

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

MISCELLANEOUS APPLICATION NO. 347 OF 2022

(Arising from Application for Revision No. 229 of 2021)

VIETTEL TANZANIA PLC APPLICANT

VERSUS

EVELYNE JOHN MOSHIRESPONDENT

RULING

K. T. R. MTEULE, J.

15th May 2023 & 18th May 2023

This Ruling concerns the application lodged herein by the Applicant praying for re-admission of **Revision Application No. 229 of 2021** which was dismissed due to Applicant's non-appearance. The aforesaid Application was lodged in this Court on **16th June 2021**. Due to continuous non attendance of the Applicant, the Court dismissed the Application for want of prosecution hence this application which is seeking for re-admission.

In the Affidavit sworn by Steven Mhando in support of this application, the Applicant stated the reasons for non-appearance on 1st June 2022 when the matter was lastly called for hearing. The reasons advanced was that the Counsel for the Applicant was

bedridden sick of malaria. A medical report to support the contention is attached.

The Respondent filed a counter affidavit in which he disputed the facts deposed by the Applicant. According to him, the Applicant did not notify the Court about the sickness.

Due to non appearance of the Respondent in the instant Application, the court ordered the matter to proceed with hearing in the absence of the Respondent. The Applicant was consequently allowed to argue the application by a way of written submissions.

Having adopted the affidavit to form part of his submissions, Advocate Steven Mhando in submitting as to whether the Applicant had a sufficient cause/reason (s) to warrant the Court to exercise its powers to grant the sought prayers, stated that the non appearance was caused by reasons beyond the applicant's control and that it was not inordinate, or constitute a case of procedural abuse.

He added that the application has been made promptly, and should the same be granted, the Respondent stands to suffer no prejudice, and that the denial to grant it will entirely stifle the Applicant's case. He added that there are important points of law to be determined by this Honourable Court.

In his view, the reason that the applicant's advocate was bedridden in hospital with malaria making him unable to make it to the court constitute sufficient cause.

He submitted that reasons for readmission should not be narrowly construed. To support this, he cited the case of **Republic vs. Y. Kaponda & Others [1985] TLR 84 at P. 86 a Court of Appeal case, whereas Makame, J.A** (as he then was) held that:

"In deciding whether or not to extend time I have to consider whether or not there are 'sufficient reasons' As I understand it, 'Sufficient reasons' here does not refer only, and is not confined, to the delay. Rather, it is 'sufficient reason for extending time, and for this I have to take into account also the decision intended to be appealed against, the surrounding circumstances, and the weight and implications of the issue or issues involved."

He continued to state that since the Respondent has not shown how he shall be prejudiced by granting of this application then the court should grant it. He supported this contention by the case of **Mobrama Gold Corporation Ltd v. Minister For Energy and Minerals [1998] TLR. 425,at Pg. 426**, where the court stated that:-

"It is generally inappropriate to deny a party an extension of time where such denial will stifle his case; as the respondents delay does not constitute a case of procedural abuse or contemptuous default and because the applicant will not suffer any prejudice, an extension should be granted"

He further argued that if this application is not granted, the execution process shall proceed wherein the Applicant stands to suffer irreparable loss.

Having considered the parties sworn statements and the Applicant's submission I now consider the merit of the application. The issue is whether the applicant had shown sufficient cause of non appearance.

It is apparent on the record that the Revision Application sought to be admitted was dismissed for want of prosecution on **1 June 2022**. This was the second time the applicant missed appearance on a date when the revision was fixed for hearing. Previously, on **21 April 2022**, the both parties were absent. Even on **8 March 2022** the matter came for mention and none of the parties was present. All these dates occurred consecutively. However, there was another incident where the Applicant missed appearance which was on **8 November 2021**.

When the court dismissed the Application for non appearance, it considered all these dates when parties were absent. But in explaining the reasons for non appearance, the applicant has explained only on 1 June 2022 when the dismissal order was issued. The previous non appearances were not explained. The applicant tried to emphasis in his affidavit as if he wanted to establish that the non appearance was justified because even the Respondent was not present in court. Let me make it clear that since it was the applicant who brought the matter in court, he had a primary duty to be in court for it to proceed even in the absence of the Respondent. Therefore, he had a duty to explain where he was even in the other dates when he was not attending in court.

Basing on the aforesaid, it is my holding that there is no sufficient reasons advanced for the Applicant's non appearance in all the dates where she was absent and without a notice to the court. In absence of that explanation, the application has no merit. The application is therefore dismissed.

Dated at Dar es Salaam this 18th Day of May 2023.



KATARINA REVOCATI MTEULE

JUDGE

18/5/2023