

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

**MISC. CIVIL APPLICATION NO. 24 OF 2019**

**DOTTO MACHIBYA .....APPLICANT**

**VERSUS**

**1.MATHIAS MACHIBYA }  
2.MASANJA MADUHU } .....RESPONDENTS**

**RULING**

07/5/ 2020

**G. J. Mdemu, J.;**

This is an application for setting aside the dismissal order of this court and restore appeal No. 3/2018 which was dismissed for want of prosecution on 22/10/ 2019.

The application was preferred under the provisions of Order XXXIX, Rule 19 of the Civil Procedure Code, Cap. 33 and supported by the affidavit of one Dotto Machibya, the Applicant.

At the hearing of the application today the 07/5/2020, the Applicant who was present, also got a representation of Mr. Constantine Ramadhan, learned Advocate. The latter at the commencement of hearing prayed the affidavit of the Applicant be adopted to form part of his submission.

According to the submission of the learned advocate and the affidavit of the Applicant, the sole ground for non-appearance on the appointed date of hearing of the appeal was that, the Applicant means of transport got breakdown. That means, the Applicant therefore could not arrive in court on

the appointed time. Mr. Constantine thought that to be a sufficient cause for not appearing in court on time on part of the Applicant.


As stated by Mr. Constantine, and also as per the annexed bus tickets to the affidavit, it is not disputed that the Applicant on 22/10/2019 was on his way to court as a passenger in a bus registered T. 565 DKV and that, the said bus was involved in a breakdown. The version of the Respondents in their counter affidavit that the break down is not an act of God in itself is not evidence that there was no breakdown.

In that stance, and since paragraph 5 of the affidavit has not been countered, there are all reasons to believe that the Applicant on that date came to court premises late only to find the appeal dismissed.

I therefore hold that, there are sufficient cause that prevented the Applicant to attend hearing of the appeal on 22/10/2019. Accordingly, this application is hereby allowed. Dismissal order of this court dated 22/10/2019 is hereby set aside and accordingly, appeal No. 3 of 2018 is restored. Each part to bear own costs.


Order accordingly.



  
**Gerson J. Mdemu**  
**JUDGE**  
**07/05/2020**

**DATED at Shinyanga this 7<sup>th</sup> day of May, 2020.**



  
**Gerson J. Mdemu**  
**JUDGE**  
**07/5/2020**