

**IN THE HIGH COURT OF TANZANIA  
(LABOUR DIVISION)  
AT DAR ES SALAAM**

**MISCELLANEOUS LABOUR APPLICATION NO. 259 OF 2021**

**BETWEEN**

**ANDALUS CORNER LIMITED.....APPLICANT**

**AND**

**COTRIDA CRISPIN HAULE.....RESPONDENT**

**RULING**

24<sup>TH</sup> & 24<sup>TH</sup> September 2021

**B.E.K. Mganga, J**

On 4<sup>th</sup> August 2021, the herein Applicant namely **ANDALUS CORNER LIMITED** filed the present application seeking to set aside a dismissal order of Revision No. 226 of 2020 dated 8<sup>th</sup> July 2021. The said application was dismissed for want of prosecution as the applicant failed to appear on the date scheduled for hearing. The application is supported by an affidavit sworn by Victoria G. Mgonja, Advocate on behalf of the applicant. The application has been resisted to, by the respondent who filed the counter affidavit to that effect.

On the date of hearing, the Applicant was represented by Mr. Bakari Ndeke, Advocate, whereas the Respondent was represented by Mr. Hamza Rajabu, Personal Representative.

On the date of hearing, the Applicant was represented by Mr. Bakari Ndeke, Advocate, whereas the Respondent was represented by Mr. Hamza Rajabu, Personal Representative.

Submitting in Support of the application, Mr. Ndeke argued that applicant had intention of pursuing Revision Application No. 226 of 2020 within time as she directed Victor Mgonja and Antony Kombe as Personal Representative to prosecute the matter. That, applicant believed that the application was in safe hand of the two mentioned persons. Unfortunately, and out of her control, those persons failed to appear in Court. Mr. Ndeke argued that the aforementioned persons also failed to file notice of representation. When Mr. Ndeke, Counsel for the applicant was asked by the court as to whether there was a proper notice of representation signed by the applicant filed in court showing that the said Victoria Mgonja advocate and Anthony Kombe, Personal representative of the applicant were duly appointed to prosecute the application on behalf of the applicant, he readily conceded that there was none. He averred that no notice of representation was signed by the applicant, therefore there was nothing on the affidavit showing that Ms. Victoria Mgonja Advocate failed to advice the applicant in accordance with the law. Mr. Ndeke advocate was of the view that applicant should not be punished for advocate's

negligence and this Court should invoke the overriding objective principle in favour of the applicant. To support his argument, he cited the case of **Mohamed Ali Mohamed v. Ajuza Shaban Mzee**, Civil Appeal No. 188 of 2016, CAT (unreported).

Opposing the application, Mr. Rajabu submitted that the applicant's omission to attend in Court for one year justify lacks of interest of prosecuting her application. He submitted further that the affidavit of Victoria Mgonja, Advocate has no connection with the revision which is why, it was dismissed for want of prosecution as there was no notice of representation showing that the said Victoria mgonja was appointed to appear before the Court on behalf of the applicant. Supporting his application, he referred this Court in the case of **Travel Partner Limited v. Revocatus Mshame**, Misc. Application No. 521 of 2019 (unreported). Mr. Rajabu concluded that applicant has failed to adduce good grounds for non appearance that led revision Application No. 226 of 2020 be dismissed for want of prosecution. He thus prayed the application be dismissed.

Having considered parties' rival submissions, this Court is called upon to determine; *whether the applicant adduced good reason for Revision No. 226 of 2020 to be restored?*

The relevant provision in relation to the issue before me is Rule 36(1), (2) and (3) of the Labour Court Rules, 2007 GN, No. 106 of 2007, which empower this Court, upon sufficient reason being advanced by the applicant for non-appearance, to enroll the application. The said Rule 36(1) of GN. No.106 of 2007 provided:-

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

From the above quoted provision, it is clear that a person seeking to re-enroll an application that has been dismissed for non appearance, applicant, by an affidavit, has to satisfy or justify as to why he failed to appear. Now, the issue is whether, applicant has managed to comply with the above quoted rule for this court to allow her application.

In the application at hand, applicant alleges that her non appearance was due to negligence of her advocate and the personal representative who failed to advise him professionally on the issue of notice of representation and appearance generally. On other hand the respondent maintained that applicant failed to appear for almost one year and that she failed to file a notice of representation. On that basis, the personal



representative for the respondent argued that, applicant had no interest to prosecute the matter.

