

IN THE HIGH COURT OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LABOUR APPLICATION NO. 474 OF 2021

(Arising from Revision No. 20 of 2020)

BETWEEN

CHITEGETSE MONICA MIGEMBE.....APPLICANT

VERSUS

AKIBA COMMERCIAL BANK.....RESPONDENT

RULING

19th July 2022 & 4th August 2022

K. T. R. MTEULE, J.

This is an application seeking for re-enrolment of Revision Application No 20 of 2020 which was dismissed by this court for want of prosecution. The dismissed revision was requesting for this Court to revise an award of Commission for Mediation and Arbitration of Dar es Salaam, Ilala, issued against the Applicant on 29th July 2020 in Labour Dispute No. CMA/DSM/ILA/R.699/18/410.

The Revision application was dismissed for want of prosecution by Hon. Aboud, J. when the Applicant failed to file written submission as per the Court orders. Having secured extension of time from Hon.

Maghimbi, J., the Applicant filed this Application praying for the enrolment of **Revision Application No. 20 of 2020**.

The Application was disposed of by Written Submissions where the Applicant was represented by Mr. Abraham Augusto Lupia from Justice Mark Attorneys. The Respondent was under the representation of Mr. Kalaghe Rashid from Excellent Attorneys (Advocates).

The application is supported by an affidavit which adduced reasons as to why the Applicant failed to file the written submission which resulted into the dismissal of the Revision Application. According to the affidavit, the applicant's counsel traveled for the burial of her mother who passed away. The order to file the said submissions was issued during the time when the counsel was on travel where he could not be reached by phone.

In her submissions, the Applicant's counsel Mr. Lupia contended that, being a lay person the Applicant could not file the submissions in time and could as well not be able to promptly find another counsel to represent her in the matter. To support his contention, Mr. Lupia cited the case of **Ramadhani Nyoni versus M/S Haule and Co. Advocates [1996] TLR 71** which ruled that in a case where a

layperson is involved, procedural Rules should not be used to defeat justice. He further cited the case of **Federicco Gellini Versus Jaco Roellene Du Plessis Safari of South Africa Commercial Case No. 67/2004 High Court of Tanzania.**

Mr. Lupia invited the court to consider the fact that the Applicant has been appearing in Court all the time. He supported his assertion by the case of **SADRU MANGAIJI versus Abdul Aziz Lalani Miscellaneous Commercial Application No. 126 of 2016 The High Court of Tanzania (Commercial Division).**

In response to the Applicant's submissions, Mr. Kalaghe started by attaching the entire submissions of the applicant on the ground that they have lost any value to be sufficient submission in support of the application. His argument is founded on the fact that while the Application is seeing for an order to re-enroll the revision application, the contents of the submissions are focused on setting aside the dismissal order under **Rule IX (3) of the Civil Procedure Code, (Cap 33 R.E 2019)** instead of **Rule 36 (1) and (2) of the Labour Court Rules, 2007.**

Mr. Kalaghe considered the Applicant's failure to communicate with her counsel or a member of his office on the duty to file submission as a lack of diligence. He cited the case of **Dr. Ally Shabhay versus Tanga Bora Janmaat [1999] TR 305 page 306** to support his contention.

Referring to the case of **Lim Han Yung and another Versus Lucy Treseas Kristensen**, Civil Appeal No. 219/2019 (unreported), Mr. Kalaghe argued that the Applicant had a duty to make follow-up to the matter.

In addressing this matter, two issues seems to be contentious. The **first** one is whether the Applicant's submissions amount to no value for having addressed setting aside of dismissal order under **Rule IX (3) of the Civil Procedure Code, (Cap 33 R.E 2019)** instead of re-enrolment as per **Rule 36 (1) and (2) of the Labour Court Rules, 2007**. The **second** issue is whether the applicant has established sufficient reasons to warrant re-enrolment of the Application for Revision No. 20 of 2020.

Starting with the first issue, it is apparent on the face of it that the application is brought under Order IX rule 3 of the Civil Procedure

Code Act (Cap 33 RE 2002] and Rule 24 (1) & (2) (a) (b) (c) (d) (e) (f) (3) (a) (b) (c) (d) and 28 (1) (c) (d) (e) of the Labour Rules, 2007 GN. No. 106/2007. Unfortunately, I did not see Rule IX which was cited in the Respondent's submission. I could not contextualize the provision cited by the applicant. I am not sure if it is an existing provision of law. This being the case, I can't make any order against the application basing on the Applicant's submission on this provision. With regards to the second issue on sufficiency of the reasons adduced by the applicant to convince the court to allow re-enrolment, Mr. Kalaghe challenged the tenability of the reasons. He has argument that the applicant was negligent for having not made follow-up and for failure to even meet another web of time limitation. From what is on record, the issue of limitation is already resolved by Hon. Maghimbi, J. who found it to be backed by sufficient reasons and allow extension of time. It cannot be raised at this stage. I find the point irrelevant in this application.

As to whether the applicant was negligent, it has to be noted that substantive justice is crucial for matters in a court of equity. In this matter, the Applicant has stated that he suddenly lost contact with her counsel who was in Iringa to attend the funeral of his mother.

This fact is not disputed. The concern of the Respondent is the Applicant's failure to make follow and failure to contact any other person in the counsel's office. In my view, having an advocate means a party cannot comprehend court processes that's why he/she prefers a legal counsel to represent her. The absence of the counsel is equivalent to the absence of the party. In my view, since the respondent does not dispute that the counsel for the Applicant went to attend funeral of his mother, there is a reasonable ground of the Applicant's failure to file the submission in time which caused the dismissal of the matter.

I feel pleased with the words quoted by the Applicant from Ramadhani Nyoni's case cited supra thus:-

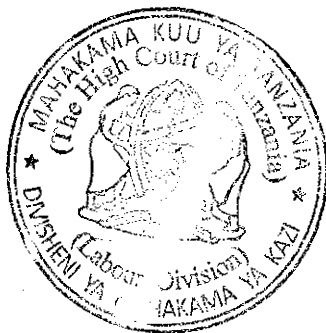
"In a case where a layman, unaware of the process of machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice".

I am convinced by the test of Hon. Mwambegele, J. (as he then was) concerning prejudice on the adverse party. Equally, in this application, when the matter is heard on merit, neither of the party will be prejudiced by injustice rather the matter will be given an opportunity of determination basing on merit which is the spirit of

valuable justice in accordance with the overriding objectives of civil justice (See Section 3A of the CPC).

It is on this reason, I allow the application to re-enroll Revision Application No. 20 of 2020 for it to be considered on merit. It is so ordered.

Dated at Dar es Salaam this 04th day of August, 2022.



KATARINA REVOCATI MTEULE

JUDGE

04/08/2022