

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

REVISION APPLICATION NO. 792 OF 2019

Z TRONG SECURITY COMPANY..... APPLICANT

VERSUS

RAHIM M. MUSA & 14 OTHERS..... RESPONDENTS

JUDGMENT

Date of last Order 31/03/2021

Date of Judgment: 09/04/2021

Z.G.Muruke, J.

The respondents were the applicant's employees until 30th May, 2016 when their relationship came to an end on ground of operational requirement. Being resentful with the termination the respondents appealed to the CMA where the matter was heard exparte. The applicant herein was dissatisfied with the exparte award dated 24th February, 2017 hence filed an application to set aside. CMA dismissed the application for want of prosecution. Applicant filed present application seeking for the revision of the CMA's ruling on the reason that the order is unlawful, illogical and irrational. The application was supported by the affidavit of Deogratius J.Lyimo Kiritta, applicant's advocate. The respondent's joint counter affidavit challenging the application. The matter was disposed by way of written submission. The applicant was represented by Advocate Deogratius J.Lyimo Kiritta, and Maiko Mhina while the respondents were represented by Joseph Basheka personal representative.

In his submission the applicant's counsel prayed to adopt the affidavit in support of the application to form part of their submission. He submitted that as it was ordered by this court, they filed the application for setting aside exparte award and served the respondents through their advocate Bartazar Kitundi on 7th August, 2020. The matter was scheduled for hearing on 30th August, 2019. Respondent were ordered to file their counter affidavit on 14th August, 2019. On the date set for hearing the matter was not heard as the arbitrators were at the CMA's seminar. He made follow up of the other date, and informed that the assigned arbitrator was suspended hence the application will be re-assigned to another arbitrator.

Mr. Mhina further contended that, surprisingly on 2nd October, 2019 the applicant was served with a copy of CMA's ruling dated 26th August, 2019 delivered by Hon. Amos. The ruling dismissed the application for want of prosecution. The same was issued four days before the date fixed for hearing On 30th August, 2019. The award was improperly procured as all the arbitrators were at Morogoro attending seminar on the date of the said ruling. He, thus prayed for this court to quash and set aside the CMA's ruling and the applicant be allowed to prosecute his application of setting aside exparte award dated 24th February, 2017. Applicant counsel insisted that if the award will not be quashed, the respondents will prosecute the award which is fraudulently obtained. The applicant was not aware of the exparte proceedings, because in December, 2016 they had a settlement with the respondents out of the commission and respondents agreed to withdraw the dispute before CMA. The applicant

became aware of the ex parte hearing after being served with summons to appear on execution application before this court.

The respondent's representative raised a preliminary objection on the cause of submission that;

- i. That the application is incompetent as the applicant is challenging a dismissal order for want of prosecution, an order which is not open to revision.
- ii. That the application is incompetent for having been preferred under wrong provisions of the law.

As regard to the 1st ground of revision the respondent's representative submitted that, the ruling issued by the CMA on 26th August, 2019 dismissed the application for want of prosecution therefore, it is not subject for revision. If the applicant was aggrieved with the said decision, the proper remedy was to file before CMA an application for setting aside a dismissal order while advancing sufficient reason for his nonappearance for the matter be heard on merit. He cited the case of **St. Mary's International School v. Geoffrey M.Rwekaza**, Rev.No.734/2019 where it was held that;

'It is an established principle of law that when a matter is dismissed a court or body for non-appearance of a party, the remedy available to the aggrieved party is to file an application for restoration before the same court.'

On the second point Mr. Basheka submitted that, this court was not properly moved as the application was made under the wrong provision of the law. That in his notice and chamber summons the applicant cited

It is on record that the applicant's seeks revision of the ruling in a dispute No. CMA/DSM/R.532/16 delivered on 26th August, 2019, the order dismissed the application for want of prosecution. Rule 28 (2) Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007, GN. No. 64 of 2007(herein GN.64/2007) states that that:-

'An Arbitrator is entitled to dismiss a complaint if the referring party fails to attend an arbitration hearing'.

It is the law that when a matter is dismissed for want of prosecution, the remedy available is to file application for restoration of the dismissed application before the same court and not filling application for revision in this court. This was also the position in the case of **St. Mary's International School v. Geoffrey M.Rwekaza** (supra). The applicant as aggrieved party ought to have filed the application for restoration under Rule 29 of GN.64/2007 before CMA adducing sufficient reason for non appearance thus, Present revision is uncalled for.

Consequently, I hereby sustain the 1st point of preliminary objection that that the application is incompetent as the applicant is challenging a dismissal order for want of prosecution. The application is hereby struck out. It is on record that case proceeded expert although applicants were paid following out of court settlement. Applicant application to set aside expert was dismissed for want of prosecution three days before date set for hearing. Applicant right to be heard has been curtailed unprocedurally. Thus, for interest of justice and better end of dispute between the parties, and in terms of Rule 55(1) and (2) of the Labour Court Rules GN number

106/2007 applicant is granted 30 days to file application for restoration of the dismissed application to set aside expert order for want of prosecution.



Z.G. Muruke

JUDGE

09/04/2021

Judgment delivered in the presence of Levis Lyimo for the applicant and Joseph Basheka respondent's personal representative.



Z.G. Muruke

JUDGE

09/04/2021