

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. CRIMINAL APPLICATION NO. 16 OF 2020
(originating from PC. CR. Appeal No. 10 of 2019, High court of Tanzania at Shinyanga)

**1. LUSONA GAMU }
2. NGUSA GAMU }APPLICANTS**

VERSUS

MASHIKU MAGANGA.....RESPONDENT

RULING

05th October, 2020.
Mdemu, J.

This is an application for restoration of an appeal which was dismissed for want of prosecution. The application of the Applicants is supported by a joint affidavit of the two Applicants sworn on 11th of June, 2020.

At the hearing of the application today the 05th October, 2020, the Applicants appeared in person. The Respondent had the service of Mr. Sabini, Learned Advocate. In addition to the contents of their joint affidavit, the 1st Applicant submitted that they delayed to appear in court on 8th of June, 2020 because of car breakdown which they were passengers. He added that, they arrived in court the same date only to find the application has been dismissed thus decided to process this application for restoration the same day. He thought this is a sufficient cause. The 2nd Applicant had nothing useful as he concurred with the submission made by the 1st Applicant.

In reply, Mr. Sabini, resisted the application. Along with what is contained in the counter affidavit, he added that, the Applicants were negligent as they knew that the distance between Shinyanga and Meatu is

long such that, they could not manage to appear in court in time to prosecute their appeal.

He also questioned on the authenticity of bus tickets for want of names of the Applicants. He further submitted that, before this court dismissed the application, took into account that, previously, the Applicants used to come late and also in some instances, they did not appear in court at all. On that account, he thought the application has no merit thus be dismissed with costs.


In rejoinder, the two Applicants insisted that, they were not negligent the reason why they processed the application for restoration the very same day it was dismissed for want of prosecution. This is what parties told this court.

Having perused the record and considered submissions of the two parties herein, the question is one, that is, was there sufficient cause for non-appearance on the date set for want hearing of PC. Criminal Appeal No. 10 of 2019?

Parties are at variance on this question. Having my personal assessment to the reasons alluded there in, I am in all fours with the Applicants that, reasons towards non-appearance on the date fixed for hearing of their appeal was out of their control. Ofcourse, I share the sentiments with Mr. Sabin that, bus tickets annexed do not bear the names of the Applicants, but this may not be the sole reason that, on the date they never appeared in court. The annexed copy of the attendance register of this court, of which Mr. Sabini did not comment on it, is indicative that, the Applicant attended in court, late though.


Again, as submitted by the two Applicants, on noting the dismissal of their appeal, they on the same day processed this application to have their appeal restored. This, in my considered view, is evident that the Applicants were not negligent and they are devoted in pursuing and prosecuting their appeal.

In that stance, this application is hereby allowed. PC. Criminal Appeal No. 10 of 2019 is accordingly restored. Mr. Sabini prayed for costs. However, this being a criminal matter, order as to costs is thus refrained. It is so ordered.


Gerson J. Mdemu
JUDGE
05/10/2020

DATED at SHINYANGA this 5th day of October, 2020.




Gerson J. Mdemu
JUDGE
05/10/2020