

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LABOUR DIVISION

AT DAR ES SALAAM

REVISION NO. 31 OF 2021

BETWEEN

SANTA LUKAS SCHOOLS _____ APPLICANT

VERSUS

FESTO MLELWA _____ RESPONDENT

JUDGEMENT

S. M. MAGHIMBI, J.

The application is for revision of the decision of the Commission for Mediation and Arbitration (CMA) dated 18th December, 2021 in Labour Dispute No. CMA/DSM/KIN/R.158/18/58 delivered by Hon. William R, Arbitrator. The applicant has moved this COUt under the provisions of Section 91(1) (a) and (2) (c), Section 94(1) (b)(i) of the Employment and Labour Relations Act, R.E. 2019, together with Rule 24(1), 24(2), (a),(b),(c),(d),(e) and 24(3), (a),(b),(c) and (d), Rule 28(1)(c),(d) and (e) of the Labour Court Rules, G.N, No. 106 of 2007 seeking for the following orders:

1. That, may the Honourable Court be pleased to call for the records and revise the proceedings of the Commission for Mediation and Arbitration in Labour Dispute No. CMA/DSM/KIN/R.158/18/58 of the Commission for Mediation and Arbitration for Dar es salaam

Zone at Akiba and revise the award delivered on 18th day of December, 2020 by Hon. William, R. Arbitrator.

2. That, may this Honourable Court be pleased to grant costs of the case.
3. That, any other relief(s) or order (s) that the Honourable Court may deem just and equitable to grant.

On the 11th day of October, 2021, the court ordered the application to be disposed by way of written submissions. The applicant was to file her submissions in chief by 25/10/2021, the respondent's reply was scheduled for the 08th November, 2021 while rejoinder was to be filed by 15th November, 2021. However, the applicant's submissions were filed on 03rd December, 2021. In his submissions, the respondent's also wrote a letter which raised a contention that the applicant filed his written submission out of time. Though the applicant had a chance to respond to such allegations he opted not to do so.

On my part, after going through the applicant's submission, the same shows that it was indeed filed in court on 03/12/2021, almost 37 days from the date ordered by the court. The applicant did not bother to notify the court of his delay, nor seek leave to file the submissions out of the prescribed time. Instead, he proceeded to file his submission out of time granted by the court. Since the applicant had a chance to respond

and he did not, will proceed to determine the effect of filing the submissions out of time.

In my view the applicant's conduct shows disobedience of the court's order, conducts of the like cannot be entertained by the court. The obligation to obey court orders was emphasised in the case of **Olam Tanzania Limited v. Halawa Kwilabya, DC Civil Appeal No.17 of 1999**, which was cited in the case of [Famari Investment T. Ltd vs. Abdallah Selemani Komba](#), (Misc. Civil Application 41 of 2018) [2020] TZHC 386 (11 March 2020) where it was held that:

"Now what is the effect of a court order that carrier instructions which are to be carried out within a predetermined period? Obviously such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or if will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So if a party fails to act within prescribed time he will be guilty of indiligence in like measure as if he defaulted to appear...This should not be allowed to occur. Courts of law should always

control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos. "

The same position was held in the case of **Harold Maleko v. Harry Mwasanjala, DC Civil Appeal No. 16 of 2000**, (HC-Mbeya, unreported)

where it was held that: -

"I, hold, therefore that the failure to file written submission inside the time prescribed by the court order was inexcusable and amounted to failure to prosecute the appeal. Accordingly, the appeal is dismissed with costs. "

This was also the decision in the case of **P3525 LT Idahya Maganga Gregory v. The Judge Advocate General, Court Martial Criminal Appeal No. 2 of 2002** (unreported) where the Court held

that: -


"It is now settled in our jurisprudence that the practice of filing written submissions is tantamount to a hearing and; therefore, failure to file the submission as ordered is equivalent to nonappearance at a hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or

defend, as the case may be. Court decision on the subject matter is bound... Similarly, courts have not been soft with the litigants who fail to comply with Court orders, including failure to file written submissions within the time frame ordered. Needless to state here that submissions filed out of time and without leave of the court are not legally placed on records and are to be disregarded.”

In line with the cited cases, it is a settled position that failure to file written submission on the dates scheduled by the Court is as good as non-appearance on the date fixed for hearing. In this application the applicant and his advocate failed to submit written submission on the date fixed and they did not bother to apply for extension of time to file the same. Such conduct has to be discouraged by the court. Since the applicant's written submission was filed out of time granted by the court without leave to do so, I hereby dismiss the application in its entirety.

Dated at Dar es Salaam this 25th March, 2022.




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S.M. MAGHIMBI
JUDGE