle of law that, failure to file written submissions amounts to non-appearance for prosecuting or defending the case. See the case of ***Salumu Ahmada Kuangaika v Mohamed Mussa Salum***, Civil Reference No. 4 of 2011; ***Mariam Suleiman v Suleiman Ahmed***, Civil Appeal No. 27 of 2010; and ***Said Abdallah Kinyanyite v Fatuma Hassan and Another***, civil appeal No. 87 of 2003 (all unreported).

In upshot, the application is a fit case for dismissal for want of appearance. This obvious legal wrath notwithstanding, I am loath to apply



it in this matter. I will give the reasons. **Firstly**, I am mindful of the fact that the Applicant still has pending review proceedings before the Court of Appeal. The subject application for review was lodged to the Court of Appeal on 19<sup>th</sup> July 2022. Reading the record with sufficient scrutiny, it is evident that the outcome of the review process may have significant impact on the rights of the parties in the present proceedings.

**Secondly**, this being a matter emanating from labour dispute, it enjoys equitable approach. That is, labour disputes are matters which should be considered with equity. **Thirdly**, circumstances of this case taken holistically; and in line with section 3 (a) of *the Employment and Labour Relations Act*, Cap 366 R.E. 2019, the approach I have taken herein, in my view, will promote social justice.

Henceforth, I will continue to, as I hereby do, strike out the application. However, the Applicant will retain a 30-day liberty to refile his application after the decision of the Court of Appeal in its pending review proceedings. Each party shall shoulder own costs.



It is so ordered and the right of appeal is fully explained to the parties.



**C.K.K. Morris**

**Judge**

**July 28<sup>th</sup>, 2023**

The ruling is delivered this 28<sup>th</sup> day of July 2023 in the presence of Advocate Mussa Nyamwelo holding brief of Mr. Constantine Mutalemwa, counsel for the respondent and in the respondent's absence.

**C.K.K. Morris**

**Judge**

**July 28<sup>th</sup>, 2023**