

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

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 428 OF 2020

TOTAL TANZANIA LIMITED.....APPLICANT

VERSUS

SEET PENG SWEE.....RESPONDENT

RULING

Date of last Order: 18/11/2020

Date of Ruling: 30/11/2020

Z.G.Muruke, J.

Before current application, applicant filed Misc labour application No. 323/2019 for extension of time to file revision. In a ruling dated 17th July, 2020, court granted applicant 14 days within which to file intended revision. 14 day leave was granted in the absence of applicant counsel. Later applicant counsel appeared on 21st August, 2020 for ruling, only to be told ruling has been delivered on 17th July, 2020, and more so, 14 day granted by the court had already been elapsed. Having discored the anomaly applicant counsel wrote a letter and also appeared before Hon. Judge Wambura for clarification, in which was directed to file proper application, hence present application to extend time granted by the court within which to file revision.

Application is supported by an affidavit of Ramadhani Karume counsel for the applicant duly instructed to act for the applicant.

A part from applicant counsel affidavit there is an affidavit of court officer Jane Rwiza attached in the applicant counsel affidavit. To shorten the story, relevant paragraph of Jane Rwiza affidavit are hereby reproduced.

- (4) That, I mistakenly recorded in the court diary that the ruling on the matter will be delivered on 21st August, 2020 and communicated the same to the applicant's counsel. Unfortunately the ruling was delivered on **17th July, 2020** at the presence of the respondent's counsel while the applicant was absent.
- (5) That, it is true I communicated to the applicant's counsel on 3rd June, 2020 that the ruling shall be delivered on 21st August, 2020 as recorded in the court's diary and not the 17th July, 2020 when the ruling was delivered.
- (6) That, on 21st August, 2020 applicant registered his presence to receive the ruling and after through follow-up it was discovered that the ruling had already been delivered on 17th July, 2020.

Respondent filed counter affidavit and supplementary counter affidavit sworn by Ruben Robert starting that, applicant counsel was aware of ruling date, attaching communication between the two counsel in supplementary counter affidavit. On the date set for hearing Ramadhani Karume represented applicant while Ruben Robert represented respondent. Hearing was conducted by way of written submission. Both parties submitted along lines of their affidavits.

Having heard both parties submissions issue before me is whether, there are sufficient cause. Without wasting much time answers are found in paragraph 4,5 and 6 of Jane Rwiza affidavit, attached to the applicant affidavit in support of the application. From the evidence affidavit of Jane

Rwiza, confusion was caused by her an officer of the court by informing applicant different date of the ruling contrary to what she recorded in court diary. That fault was caused by the court clerk, thus domestic affairs of the court. It is worth noting that, parties to the suit submit themselves to the jurisdiction of the court to seek redress.

Thus, it is surprising for the parties to lose their case for wrong committed by the officer of the court in cause of administration issues. I understand parties they have not come to be punished to case have come to seek redress, they can be punished for irregularities caused by court clerk in her administration duty. As demonstrated above, confusion was caused by Jane Rwiza, court clerk, thus applicant should not be penalized. In all these applications it is for applicant to be heard on an intended revision. Right to be heard is very fundamental.

Right to be heard is one of fundamental principles of natural justice, failure of which vitiates proceedings. 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 valuable 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 understanding, **the Principles** 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 court save where their application is excluded expressly or by necessary implication. It is un-procedural for a court to give judgment 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. Right to be heard was insisted in the case of **Kijakazi Mbegu and five others Vs. Ramadhani Mbegu** [1999] TLR 174.

Applicant right to be heard will be curtailed if application is not granted. Respondent right to be heard will still await, much as it will be

delayed. Thus, application granted. Intended revision to be filed within 7 days from today. It is so ordered.



Z.G.Muruke

JUDGE

30/11/2020

Labour Court TZ.

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MISCELLANEOUS APPLICATION NO. 428 OF 2020

TOTAL TANZANIA LIMITED APPLICANT

VERSUS

SEET PENG SWEE RESPONDENT

Date: 30/11/2020

Coram: Hon. S.R. Ding'ohi, DR.

Applicants:

For Applicants:

Mr. Humphrey Mwasambone for Advocate Karume

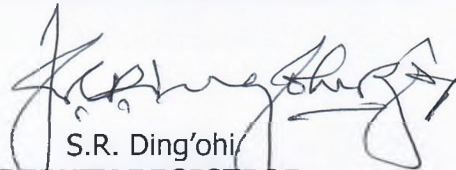
Respondent:

For Respondent:

Ms. Latalie Nyamwilimira, Advocate for Advocate Robert Rubeni

CC: Halima

Court: Ruling delivered this 30th day of November, 2020.



S.R. Ding'ohi

DEPUTY REGISTRAR

30/11/2020