

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISC.APPLICATION NO. 500 OF 2019
NOKIA SOLUTIONS & NETWORK (T) LTD.....APPLICANT
VERSUS
MOTESWA LUSINDE.....RESPONDENT

RULING

Date of last Order: 12/06/2020

Date of Ruling: 17/06/2020

Z.G.Muruke, J.

Current application is for restoration of application for revision No. 62/2018 between the parties dismissed by this court on 25th February 2019 for want of prosecution.

According to the court records letter dated 26th March, 2020, written by respondent counsel, Mr. Peter Ngowi is not qualified to practice as an advocate, in terms of annexure **VAM-1**, since 1st of January, 2020. The order to file submission was issued on 02nd March, 2020 same was filed by Mr. Ngowi on behalf of the applicant, on 09th March, 2020. Applicant counsel as an advocate appeared and filed submission without a current practicing certificate. By doing so, not only Mr. Ngowi acted illegally but also whatever he did as an unqualified person has no legal validity. Thus, record of this court dated 2nd March, 2020 in which Mr. Ngowi appeared,

and subsequent submission filed on 9th March, 2020 are of no legal affect. Thus, same are expunged from the court records.

What remain in court records is pleadings on application and submission by respondent which, will be considered in the cause of composing ruling. Reason for none appearance by applicant counsel is started at paragraph 9,10 of affidavit in support of the application, that read;

- (9) On 25th February, 2019 when I was on my way to the High Court Labour Division I got an accident with Motor cycle along Kijitonyama area, whereby the passenger who was carried by Bodaboda was seriously injured, therefore I was forced to take her to Kijitonyama hospital for medical checkup.**
- (10) Immediately after I have been informed by the Doctor that the passenger whom I brought there have sustained minor injuries and will be released, I rushes to the High Court and found that the Revision application number 62/2018 was already dismissed before Honourable Muruke, J for want of prosecution.**

It is apparent clear that reasons for dismissal of Labour Revision No. 62 of 2018 was due to the negligence acts of the counsel and nothing else. The court is duty bound to look on reasons to justify the applicant non-appearance. Applicant laboured much on what he termed as huge compensation granted as an award at CMA to use as the reasons for this court to grant restoration. The assertions of huge compensation is merely

sympathy which the applicant counsel tend to rely on it. Any amount of compensation depends on salary of the complainant (who is the respondent) in this application. It is in the record that the respondent his monthly salary was to the tune of Tshs. 3,500,000/= per month.

Going through present application there is no any evidence which the applicant counsel produced before this court to back his averments. There is **no police report (PF-3), No name of the injured bodaboda passenger, no any hospital document which shows that at the date of hearing the applicant was at hospital.** In turn these allegation are hanging without being backed up with any document. **The error made by an advocate through negligence and lack of diligence is not a sufficient cause for extension of time,** hence it cannot warrant this court to grant those prayers which sought in his chamber summons.

To this court, it is true as correctly submitted by respondent counsel, that, there is no any attached evidence like Police report, PF 3 or hospital documents to prove accident and treatment of the injured person that Mr. Ngowi took to the Hospital. Equally applicant was being represented by Mr. Ngowi who caused all the problems including appearing and filing submission while he is unqualified advocate. What real happened is pure negligence of highest kind by Mr. Ngowi as follows:

- (i) **Dismissal of application for revision for none appearance.**
- (ii) **Appearing and filing of documents while he is unqualified advocate.**

The two issues above are purely attached to advocate not the applicant as a party to the suit. Is applicant to be punished for what Mr. Ngowi did. What applicant is seeking is right to be heard on revision earlier dismissed. Right to be heard is first and foremost fundamental and is a principal of natural justice.

Rule of natural justice states that no man should be condemned unheard and, indeed both sides should be heard unless one side chooses not to. **It is a basic law that, no one should be condemned to a judgment passed against him without being afforded a chance of being heard.** The right to be heard is a valued right and it would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.

To the best of my understandings, **the principle** of natural justice should always be dispensed by the court, that is both parties must be heard on the application before a final decision. Failing which there is miscarriage of justice as it is wrong for the judge to impose an order on the parties and such order cannot be allowed to stand. **Implicit** in the concept of fair adjudication lie cardinal principles namely that no man shall be condemned unheard. Principles of natural justice must be observed by the courts save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgement against the defendant without giving him an opportunity of being heard. **Every judicial or quasi-judicial tribunal must apply the fundamental principles of natural justice and natural justice will not allow a person to be jeopardized in his person or pocket**

without giving him an opportunity of appearing and putting forward his case. The issue of denial of the right to a hearing is a point of law which underline the proceedings the effect of which is to render a proceeding a nullity.

In the case of Ridge Vs. Baldwin [1963] 2 All ER 66, it was insisted that the consequence of the failure to observe the rules of natural justice is to render the decision void and not voidable. Official of the court must comply with the rules of natural justice when exercising judicial functions.

What happened to applicant counsel Mr. Ngowi, it is pure negligence of an advocate, and not otherwise. It sounds unfair and inequitable, in my considered opinion **for a part to Civil litigations to be punished for an error committed by the advocates and more specifically where the error is within the domestic affairs of an advocate. Throughout history, courts of law have assumed the position of custodians of justice. It therefore comes as a surprise and indeed it lowers down the reputation and respect of the court when parties submitting themselves to the jurisdiction of the court loses their cases for wrongs committed by their advocates or representative.**

I have considered, respondent, right, of being prejudiced, I see none, much as this matter has delayed, but, he will have right to be heard on revision. Thus, considering the circumstances of the case and what transpired on the day of the case dismissed, for non-appearance, this court is satisfied that for interest of justice, dismissal order is set aside. The case

to be heard enter-parties to ensure that justice is reached to all parties.
Restored revision number 62/2018 to come for mention on 09th July, 2020
at 9 am. It is so ordered.



Z.G.Muruke

JUDGE

17/06/2020

Ruling delivered in the absence of applicant and in the presence of
Dennis Malamba for the respondent.



Z.G.Muruke

JUDGE

17/06/2020