

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

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 579 OF 2019

BETWEEN

**ANHUI FOREIGN ECONOMIC CONSTRUCTION
GROUPCOMPANY LIMITED.....APPLICANT**

VERSUS

FREDDY MWAKISYONDE 1ST RESPONDENT

HAJI SAID.....2ND RESPONDENT

ISYIKA KITEMBA.....3RD RESPONDENT

BIGILWA TADEO.....4TH RESPONDENT

RULING

Date of Last Order: 15/02/2021

Date of Judgment: 08/03/2021

Z.G.Muruke, J.

This is an application for re-enrollment of Revision No.75/2019 which was struck out by this court on 5th September, 2020 for want of prosecution. The application was filed under Rules 24(1),(2)(a)(b)(c)(d)(e)(f), (3)(a), (b)(c)(d) and 36(1),(2),(3) of the Labour Court Rules, GN. No. 106 of 2007 (herein the Rules). The applicant sought to move the court for the following orders:-

- (a) This Honourable Court may be pleased to re-enroll Revision No. 75/2019 which was dismissed by this Honourable Court on 5th September, 2019.
- (b) Any other Order or relief(s) as the Honourable Court may deem fit and just in the circumstances.

The application was supported by the affidavit of Ditrick Mwesigwa, the applicant's counsel. In challenging the same the respondents' filed their joint counter affidavit. With leave of the court, hearing was by way of written submission. Both parties were represented. The applicant was represented by Advocates Ditrick Mwesigwa and Alphonse Peter Kubaja, while the respondents were served by Sammy Katerega Personal representative.

Submitting in support of the application, the applicant's counsel prayed to adopt the affidavit in support of the application to form part of his submission. Learned counsel submitted that the applicant's counsel has a good cause for his nonappearance as on 5th to 8th September 2019, he attended Tanganyika Law Society Annual Meeting at Arusha for improving his legal professionalism as required by the law. Revision No.75/2019 was dismissed during the meeting hence it is prudent not to punish the applicant for the mistake committed by the advocate.

Further, applicant's counsel submitted that when the matter was fixed for mention on 4th July, 2019, he was sick and he informed the respondent's representative who agreed to notify him on the hearing date but he did not. On 17th July, 2019 while attending another case before Hon. Aboud J, he made follow up at the court registry and Mr. Lyimo was informed that, hearing of Rev.75/2019 will be on 23rd September, 2019. Later on 17th September, 2019 he received an sms from Number 15200 notifying him that Rev. 75/2019 was decided. He then filed the present application seeking for the right to be heard. That the applicant's counsel

has shown good cause for his nonappearance under Rule 36 (1), (2) of the Rules. The applicant's counsel cited various applications including the case of **Mwanza Director M/s New Refrigeration Co. Ltd v. Mwanza Regional Manager of TANESCO Ltd and another** (2006)TLR 329. He thus prayed for the grant of the application.

Responding to the applicant's averments, the respondent's representative prayed to adopt the counter affidavit in opposing the application to form part of his submissions. Mr. Katerega submitted that, the applicant moved this court with Rule 36 (1) (2) (3) of the Rules praying for re enrollment , the said provision is applicable when the matter is struck off and not when the matter was dismissed.

Respondent's representative further submitted that, the applicant's counsel is aware of the remedies and procedure when the respondent have not filed counter affidavit. The respondent filed the counter affidavit on 17th April,2019 and 9th May,2019 respectively, but counsel could not be traced and the applicant refused to receive the document and said they should be communicated to their Advocate who was not reachable.

Further Mr. Katerega averred that, the TLS meeting was held on 7th September,2019 so he could have attended the court session on 5th September,2021 and travel thereafter. The applicant's counsel abandoned the application for seven (7) months' before it was dismissed. During the said period there were four court sessions but neither the applicant, nor their counsel who attended hearing. That is negligence and lack of seriousness. Thus, prayed for dismissal of the application.

After careful consideration of the parties submissions, I have the following issues for determination:-

- i. Whether this court was properly moved
- ii. Whether the applicant has sufficient reasons for re enrollment of the Application.

On the 1st issue, as stated by respondents' representative the applicant's counsel has moved this court by Rule 36(1)(2)(3) of the Rules which provides that :

'36.-(1) Where the matter is struck 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 a satisfactory explanation by an affidavit for his failure to attend the court'

The wordings of that provision are very clear that, under that Rule re enrollment is for the matter which has been struck off and not a dismissed matter. I have duly gone through the Court file on Rev. no. 75/2019 and found that on 5th September, 2019 this court dismissed the application for want of prosecution. The order reads;

'This matter was filed 7 months' ago. Applicants have not appeared even once since filling of this case. From the records, applicant have lost interest to prosecute their own case filed 7 months ago. Accordingly, revision number 75/2019 is dismissed for want of prosecution.'

It is quite clear from that order Revision No.75/2019 was dismissed for want of prosecution and was not struck off. Therefore, this court was not properly moved as a result I find no need to determine the remaining issue. Basing on the above discussion, I hereby struck out the application for being incompetent.

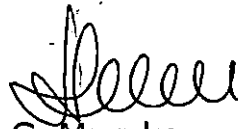


Z.G. Muruke

JUDGE

08/03/2021

Ruling delivered in the presence of Joseph Mbogela holding brief Ditrick Mwesigwa for applicant and Sammy Katerega for respondent.



Z.G. Muruke

JUDGE

08/03/2021