I have carefully read the affidavit of Victoria G. Mgonja, advocate sworn on 26<sup>th</sup> July 2021 wherein she stated inter-alia:-

*1.0: That I am the applicant's representative herein **who was engaged to represent the applicant in application for revision NO. 226/2020**, hence very conversant with the facts I am about to depose as hereunder:-..."*

Reading the foregoing paragraph of affidavit in support of the application, one comes to the conclusion that Victoria Mgonja was appointed to represent the applicant in Revision Application No. 226 of 2020. But the truth is that she was not appointed as such. She had no right of appearance in court. Appearance before the Labour court is controlled or governed by the provision of section 56 of the Labour Institution Act [cap.300 R.E. 2019]. The said section provides:-

*"56. In any proceedings before the labour Court, a party to the proceedings may appear in person or be represented by-*

- (a) an official of a registered trade union or employer's organisation;*
- (b) a personal representative of the part's own choice; or*
- (c) an advocate.*

This section has to be read together with Rule 43 of the Labour Court Rules, GN. No. 106 of 2007. Rule 43(1) of the said rule requires a party

acting on behalf of any party to the proceedings, by notice in writing to notify the Registrar. In his submission, Mr. Ndeke advocate conceded that there was no notice filed in court showing that the said Victoria Mgonja, advocate and Anthony Kombe, the personal representative. In absence of a notice of representation filed before the court, the only inference is that applicant was appearing in person. As there was no notice of representation and further no notice of application to that effect annexed to Ms. Victoria Mgonja's affidavit in support of the notice of application, all averement that she was appointed by the applicant to persue revision No. 266 of 2020 becomes unsubstantiated. This equally applies to Mr. Anthony Kombe. There is nothing in this application as it was in revision application No. 226 of 2020, showing that the two persons were appointed by the applicant to enter appearance before this court on behalf of the applicant.

Mr. Ndeke submitted by shifting blame to Victorai Mgonja, advocate on ground that the said advocate was negligence and that she did not properly advise the applicant. With due respect to Mr. Ndeke. Ms. Mgonja advocate has not admitted in her affidavit that she was negligent or that she did not properly advise the applicant. Therefore the argument by Mr. Ndeke advocate that Ms. Mgonja advocate was negligent and that did not properly advice applicant, is submission from the bar as such is not

evidence. I will therefore ignore it because it has a far reaching consequence to professional carrier of Ms. Mgonja, advocate who has not been heard. Knowing the effect thereof on her professional carrier, I am afraid, that it is not proper to condemn her for that. It seems Mr. Ndeke advocate for the applicant is advancing an argument that there was carelessness or inadvertence in handling revision application No. 266 of 2020 on part of the applicant believing it to be a good ground for re-enrollment of the dismissed revision. In my view, that argument is also bound to fail. The issue of being carelessness or inadvertence has been discussed in different cases including the case of **Frank Kibanga v. ACU Limited, Civil Case No. 24 of 2003 (unreported)** in which it was held that; -

*"carelessness or inadvertence on the part of litigants or their counsel cannot be accepted as sufficient explanation to move the court's hand in the favor"*

The record in revision application No. 226 of 2020 shows that on 7<sup>th</sup> October 2020 Ms. Victoria Mgonja appeared as applicant's advocate and on 8<sup>th</sup> July 2021 Antony Kombe appeared as Personal Representative of the applicant. In both appearance, they appeared in absence of the notice of representation contrary to Rule 43(1) and (2) of the Labour Court Rules, G.N No. 106 of 2007. It can be concluded that in all instances, there was

no appearance as they had no locus. In short, it is good as if they did not appear.

As there was no notice signed by the applicant and filed in court recognizing them as her representatives, their appearance on non appearance has nothing do with the dismissed application. In short, there was no connection between the said Victoria Mgonja advocate and Anthony Kombe, the alleged personal respresentative of the applicant on one hand and Revision application No. 266 of 2020 on the other hand. I therefore subscribe to the position taken by my learned sister, Z.G. Muroke, J, in the case of ***Travel Partiner Limited*** (supra) that for the applicant to succeed in re-enlloment of a dismissed application, there has to be a connection between the person who failed to appear and the application itself. I should add, that in absence of that connection, applicant(s) will be bringing any pearson in court arguing that, none appearance was caused by that person. We cannot allow strangers to control court business. In absence of the notice of representation, both Ms. Mgonja , advocate and Anthony Kombe were strangers to the application that was before the court as they were not connected with it. As there was no connection between the mentioned persons and the said revision application, I find that there is no



sufficient cause for non appearance of the applicant on the date revision application No. 266 of 2020 was dismissed.

For the foregoing, this application for restoration of revision No. 266 of 2020 is hereby dismissed for lack of merit.



A handwritten signature in black ink, appearing to read "B. E.K. Mganga".

**B. E.K. Mganga**  
**JUDGE**  
**24/09/2021**

LABOUR COURT-TZ