

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

**REVISION APPLICATION NO. 91 OF 2018**

*[Arising from Labour Dispute No. CMA/MZ/ILEM/63/2018]*

**OMEGA FISH LIMITED ..... APPLICANT**

**VERSUS**

**ZAKAYO KABALI ..... RESPONDENT**

**R U L I N G**

*27/07/2020 & 30/07/2020*

**W.R. Mashauri, J.**

This application accrues from the decision of Hon. Mwebuga .O (Arbitrator) in Labour Dispute No. CMA/MZ/ILEM/63/2018 which was heard exparte pursuant to the provisions of rule 28(I) b of GN. 67/2007 despite of the respondent Omega Fish now applicant being served for some days but for the reasons he alone was aware did not attend.

In the said Labour Dispute No. CMA/MZ/ILEM/63/2018, the complaint was Zakayo Kabali and Omega Fish was respondent.



Upon heard the dispute exparte the Arbitrator Hon. Mwebuga O. was of the opinion that the complainant's evidence he adduced before the commission that, there was no valid reasons for the employer to terminate the employment of the employee [Bwana Zakayo Kabali]. He also found it clear that the employer did not follow of termination for operational requirement as provided for under S. 38(I) of the employment and labour relation Act, 2004 which inter-alia requires the employer to give notice to the employee before termination.

Having so gathered, the only relief he found available to the complainant is to reinstate him in duty without loss of salaries effective from the date of 23<sup>rd</sup> July, 2018.

Feeling aggrieved with the award given by the Arbitrator to the complainant, the respondent Omega Fish filed a Misc. Application No. CMA/MZ/ILEM/MISC/21/2018 in the CMA asking the commission to set aside the ex-parte award pronounced in favour of the complainant Zakayo Kabali on 23/07/2018.

Again, in his ruling dated 25/09/2018, Kachenje J.J. Y.M. Arbitrator dismissed the application for want of prosecution upon the applicant's failure



to attend his application before the Arbitrator for three days consecutely and ordered the award issued by the commission dated 23/07/2018 to remain undisturbed. Hence this application by Omega Fish Limited who in his chamber summons is praying this court to set aside the exparte award of the Arbitrator, asking the court to order that the dispute be heard inter-parties or alternatively that this court hear and determine the dispute.

When this application was called for in court for hearing on 21/07/2020 the applicant, despite of filed this application on 6/12/2018 and several times failed to attend in court he also did on 21/7/2020 fail to enter appearance.

Mr. Mathias Mwilwa, representative of the respondent told the court of the applicant's play of hide and see in respect of executing the award given to the complaint by the commission and finally asked the court to decide the application exparte. And upon heard his submission. I agree his prayer of giving a decision in this application exparte basing on his submission.

He said that, having the commission pronounced the award in favour of the respondent, he filed an application for execution No. 40/2018 asking a court for an order of reinstating him in employment. Before the court, the applicant refused to reinstate the respondent in employed but he said was



ready to pay the respondent compensation according to the law. By his letter dated 16/11/2018, the Deputy Registrar of the High court urged the CMA to make sure that the respondent's terminal benefit is paid according to the requirements of the law. In response, to the district Registrar's letter, the CMA ordered the applicant to pay the respondent's terminal benefit in the tune of Shs. 6,900,000/= but in vain. The respondent opened another application No. 15 of 2020 but the applicant said had filed another application for Revision No. 91 of 2018 in court but he did not serve the respondent until when he complained to the Deputy Registrar and was served on 29/06/2020.

That, the applicant in this application is technically delaying the respondent's right. He therefore prayed the court to dismiss the applicant's application and order the applicant to pay the respondent's award awarded by the commission.

The issue is, was the applicant every when he lodged the applications in court declines to attend.

Starting with the original complaint No. CMA/MZ/ILEM/63/2018, when filed by the respondent in the commission, the applicant, then respondent did not attend the case. It was heard exparte. He filed an application No.



CMA/MZ/ILEM/MISC./21/2018 asking the commission to set aside the ex parte award dated 23/07/2018 but did not appear in court to prosecute it and the same was dismissed for want of prosecution. He again has filed this application to set aside the ex-parte award of the Arbitrator and the dispute be heard inter-parties.

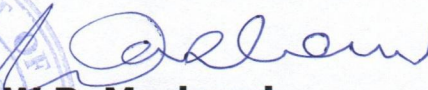
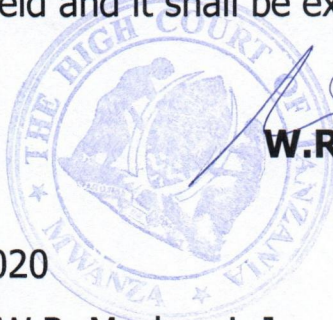
On my part, I agree with the respondent's representative that, the applicant in this application is doing nothing save delaying the respondent's award. It is revealed in this application that, from the date this application was filed in this court on 6/12/2018 the applicant and its advocate appearance is very minimal. For instance, it is seen in the record that, the applicant's advocate lastly appeared in court on 10/3/2020. He did not enter appearance on 21/4/2020, 3/6/2020, 16/7/2020 and 21/7/2020.

It is therefore quite apparent from the conduct of the applicant and its advocate they have demonstrated in this case that, the applicant and its advocate are using the court as an instrument of delaying other persons right forgetting the principle that justice delayed is justice denied.

This application is hereby therefore dismissed for want of prosecution.



The award issued by the commission to the respondent on 23/07/2020  
is hereby upheld and it shall be executed immediately.

  
  
**W.R. Mashauri**  
**JUDGE**

Date: 30/7/2020


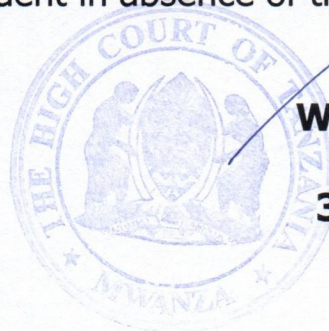
Coram: Hon. W.R. Mashauri, J

Applicant: Absent

Respondent: Mr. Mathias Mwilwa Advocate

B/c: Felister Mlolwa, RMA

**Court:** Ruling delivered in presence of Mr. Mathias Mwilwa representative of  
the Respondent in absence of the applicant this 30/7/2020.

  
  
**W.R. Mashauri**  
**JUDGE**  
**30/07/2020**