

IN THE HIGH COURT OF TANZANIA

AT TABORA

MISC. CIVIL APPLICATION No. 17 OF 2005

(Arising from PC. Civil Appeal No.1/2005
of Tabora High Court of Tanzania,
Tabora Registry).

MADUHU s/o KULWA APPLICANT
Versus.

NKINGA s/o SENI RESPONDENT

R U L I N G

3rd July, 07 & 9th August, 07.

KIHIO, J.

The applicant, Maduhu s/o Kulwa filed this application against the respondent, Nkinga s/o Seni applying that PC. Appeal No.1 of 2005 dismissed on 23/8/2005 for non appearance of the applicant be restored back to the register and heard inter parties.

The applicant's Chamber Summons is brought under rule 17 of the Civil Procedure (Appeals in Proceedings originating in Primary Courts) Rules, 1963 and is supported by the affidavit of the applicant, Maduhu s/o Kulwa.

He (applicant) deposed at paragraph 3 of his affidavit that on 20/8/2005 he felt seriously sick and was taken to a witchdoctor, one John of Malaswa village where he got treatment for four days when unconscious and on getting minimum relief on 31.8.2005 he travelled to Tabora where he was informed that his appeal had been struck out.

The respondent strongly opposed the application.

The parties are unrepresented.

The applicant submitted that he failed to enter appearance in court on 23.8.2005 because he was sick and that when he appeared at the court registry on another date to make a follow up on his appeal he was informed that his appeal had been dismissed. He further submitted that he was alone and so he had no person to send to court for purposes of notifying the court that he was sick.

The respondent submitted that the applicant was not sick as alleged. He further submitted that the applicant is having three sisters and he would send one of his sisters to notify the court that he was sick.

(applicant)
In reply, he submitted that his sisters are married.

Rule 17 of The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963 - Government Notice No.312 published on 29/5/64 provides;

"Where an appeal has been dismissed under rule 13 (2) in default of appearance by the appellant,

he or his agent may apply to the appellate court for the re - admission of the appeal, and if the court is satisfied that he was prevented by any sufficient cause from appearing either personally or by agent when the appeal was called on for hearing it may re - admit the appeal on such terms as to costs or otherwise as it thinks fit."

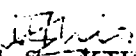
Under rule 17 of The Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules, 1963 the court has discretion to re - admit an appeal dismissed under rule 13 (2) in default of appearance by the appellant if it will be satisfied that there was sufficient cause which prevented the appellant from appearing personally or by agent when the appeal was called on for hearing.

In the present application, I am satisfied that the applicant has shown sufficient cause which prevented him from appearing when the appeal was called for hearing.

Therefore, the applicant's application succeeds and it is granted.

The applicant's appeal is re - admitted. The applicant should bear the respondent's costs for 23/8/2005.

Ordered accordingly.


S.S.S. KIHIO

JUDGE

9/8/2007

COURT:- Ruling pronounced in the presence of the parties.

J.H.S.
S.S.S. KIHIO

JUDGE

9.8.2007