

**IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR**

**ZNZ CIVIL APPLICATION NO. 4 OF 2010
REGION MANAGER TTCLAPPLICANT
VERSUS
OTHMAN MBAROUK AND 21 OTHERS.....RESPONDENTS
(Application for Restoration of Civil Application No.4 of 2010 which was
dismissed by the Court of Appeal of Tanzania at Zanzibar)**

(Rutakangwa, Massati, Oriyo, J.J.A.)

**In Ruling dated the 23rd day of February, 2013
in
Civil Application No. 4 of 2010**

RULING

MUSSA, J. A.:

By Notice of Motion, the applicant moves the Court **“to grant a Order for restoration of Civil Application No. 4 of 2010 which was dismissed on 23rd February 2012 by the Court of Appeal of Tanzania (Hon. E.M.K. Rutakangwa, J.A., S. A. Massati, J.A.,and K.K. Oriyo, J.A.) for non-appearance on grounds that the applicant’s non- appearance was due to lack of knowledge of hearing date and lack of cooperation from its former advocates, Jimmy Obedi and Co. advocates”**

The Notice of Motion was taken out under Rules 48(1) and 63(3) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by the affidavits of Messrs Gilder Fanuel Kibola and

Amour Said Khamis who were, at the material times, respectively, the Company Secretary and Advocate of the applicant. In his affidavit, the former avers in paragraph 7 as hereunder:-

*"That furthermore, the said counsel for the applicant, Mr. Amour S. Khamis, noted that on the 23^d February, 2012 the Court of Appeal of Tanzania had dismissed with costs Civil Application No. 4 of 2010 for non-appearance of the applicant's counsel. Copy of the **Ruling dated 23^d February, 2012 is attached marked "C"**. [Emphasis supplied.]*

Similarly, in his affidavit Mr. Khamis asserts in paragraph 7 as follows:-

*"That furthermore, I noted that on the 23^d February, 2012 the Court of appeal of Tanzania dismissed with costs the Civil Application No. 4 of 2010 for non-appearance of the applicant's counsel. Copy of the **Ruling dated 23^d February, 2012 is attached marked "C"**. [Emphasis supplied.]*

Ironically, the so-called dismissal Ruling dated the 23rd February, 2012 was not appended to the respective affidavits. Instead, what is attached in the two affidavits is a Ruling dated the 5th day of December, 2012 through which a single Judge (Bwana, J.A.), granted a fourteen days extension of time to the applicant within which to file an application for the restoration of the dismissed application out of time.

At the hearing before me, the applicant entered appearance through Mr. Reginald Shirima, learned Advocate, whereas the respondents had the services of Mr. Nassor Mohamed, also learned Advocate.

At the very outset, I prompted Mr. Shirima to comment on the status of the application, particularly in the light of the fact that the dismissal Ruling dated the 23rd February, 2012 is no show. After dragging his feet a good deal, Mr. Shirima eventually submitted that the attached Ruling by the single judge refers the detail about the application being dismissed for non-appearance and would, thus, suffice in the exercise of the determination of the application at hand. For his part, Mr. Mohamed was minded of a different view and urged

that the dismissal Ruling was a vital document, without which the application at hand is rendered incompetent.

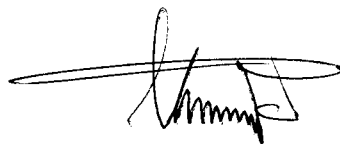
To express at once, I entirely agree with Mr. Mohamed that the dismissal Ruling is a vital document for otherwise how would the Court and the adversary party be seized of the fact that the application was, indeed, dismissed for non-appearance as well as the reasoning comprised in the decision.

That being so, I am constrained to hold that this application is incompetent for not being accompanied with a vital document. It is, accordingly, struck out, but as the infraction was prompted by the Court, *suo motu*, I give no order as to costs.

DATED at **ZANZIBAR** this 2nd day of December, 2015.

K. M. MUSSA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

A handwritten signature in black ink, appearing to read 'J. R. Kahyoza', with a long horizontal stroke extending to the left.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL