

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 132 OF 2018

(Arising from the decision of HC Mwanza Civil Case No. 33 of 2017)

SENGEREMA DISTRICT COUNCILAPPLICANT

VERSUS

1. JUMA CHASAMA KAMATA

2. NATIONAL MISCROFINANCE BANK PLC.RESPONDENTS

RULING

22 & 22/01/2019

RUMANYIKA, J.:

Application for restoration of Civil Appeal No. 33 of 2017, for reasons of want of prosecution on 24/09/2018 dismissed with costs, is brought under **Order XXXIX Rule 19 of the Civil Procedure Code Cap. 33 R.E. 2002** (the CPC). It is supported by affidavit of Sarapian Matiku. Whose contents essentially, the applicants' council/solicitor herein adopted during the hearing.

Ms. S. Matiku in a nutshell submitted that according to practice of the court, before the fateful date had been that for any case scheduled for mention, like that one, parties appeared and indeed he appeared before the Deputy Registrar. Only to his surprise to learn that matter was now before the presiding Judge S.M. Rumanyika and found the appeal just

having been dismissed. That when restored, parties would have got time of it now being determined on merits. The learned solicitor stressed.

The respondent wasn't in court (not served). However, given nature of the application and, as one had nothing in the application to lose, his appearance, pursuant to my order of 22/01/2019 was dispensed with.

Dr. Mwaisondola learned counsel for the 2nd respondent submitted that the application lacked merits. As a copy of summons (annexed to the applicant) notified one of hearing not a mention date. That matter therefore, was, on the fateful date called on for hearing and the applicants' counsel knew it. That is it.

The issue, and it is trite law is whether the applicant's council/solicitor has assigned a sufficient ground for restoration of the appeal. The answer is yes! For one main reason:-

Summons issued (appended to the application) may have been for hearing yes! But the immediate Deputy Registrar's order of adjournment of 18/09/2018 was to the effect that the appeal stood for mention on 24/09/2018 (but turned out to be date of dismissal of the appeal). Hence the application.

Whereas, I will increasingly point out that there wasn't in the CPC anything called a mention date, in ail fairness case could not on that basis be dismissed. Unless last order was for hearing. As a matter of practice, cases were fixed for mention only for court to issue necessary orders inclusive of courts fixing dates of hearing. It is very unfortunate that on the

fateful date Dr. Mwaisondola submitted that matter was coming for hearing. Contrary as said, to the actual order on records. It is trite law that court's records (proceedings other than summons) are serious documents such that they cannot be casually impeached. The 18/09/2018 records spoke loud and clear about status of the matter (as it stood on the fateful date). For mention. Not for hearing! Now that for the foregoing reasons the appeal was prematurely dismissed, it is, without costs accordingly restored. Application is granted.




S.M. RUMANYIKA
JUDGE
22/01/2019