

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA**

LABOUR APPLICATION NO. 06 OF 2022

[From Labour Application No. 18 of 2021, Original CMA
Award in Labour Dispute No. CMA/SHY/173/2019]

MSILIKALE MICRO INVESTMENT CO. LTDAPPLICANT

VERSUS

GODSON ISAYA BAGAMBEKIRESPONDENT

RULING

Nov. 7th & 10th, 2023

Morris, J

The Court is, at the instance of the applicant above, being moved to determine the application for re-enrollment of Labour Application No. 18 of 2021 which was dismissed for want of prosecution. The application has been preferred under Rule 36(1) and 55(1) of ***the Labour Court Rules***, GN No. 106 of 2007 (*the Rules*). The affidavit of Robert Msilikale, Principal Officer of the applicant supports it. The respondent, however, contests this application vide his counter affidavit.

Briefly accounted from the record, the respondent herein instituted Dispute No. CMA/SHY/173/2019 at the Commission for Mediation and

Arbitration for Shinyanga (CMA). The matter was heard *ex-parte* against the applicant herein. The applicant was ordered to pay Tshs. 6,053,384.615/= to the respondent. The former unsuccessfully pursued an application to set aside the *ex parte* award at CMA. Allegedly, the applicant attempted to file revision against the decision of CMA but the Deputy Registrar rejected it for it was not filed online. He, however, was caught up by time limitation before he could file the same electronically.

However, on 6/8/2021, vide Labour Application No. 28 of 2020; this court granted leave to the applicant for him file revision out of time. Thence, the applicant filed Labour Application No. 18 of 2021. On 23/6/2022 the matter was fixed for hearing before Hon. Mkwizu J. Nonetheless, both the applicant and his advocate did not enter appearance. Thus, the Court dismissed the application for want of prosecution. Hence, this application.

When the present matter was fixed for hearing, Advocate Paul Kaunda represented the applicant. The respondent appeared in person, unrepresented. It was submitted by Mr. Kaunda that the affidavit by Robert Msilikale discloses a sole ground to support this application. That is, the applicant has always been diligent in prosecuting his cause. He never



exhibited any signs of abandoning his rights hereof. That revision proceedings (Labour Application 18/2021) before this court were adjourned several times before being scheduled for hearing on 23/6/2022.

He argued further that, on the foregoing date, the applicant's advocate arrived at the court around 9:30 hours only to find that the respondent had successfully moved the court to dismiss the application. To him, the applicant has never lost interest over his rights; and that the 30-minute delay (on 23/6/2022) was not so serious nor prejudicial to the respondent. He, thus, prayed for the application to be granted.

The respondent, being a layperson, was very brief. He submitted that the application should not be granted because the applicant has been employing delaying tactics at the expense of his justice. Hence, this application should not be granted for want of merit.

On the basis of affidavital depositions and submissions of the parties, the Court will determine the application. Under rule 36 (1) of ***the Rules***, the matter may be re-enrolled if satisfactory ground(s) are given in the affidavit. The sole ground stated by the affidavit of the applicant is that he diligently appeared save for 23/6/2022 when his Advocate Paul Kaunda was late for

only 30 minutes. However, the proceedings of the matter subject of this application (especially for 23/6/2022) were not attached to either affidavit or counter affidavit. Nonetheless, as correctly submitted for the applicant, the fact that the counsel for the applicant always appeared was noted by paragraph 7 of the counter affidavit. Therefore, I will assume that fact is truthful.

That foregoing concession notwithstanding; under paragraphs 16 and 18 of the affidavit, it was deposed by Robert Msilikale that, Mr. Kaunda arrived at 09:30 hrs. That is, he was late for 30 minutes only. That averment, according to verification, was received from Mr. Kaunda. The law requires that when the source of information is another person; an affidavit from such person is obligatory. Lest, such averment becomes hearsay and, thus, inadmissible. I refer to ***Narcis Nestory v Geita Gold Mining Ltd***, Misc. Labour Application No. 13 of 2020; ***NBC Ltd v Superdoll Trailer Manufacture Co. Ltd.***, Civil Application. No. 13 of 2002; ***Awadh Abood (As Legal personal representative of the Estate of the Late Salehe Abood Salehe) v TANROADS and AG***, Misc. Land Application No. 53 of 2020 (all unreported).

That is to say, the affidavit of Paul Kaunda was important for this court to have the reason for non-attendance of the applicant and/or his advocate before Hon. Mkwizu J. on 23/6/2022. In law, the court cannot rely on hearsay information. Consequently, no reason for non-attendance of the applicant and/or his counsel has been exhibited or proved.

For the stated reasons above, I find that this Court has not been legitimately moved to re-enroll Labour Application No. 18 of 2021. The application, thus, lacks merit. It is accordingly dismissed. Each party to shoulder own costs.



A handwritten signature in blue ink, appearing to read "C.K.K. Morris", with a large, sweeping flourish extending upwards and to the right.

C.K.K. Morris

Judge

November 10th, 2023

A small, handwritten flourish in blue ink, consisting of a simple, elegant curve.

Ruling is delivered this 10th day of November 2023 in the presence of Mr. Paul Kaunda (online- 0713995209), the applicant's advocate and Mr. Gibson Isaya Bagambeki, the respondent.



C.K.K. Morris

Judge

November 10th, 2023

