

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM
MISCELLANEOUS LABOUR APPLICATION NO. 168 OF 2019

BETWEEN

RISING SUN HOTEL.....APPLICANT

VERSUS

TEDDY MARTIN.....RESPONDENT

RULING

Date of Last Order: 29/04/2020

Date of Ruling: 12/06/2020

A. E. MWIPOPO, J.

The applicant namely the Rising Sun Hotel filed this application to re – enroll Revision Application No. 13 of 2016 which was dismissed for want of prosecution on 7th February, 2018 before Hon. Mashaka, J. The application is supported by the affidavit of Kasaizi Andrew Kasaizi, the applicant’s learned advocate.

The application was heard in ex – parte following non - appearance of the respondent even after the summons was effected by way of publication

in Mwananchi Newspaper dated 31/03/2020. The application was heard by way of written submission.

The applicant have submitted in his written submission that the Revision Application No. 13 of 2016 was dismissed by this Court on 07th February, 2018, for the reason of non-appearance of the applicant to prosecute his case when the matter was coming for hearing. The reason for applicants non - appearance is that on the hearing date the Counsel for the applicant was attending Court of Appeal Session at Mbeya in Civil Appeal No. 59 of 2016. In support of this argument the applicant have submitted dismissal order of this Court dated 07th February, 2018, Summons, cause list, air ticket and bus ticket to prove that the counsel was attending Court of Appeal Session.

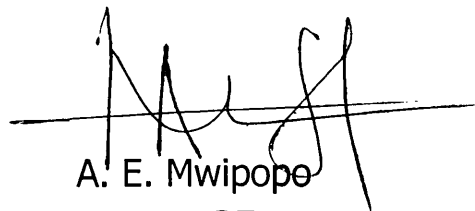
According to rule 36 (1) of the Labour Court Rules, G.N. No. 106 of 2007 the Court may enroll the matter which was struck off for absence of the party who initiated it if that party provides satisfactory explanation for his failure to attend the Court on the respective date. In the present matter the applicant have given satisfactory explanation that on the hearing date the counsel for the applicant was attending Court of Appeal sessions at Mbeya and all the relevant documents such as summons of the Court of

Appeal, cause list of the Court of Appeal Sessions, Air ticket and Bus ticket. Those documents provides proof that the Applicant's counsel travelled to Mbeya on 05th February, 2018 to attend Court of Appeal Session in the Case of Salu Nsuluja V. Attorney General and 2 others which was fixed for hearing on 06th February, 2018. The documents shows that the Counsel for the applicant travelled back to Dar Es Salaam on 07th February, 2018 by bus where he arrived late around 20:30 hrs. This is the date when the Revision Application No. 13 of 2016 was fixed for hearing. Therefore, it is clear that he could not arrive on time to attend the hearing before this Court.

The applicant states in the affidavit that he did send his legal officer namely Johnston Bakari Barnabas to inform the Court of his absence. Mr Johnston Bakari did swear an affidavit which is attached in this application and he states that he did not get any advocate to hold brief of the learned Counsel for the applicant as result he enter in Judge's chamber and informed the Court of the absence of the counsel for the applicant but he was denied the chance since he have no locus. All of this proves that the applicant have provided a satisfactory explanation for the failure to appear and prosecute his case before this Court on the hearing date. Further, it proves that the

applicant made some efforts to inform the Court about his absence but the same failed.

From above, I find that the applicant have provided satisfactory explanation for his failure to attend the Court on the respective date. For that reason the application is allowed and the Revision No. 13 of 2016 is hereby restored.



A. E. Mwipopo
JUDGE
12/06/2020