

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION No. 185 OF 2019

(Arising from Civil Revision No. 06 of 2019)

SELEMANI LUTUNDUJAAPPELLANT

VERSUS

MANAGER MKOMBOZI SACCOS & ANOTHERRESPONDENTS

RULING

31st March & 8th July 2020

TIGANGA, J.

In this Ruling the applicant seeks this court to give the following orders;

- i. That the dismissal order in respect of the above mentioned application dated on 07/11/2019 be set aside.
- ii. Service to the respondent be dispensed with.
- iii. Cost of this application be provided for.

The application was filed by a chamber summons under order IX Rule 4 and section 95 of the Civil Procedure Code [Cap 33 RE 2019]. The same was supported by an affidavit sworn by Anthony Karaba Nasimire learned counsel for the applicant. The hearing of this application had by the order

this court proceeded ex parte on the ground that the revision application which is sought to be restored was proceeding ex parte before the same was dismissed.

The hearing of the application was conducted orally, whereby Mr. Anatory Nasimire learned counsel who represented the applicant adopted the content of the affidavit filed in support of the application. In his arguments which reflect the content of the affidavit. He submitted that on 07/11/2019 when the High Court Civil Revision No. 06/2019 was dismissed, it was scheduled together with two other cases before Hon. Siyani, J. The other cases were Misc. Land Application No. 06/2018 between Robert Sengerema vs Minza Matongo, and Revision No. 05/2019 between Marry Migare Magata vs Ndera Auction Mart.

On that very date, the counsel for the applicant was also appearing before his Lordship the Judge in charge first, following that state of affairs, he asked his fellow advocate one Mwanaupanga to ask for a bench clerk to buy time so that Mr. Nasimire can finish his business before the Hon. Judge in-charge.

When Mr. Mwanaupanga was conveying the message to the bench clerk, he omitted to mention HC. Civil Revision No. 06/2019, the subject of this application. Without being aware that case was also represented by Mr. Nasimire, the bench clerk called the case and placed it before the Hon. trial judge who upon learning that the parties were absent without notice and reason, he dismissed the same for want of prosecution.

It is his submission and the facts in the affidavit that when he appeared, he found the rest two cases were not yet been called, while the case subject of these proceedings had already been dismissed. He further submitted that, the dismissal was not due to his negligence or inadvertence; it was on a mistake which was beyond his control. That being his submission, he prayed the dismissal order to be vacated, so that the said revision application can be restored.

That is a summary of the evidence as contained in the Affidavit in support of the application and the arguments by Mr. Nasimire learned counsel. Now, the law upon which the application has been filed that is Order IX Rule 4 of the Civil Procedure Code [Cap 33 RE 2019] empowers this court to restore or set aside the dismissal order if it is satisfied that there was sufficient cause for the applicant's non appearance as established in the authority of **Patson Matonya vs. The Registrar Industrial Court of Tanzania and The Attorney General**, Civil Application No. 90 of 2011 CAT Dar Es Salaam.

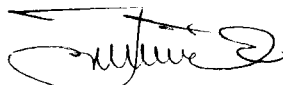
In this case considering the reason given the affidavit and the arguments by Mr. Nasimire above, I find them to be sufficient cause for his non appearance and that the reason which caused the matter to be dismissed was not due to his negligence or in action on his side but an omission by the other counsel who was sent by Mr. Nasimire to hold his brief for the Applicant.

That being the case, I find sufficient grounds to set aside the dismissal order passed on 07/11/2019, I therefore order the dismissal

order to be set aside, and the HC. Civil Revision No. 06 of 2019 be restored to proceed with hearing from where it had reached, since the dismissal was not in any way contributed to by the respondent, no order as to cost is made.

It is so ordered.

DATED at MWANZA, this 08th day of July, 2020

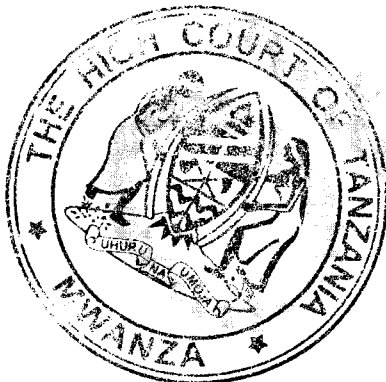


J. C. TIGANGA

JUDGE

08/07/2020

Ruling delivered in the presence of Mr. Nasimire learned counsel on line through tele conference but in the absence of the respondent.



J. C. TIGANGA

JUDGE

08/07/2020