

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**DISTRICT REGISTRY**

**AT BUKOBA**

**MISC. PROBATE APPLICATION NO. 4 OF 2017**

*(Arising from Probate Appeal No. 13 of 2016 in the High Court of Tanzania at Bukoba and Probate Appeal No. 2 of 2016 of Karagwe District Court and Originated from Probate Cause No. 8 of 2015 of Nkwenda Primary Court)*

**JOHN BILISINGI RAPHAEL-----APPLICANT**

**VERSUS**

**DIANA BILISINGI-----RESPONDENT**

**RULING**

**24/9/2018 & 24/9/2018**

**MLACHA, J.**

The applicant, John Bisilingi Raphael was the appellant in Probate and Administration Appeal No. 13 of 2016. He could not appear in court on 1/11/2016. The respondent, Diana Bisilingi was the respondent in the appeal. She was present in court that day. On the absence of the applicant/appellant and on the request of the respondent, the appeal was dismissed for want of prosecution. The applicant still needed to pursue the appeal but could do so without setting aside the dismissal order hence the present application seeking to set aside the dismissal order.

When the application was placed for hearing today before me, the parties who are close relatives agreed for the dismissal order to be set aside so that they can proceed with the appeal. I have considered their request. I have also examined the affidavit of the applicant to see the reasons advanced to support the application. The main reason advanced was the sickness of the applicant in the relevant period. A medical chit was attached to support the point. It shows that he had malaria which was treated by quinine injections.

In view of proof of sickness in the relevant period and in the absence of objection from the respondent, this application has to be granted. It is granted. I set aside the dismissal order of this court dated 26/10/2016 and direct the appeal to proceed for hearing. It is ordered so. I make no order as to costs.



L.M. Mlacha

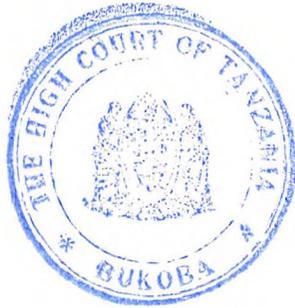
Judge

24/9/2018

**Court:** Ruling delivered in the presence of the applicant and respondent.



L.M. Mlacha



Judge

24/9/2018