

**IN THE HIGH COURT OF TANZANIA  
LABOUR DIVISION**

**AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO.324 OF 2019**

**MAGRETH NJAU..... APPLICANT  
VERSUS**

**TANZANIA CIGARATTE COMPANY LTD..... RESPONDENT**

**RULING**

*Date of last Order:04/06/2020*

*Date of Ruling: 09/06/2020*

**Z.G.Muruke, J**

The present application originated from Revision Application No. 295/2018 sought to revise the Commission for Mediation and Arbitration Award dated 25<sup>th</sup> May, 2018. After several mentions of Revision Application the matter was placed under special court session (Crush program) which aimed at disposing off pending matters expediently. On 21<sup>st</sup> March 2019, Revision Application was called and both parties were present in court. The court scheduled the matter for hearing on 22<sup>nd</sup> May 2019, without any reservations from both parties. Date for hearing was by consent.

On 22<sup>nd</sup> May, 2019 date set for hearing of the revision application, neither the applicant nor her advocate entered appearance. Court under Regulation 55(1) of the Labour Court Rules, GN No. 106 of 2007, proceeded to dismiss the revision for want of prosecution. On 30<sup>th</sup> May

2019, applicant then filed an application for restoration of dismissed revision.

In the application, applicant raised four ground for restoration as follows.

**(i) That the CMA case file had not been brought to the Honourable Court.**

In support of this ground applicant counsel advanced an argument that the CMA case file was not yet brought to this court, that being the case, the matter could not have proceed for hearing when it was called on 22<sup>nd</sup> May, 2019. Respondent counsel in reburt submitted that the applicant submission is devoid of merit and a clear act of contempt of the court. The applicant has not cited any back up provision of the law which gives the discretion to a party in dispute not to enter appearance when so directed by the court by a mere speculation that, their matter will not proceed for hearing.

It is this court view that the fact that CMA case file had not been in the hands of the court on 22<sup>nd</sup> May, 2019, it was for the court to disclose and both parties had no actual knowledge as to whether the same was already in court or not. This ground has no basis, and a total assumption of facts raised by the applicant which cannot be proved. Records of court, is business of the court, more so, it is domestic affairs of the court which has nothing to do with the applicant or her advocate.

**(ii) Applicant had mistakenly entered appearance on 20<sup>th</sup> May, 2019 and could not crosscheck with her advocate.**

Applicant counsel submitted that applicant entered appearance on 20<sup>th</sup> May, 2019 instead of 22<sup>nd</sup> May 2019, because she failed to cross check with her advocate. Respondent counsel submitted that a reasonable person one could say the applicant has made up a story because how is it possible for a person to stay in court premises for the entire day without her case being called and comfortably and without taking any further steps to enquire what had happened, decides to leave the court? With all due respect, this argument is too good to be true, and it is an after thoughts.

To this court, failure by applicant to enter appearance on the date set on the ground that she mixed up the date is not good ground for restoration. It is worth insisting that court orders has to be complied with, once issued. None compliance, not only is a disrespect, but create chaos on entire administration of justice. The position was discussed by this court in the case of **Abdulrahaman Kinana Vs. Peter Simon Msingwa** (MP) Civil Case No. 108/2013, Dar es Salaam, District registry (unreported) where it was held that;

There was no compliance of this court order dated 1st December, 2016, not only for defendant or his witnesses by also defendant counsel, who under took to do so as an officer, of the court. Very surprisingly, it is non-compliance of this court order by it's own officer. Court orders should be complied forthwith. None compliance of court orders not only is a sign of disrespect, but, create chaos in the entire administration of justice. That cannot be left to continue.

**(iii) That there was no one in the office to send to inform the court of the Advocate absence.**

Respondent counsel submitted that again this ground lacks merit and raises a number of questions. Malindo Law Chamber is a legal institution/law firm expected to have a reasonable number of people/office attendants and, in several occasions, a legal officer was sent to inform the court incase Advocate Amini Mshana was indisposed for genuine reasons.

To this court, the argument raised by applicant counsel that there was no one to send to court from applicant advocate is a monkey of justice. What happens to advocates offices is neither a business of respondent nor the court. It is domestic affairs of the applicant counsel. The way advocate offices are runned are their internal affairs. Thus, lack of person to come to inform the court cannot be good ground in the eyes of the law to restore dismissed revision.

On the 4<sup>th</sup> ground counsel for the applicant submitted that, revision dismissed had raised important issues for discussion. Respondent counsel on the other hand submitted that question here, is whether this fact was known to applicant's advocate prior to 21<sup>st</sup> March, 2019 when Revision Application No. 295/2018, when the court scheduled hearing of the said revision to be on 22<sup>nd</sup> May, 2019. Failure to enter appearance by the applicant only proves the fact that they never had legitimate claim to pursue and interest on the matter. As records shows that even on the previous dismissal of claims at CMA level, was due to lack of interest and or negligence on the part of the applicant.

This court having heard both parties in this ground, it is clear that at this juncture it is not easy to see points involved in the revision to be restored. Issue before me is whether applicant has shown sufficient cause to warrant restoration. Applicant and her advocate were both present when the date for hearing revision was set, they both absented themselves. There was nothing court could have done apart from dismissing the revision. From the submission made by both parties, this court join hand with respondent and I see no reason advanced by the applicant.

In the up short, applicant has failed to convince this court to restore her application for revision dismissed for none appearance. Accordingly application dismissed.



Z.G.Muruke

**JUDGE**

09/06/2020

Ruling delivered in presence of applicant in person and Jacob Anorld Luoga for the respondent.



Z.G.Muruke

**JUDGE**

09/06/2020