

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPL. 508 OF 2018

COMVIVA TECHNOLOGIES LTD.....APPLICANT

VERSUS

VENANCE EDSON.....RESPONDENT

RULING

Date of Last Order: 04/05/2020

Date of Ruling: 05/06/2020

A. E. MWIPOPO, J

The applicant **COMVIVA TECHNOLOGIES LTD** filed the present application to set aside the dismissal order dated 1st March 2018 and re-enroll the Revision Application No. 354 of 2016. The application was preferred under Rule 24(1), (2)(a)(b)(c)(d)(e)(f), (3)(a)(b)(c)(d), (11)(b) and Rule 36(1)(2)(3) of the Labour Court Rules, GN No. 106 of 2007. The application before this Court was supported by the affidavit of Aziza Mhina, applicant's Learned Advocate. The applicant is seeking re enrolment on the legal issue whether the applicant's non appearance on the 1st day of March, 2018 was deliberate.

During the hearing of the application the applicant was represented by Mr. George Shayo (Learned Advocates) whereas the respondent was represented by Ms. Stella Simkoko Advocate.

In supporting application, Mr. George Shayo prayed to adopt the affidavit to form part of their submission. Thereafter he submitted that the application was dismissed for the reason that the applicant did not appear in Court on hearing date. The reason for non-appearance is she was sick. He stated that at that particular date the applicant who was pregnant became sick on particular date and she was admitted at Burhan Charitable Center. The applicant attached the Clinic Card and hospital report to prove that the applicant was sick and was admitted on the hearing date. The counsel for respondent did not submit on the issue as he have no objection to applicant's prayer.

The issue for determination in this application is whether applicant have provided the Court with satisfactory explanation for the court to allow the matter be re-enrolled.

Rule 36 (1) of the Labour Court Rules, G.N 106 of 2007 provides for re – enrolment. The Rule provides that;

Rule 36(1) Where a matter is stuck off the file due to absence of a party who initiated the proceedings, the matter may be re-enrolled if that party provides the Court with satisfactory explanation by an affidavit, for his failure to attend the Court.

This court in the case of **Tanzania Postal Bank Dar Es Salaam v. Thomas Edward Gambo**, Miscellaneous Application No. 152 of 2012, High Court Labour Division, at Dar Es Salaam held that “it is true that a matter dismissed for want of prosecution can be stored but only if the party adduces sufficient grounds for the alleged absence.”

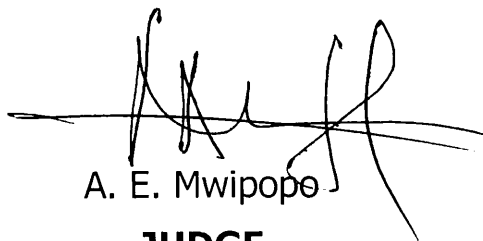
This means that the Court have discretion to re – enroll the matter dismissed after being satisfied that the party have sufficient ground for the alleged absence. Thus the applicant have duty to prove that the absence was not intentional and was for the reason out of applicant’s control.

In the present matter the counsel for the applicant have submitted that at that particular date the Counsel for the applicant who was pregnant became sick on particular date and she was admitted at Burhan Charitable Health Center. The applicant attached the Clinic Card and hospital

prescription form to prove that the applicant was sick and was admitted on the hearing date. The Burhan Charitable Health Centre prescription form show that Aziza Mhina was attended on 01/03/2018 and was given a one day ED. This prove that the Counsel for the applicant was sick and was treated at the hospital. The applicant also attached clinic card that show at that particular time she was also seven months' pregnant and she delivered on 13/05/2018. All of this proves that non - appearance of the applicant was not intentional, but was for the reason of sickness.

Therefore, I find that the applicant have provided the Court with satisfactory explanation for the court to allow the matter to be re-enrolled. In the foregoing, the application have merits and is hereby allowed. The Revision Application No. 354 of 2016 is re-enrolled as prayed.

It is so ordered.

A handwritten signature in black ink, appearing to be 'A. E. Mwipopo', written over a horizontal line.

A. E. Mwipopo

JUDGE

05/06/2020