

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 415 OF 2018**

**TANZANIA MILLING CO. LTD..... APPLICANT**

**VRS**

**ZACHARIA AMANI t/a**

**ALL GOLD CO. & ANOTHER..... RESPONDENT**

*Date of last Order: 08/10/2019*

*Date of Ruling: 18/10/2019*

**R U L I N G**

**MGONYA, J.**

The Applicant in this Application, Tanzania Milling Company Limited is hereby seeking for an order of setting aside its dismissal order dated 09/06/2016 against the Applicants Application vide Civil Revision No. 42 of 2013 and prays for an order for restoration. The Application is made under Order IX Rule 4 of the Civil Procedure Code [Cap. 33 R. E. 2002]. The Application before this Court is in support of an affidavit of one **Yohanes Konda**, Advocate for the Applicant.

In support of the Application the Applicant in his Affidavit states the reason for his delay being caused by the Registry Officer who informed him that the assignment of cases would depend on the availability of lower Court proceedings. Further this advice was offered to him at the Open Registry and again he states he is not sure with the person that informed him since the officers do normally swap.

Further that the Registry Officer informed him that the Court would issue a calling for records to the trial Court so as to avail this Court with the records, and yet he should make follow-ups at the Court to know if the records of the lower Courts are availed to this Court.

The Applicant states to have made several follow up to see whether the Lower Court records have been brought to this Court but each time of the follow up they were informed the records were yet to be brought to this Court. Up to **March 2015** the lower Court record were yet to be brought before this Court. At the Open Registry the Applicant informed that on the **17/03/2017** the Court had issued a reminder for calling of the records and a copy was shown to him and was still advised to make follow ups of the same.

It is in the affidavit that the Applicant made more follow up and even at the lower Courts but without positive results and further wrote a letter to the lower Court the said letter attached to the affidavit and marked Annexure FB1.

The Applicant averred that on the 01/07/2016 one of the Court officers heard the Applicant inquiring on the lower Court records and informed the latter that the Matter was called before Hon. Mwandambo and matter and the same was dismissed for want of prosecution.

It is the averment of the Applicant that said no one in their office was aware that the matter was preceding in Court. Upon perusal of the Court records, it came to their knowledge that the matter was from **15/04/2019** assigned before Hon. Mwandambo and has been called six times where at all times the Advocates for the parties were absent since they no any knowledge that the matter was assigned and was proceeding.

Having considered the submission of the Applicant in support of the Application for setting aside the dismissal order and praying for restoration, the main issue at this juncture is whether the Applicant has established ***sufficient or good cause*** for the prayer sought. I am of the opinion that an application to set aside a dismissal order must be based on sufficient reasons

and the court has absolute discretion where sufficient cause is shown. What amounts to reasonable or sufficient cause has not been defined because the court should have the discretion to decide based on the circumstances of each case.

In this case, the Applicant claimed they were not aware of the matter being assigned to the Hon. Judge and that the matter was proceeding in the Court. The Applicant states to have made follow ups with the registry officer. In the Applicants affidavit at paragraph 3 and 6 names two officers of the Court with whom he had made follow-ups and was notified that the matter was yet to be assigned to a Judge. The case of ***BENEDICT KIMWAGA VS., PRINCIPAL SECRETARY MINISTRY OF HEALTH, Court of Appeal Tanzania in Civii Application No. 31 of 2000*** the Court held:

***"If an Affidavit mentions another person, that other person has to swear an Affidavit. However, I would add that, is so where information of that other person is material evidence because without the other Affidavit it would hearsay".***

It goes without saying that the Applicant ought to have attached the Affidavit of the person mentioned under paragraph 3 and 6 of the Affidavit.

It is in the Affidavit that the Applicant states to have made follow ups with the Lower Court and that a letter is attached to the Affidavit proving the same. In perusal of the records before me it is nowhere proved that a letter is attached that proves the Applicant to have done what he states the only letter attached there to is a letter proving Perusal of the Court file and the named letter above.

It is from the reasons above that this ***Application is hereby dismissed for want of merit.***



**L.E. MGONYA**  
**JUDGE**  
**18/10/2019**

**COURT:** Ruling delivered in chambers in the presence of Mr. Baraka Msana, Advocate for the Applicant and Ms. Veronica RMA, this 18<sup>th</sup> October, 2019.



**L.E. MGONYA**  
**JUDGE**  
**18/10/2019**