

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA
PROBATE AND ADMINISTRATION CAUSE NO 6 OF 2013 IN THE MATTER
OF THE ESTATE OF THE LATE RAJINDER KUMAR BEHAL**

**AND
IN THE MATTER OF AN APPLICATION FOR PROBATE BY SUNIT SHER SINGH
VARMA AND SUNIL SURYAKANT RAVAL
AND**

**IN THE MATTER OF AN APPLICATION TO SET ASIDE THE DISMISSAL ORDER
DATED THE 22ND JULY 2014 AND TO RESTORE PROBATE CAUSE NUMBER 6
OF 2013**

**AND
MISC. CIVIL APPLICATION NO 219 OF 2016**

RULING

DR.M.OPIYO, J

By Chamber summons made under Order IX Rule 4 and section 95 of the Civil Procedure Code, Cap 33 of the Laws R.E 2002. (CPC). The applicants are seeking for an order that, this honourable court may be pleased to set aside an order dismissing Probate Cause No 06 of 2013 made on the 22nd day of July, 2014 and restore the same. Costs to be in the cause. The application is supported by affidavits of MR. SUNIT SHER SINGH VARMA and ELVAISON MARO.

Before me the applicants were represented by Mr. Elvaison Maro learned advocate the respondent had never entered appearance, thus the hearing of this application proceeded ex-parte after the applicant served the respondent through substituted services, the same was disposed off by the way of written submissions.

In his written submission it was Mr. Maro's submission that, the applicants are seeking for an order to set aside the dismissal order dated 22nd Day of July, 2014 when the probate cause No 6/2013 was dismissed for want of prosecution.

The learned Counsel submitted further that, the applicant even his then advocate were not aware of the fact that the matter was set for hearing on the 22nd July 2014 as the said probate cause was called for mention before Hon. Massengi, J on 8th day of July, 2014 and it was to be fixed for hearing on notice to the parties. No Notice was issued upon the applicant or his advocate so when the matter was called on 22nd July, 2014 none of the parties appeared and the matter was dismissed for want of prosecution. Since the applicant and his advocate were not served, they did not know of the hearing date at all.

It was his further submission that, to date the affairs of the estate of the late Rajinder Kumar Behal remains unresolved and since no one has been appointed to administer the deceased estate, the beneficiary of the said estate have remained in limbo. There has been no one with authority to distribute the estate, to pay out debts if any etc and that the purported objector Mr. Amirali Sadrudin has not been able to ventilate and assert his interest in the said estate or at all, he remains "unprotected" todate.

In his conclusion, he submitted that, an order restoring the probate cause no 06/2013 will prejudice no one instead it will offer a forum for all interested parties to be heard on merits ventilating their interests. It was his prayer that the application be granted by setting aside the dismissal order and restore the probate cause no 03/2013.

I have considered applicants written submission in support of the present application. The Provision of Order IX rule 4 of the Civil Procedure Code reads:

"4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit."

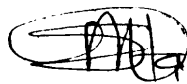
Order 9 Rule 4 of the CPC, (supra) gives power to this court to set aside dismissal order, upon good cause being shown. The question in such application is always, whether there is good cause for setting aside the dismissal order. What is "good cause" is a question of fact, and no hard and fast rules can be laid down as to what constitutes and what does not constitute a good cause. The term "good cause" is defined by Free Legal

Dictionary online, as "*a legally adequate or substantial ground or reason to take a certain action.*" I will adopt that definition in the present application.

In this case, one of the grounds advanced by the applicant was that he and his advocate were not given notice that the probate cause No 06/2013 was fixed for hearing on 22nd July, 2014, constituting the reason for their non-appearance on that date when the probate cause was dismissed for want of prosecution. From the circumstances of this case, as the records support the counsel's assertion that the court fixed a date for hearing and ordered the parties to be notified, the order which was however not fulfilled, in my view advanced reason for non-appearance on the date fixed for hearing constitutes a good cause. In any event I do not think that the respondent will be prejudiced anyhow if the application is granted, instead it will enable him as well to ventilate and assert his interest in the said estate only if the same is restored. All said the application is granted, the dismissal order dated 22nd July, 2014 is set aside and probate cause No 06/2013 is hereby restored.

No order as to costs.

Order accordingly.



DR. M. OPIYO,

JUDGE

24/05/2018