

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC LABOUR APPLICATION NO. 12 OF 2021

(Arising from Ex- Parte Ruling in Labour Revision No 47 of 2020, Original
CMA/MZ/BUCH/127/2019)

SEBASTIAN MALINDIMA KASAMWAAPPLICANT

VERSUS

LAKE VICTORIA CHRISTIAN PRE & PRIMARY

ENGLISH MEDIUM SCHOOLRESPONDENT

RULING

3rd & 30th June, 2021

RUMANYIKA, J.:

With respect to exparte ruling dated 16/3/2021, through Mr. E. Katemi, learned counsel the application for setting aside it was brought at the instance of Sebastian Malindima Kasamwa (the applicant). Lake Victoria Christian Pre - & Primary English Medium School had service of Mr. A Rinus learned counsel. Through mobile numbers 0766148939 and 0767464538 respectively, I heard the parties by way of audio teleconferencing on 3/6/2021. The application is supported by affidavit of Sebastian Malindima Kasamwa whose contents essentially, the appellant's counsel adopted during the hearing. Very briefly Mr. E. Katemi learned counsel submitted that having had arrived, and, at or by 9:00 am of the hearing date was in

court premises, his appearance would not have been dispensed with but for his hand set having had fallen low battery charge and it went off even before the matter was called out, and he wasn't aware of the ex parte order until at about 10:00 am when he inquired the matter with the bench clerk. That he never ever defaulted before much as should the application be granted he had over whelming chances of success (paragraphs 8, 9 and 10 of the supporting affidavit). That is all.

Having adopted contents of the counter affidavit, Mr. A. Rinus learned counsel submitted that in fact the applicant had assigned no sufficient grounds for setting aside the ex parte ruling because with respect to the scheduled digital, therefore remote hearing platform and he was duly notified, whether or not in between the applicant's handset had run low battery charge it was immaterial much as also it was undeniable fact that the applicant had been on fixed term basis contract employed and upon expiry of the term therefore the parties were done since.

Both the central issue and bottom line is whether the applicant has assigned sufficient ground for setting aside the ex parte ruling.

The answer is no for six main reasons; **(a)** at least it was not disputed that like the respondent, when the matter was called on for online

hearing on 18/2/2021 the applicant was duly served. Unless from the very beginning he doubted his hand set the applicant shouldn't have, if at all at the same time come to the court premises in the first place **(b)** I think like in any other plat forms, and it so happened here, where parties were duly notified, nonappearance, in this case unreasonably being offline it entitled one exparte hearing or dismissal of the matter as the case may **(c)** unless he arrived later than the scheduled 9:00 am when courts' business commenced, the moment, if at all the hand set had run off due to low battery charge, a prudent party should have immediately reported the case at the front desk or bench clerk's desk as the case may be (not at the alleged 10:00 am). **(d)** the applicant may have had been in the court premises timely or late, only upon inquiries to learn from a bench clerk that exparte orders(s) had just been passed against him yes, but looking on the clerk's leaf, probably subsequently issued and dated 16/3/2021 (Exhibit / K2"), the same may have been issued to such other person other than the applicant because it reads; **"Aje tarehe 8/3/2021 kuja kuchukua hukumu yake"** **(e)** if at all militant as one may seem to suggesting, the applicant did not give reasons why he did not lodge the instant application earlier but on 29/3/2021 i.e sixteen (16) good days

later (f) whereas, I am warned on the dangers of running the risks to pre-empt the intended inter partes hearing, I think as opposed to permanent and pensionable contract of service the moment, in this case the one year fixed term had lapsed, whatever additional fractions of a year (in this case say three months it was, but a mere bonus much as it wasn't the applicant's contention that in terms of retirement age he was prematurely terminated leave alone the allegations that for some reasons or the other the applicant had only resigned.

In the upshot, the devoid of merits application is dismissed. It is so ordered.


S. M. RUMANYIKA
JUDGE

04/06/2021

The ruling is delivered under my hand and seal of the court in chambers this 30/6/2021 in the absence of the parties.




S.M. RUMANYIKA
JUDGE

30/06/2021