

THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 312 OF 2021

BETWEEN

KINONDONI MUNICIPAL COUNCIL..... APPLICANT

AND

YUSUPH MOHAMED NANDILE & 28 OTHERS.....RESPONDENTS

RULING

Date of last order 31/03/2022

Date of Ruling 22/04/2022

B. E. K. Mganga, J.

In the application at hand, the applicant is seeking restoration of Miscellaneous Labour Application No. 205 of 2020 that was dismissed by Hon. Z. G. Muroke, J, on 26th February 2021 for want of prosecution. In support of the applicant, applicant filed an affidavit sworn by Leah H. Mnzava, her solicitor. Reasons assigned for non-appearance on the date the application was dismissed are that the said Leah H. Mnzava left the office to attend her sick mother without handing over the case file to her office mate, and that when she came back, she found that applicant's office had been demolished and some of the files including the one

relating to the application at hand missing. Respondents filed a joint counter affidavit resisting the application stating that applicant has shown gross negligence in handling the matter not expected from an officer of her status and caliber.

By consent, the application was argued by way of written submissions.

In her written submission in support of the application, Leah Mnzava, submitted that she failed to make follow up of the case because she left the office to attend her mother who was attacked by Corona Virus Pandemic and was seriously ill. She submitted that, in her return to office, she found that the office had been already demolished for maintenance and files moved to other offices but the one relating to this application was missing. She cited the case of **Nyanza Road Works Limited v. Giovann Guidon, Labour Revision No. 8 of 2020**, (unreported) to stress a point that she was prevented to enter appearance due to sickness. She further cited the case of **Thomas Daniel v. Simba Safaris Ltd [2013] LCCD 142** and **Tanga Cement Company Ltd v. Jumanne Masangwa & Another, Civil Application No. 6 of 2001**, HC (unreported) to implore the court that the application has been promptly filed and that there is good

explanation for non-appearance. She also submitted that illegality can be a ground for re-admission and cited the case of ***Mwana Mohamed v. Ilala Municipal Council, Misc. Land Application No. 12 of 2020***, High Court Land Division (unreported) to support her arguments.

In his written submission, Mr. Shafii Mafita, the personal representative of the respondents, submitted that applicant filed in court Miscellaneous application No. 205 of 2020 on 4th June 2020. But from the date of filing to the date of dismissal for want of prosecution on 26th June 2021, almost Eight months, applicant did not enter appearance even a single date. Mr. Mafita submitted further that, from the date of dismissal order to the date of filing this application is almost six months. He went on that, applicant filed this application on 26th August 2021 one month after respondents have executed the award in CMA/DSM/KIN/R. 567/15/6/39 on 22nd July 2021. He concluded that there is no sufficient ground for restoration of the application because there is no proof relating to sickness.

I have carefully read the affidavit in support of the application and find that the deponent did not even mention the date the application was dismissed and the date she became aware. More so, she did not attach to her application the ruling dismissing her application. Not only

that but also, the deponent did not state as to when her mother contacted Corona Virus, the date she left the office to nurse her mother. Interestingly, she stated in paragraph 9 of her affidavit that she returned in office on 15th September 2020. I have read the ruling of the court dismissing the application filed by the respondents in their written submissions and find that the application was dismissed on 26th February 2021. Considering the date, she submitted that she returned to office and the date the application was dismissed, I find that applicant has told nothing but lies. Considering further what has happened in this application, I am of the view that, if there is a person to be relied upon to lie, is the deponent of the affidavit in support of this application. It is my considered opinion that, there was no justification for non-appearance and that all reasons advanced in this application is a total fabrication. The application was dismissed while the deponent of the affidavit in support of the application was in office and not as she stated in her affidavit.

I have that strong opinion because it was not disputed by the applicant that this application was filed after she was served with execution order directing the applicant to reinstate the respondents. Therefore, this application was filed just to delay execution process

because it is beyond imagination that any reasonable public officer can react as the applicant has done. The submission that an employee left office to nurse her mother without handling her duties to her office mate is unexplainable and contrary to norms, circulars, regulations, and procedures governing public offices. If at all this is what happened and no action was taken, then, I have no reason for not accepting what was stated by the respondents in their joint counter affidavit that applicant has shown gross negligence in handling the matter not expected from an officer of her status and caliber. Public duties in public offices are done collectively by all public officers of the same professional save for those are clearly designated for specific individuals under the law. It was open therefore that all lawyers in the applicant's office were supposed to take care of the situation if at all the deponent was nursing her mother, of which no proof thereof.

The cases cited in support of the application are of no help to the applicant because they are irrelevant. I will not therefore consider them.

For the fore going, I find that applicant has failed to advance good cause that prevented her from appearing in court on 26th February 2021. In short, she has failed to advance good reasons as to why the

application should be restored. That being the position, I hereby dismiss the application for want of merit.

Dated at Dar es Salaam this 22nd April 2022.



B.E.K. Mganga
JUDGE

Ruling delivered on this 22nd April 2022 in the presence of Julius Yosiha, State Attorney, for the applicant and Shafii Mafita, the personal representative of the respondent.



B.E.K. Mganga
JUDGE