

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPLICATION NO. 300 OF 2021
(Arising from Civil Case No. 26 of 2013)**

**BUSINESS DEVELOPMENT AND GENERAL
SERVICE COMPANY LIMITED..... APPLICANT
VERSUS
MUNICIPAL DIRECTOR, ILALA
MUNICIPAL COUNCIL..... RESPONDENT**

Date of last order: 28/10/2021

Date of Ruling: 24/11/2021

R U L I N G

MGONYA, J.

Before the court is an application made under **Order IX Rule 9 (1) of the Civil Procedure Code Cap. 33 [R. E. 2019]**, whereas the Applicant before this Court is seeking for the following Orders:

- 1) The Court be pleased to make an order to set aside the dismissal order and restore the suit for hearing inter-parties.***
- 2) Costs of the Application be provided for.***

The Application at hand is in support of an affidavit duly sworn by one **ISRAEL RWEHALULA** the Applicant's principal officer. When the matter was due for hearing, the Respondent laid a prayer before the court that matter be disposed off by way of written submissions. The prayer was granted by the Court in that respect.

The Applicant submitted that, before this honorable Court, there was a **Civil Case No. 26 of 2013** which was dismissed for want of prosecution on non appearance of the applicant herein.

The reason for non appearance advanced by the Applicant through the submission states that he had travelled to BUKOBA to take care of his mother who was seriously sick and the reason that he could not attend in court on the date when fixed for hearing of the preliminary objections on 09/10/2017.

Further, the Applicant submitted that if the application is not granted, he will suffer. On the contrary, the respondent will not be prejudiced if the application will be allowed and will not suffer any loss.

In reply, briefly the Respondent prayed this Application be dismissed since the law requires the Applicant to furnish sufficient reasons for her nonappearance on the date the matter was dismissed. The case of ***NASIBU SUNGURA VS PETER MACHUMU [1998] T.L.R*** was cited to support this

argument. And hence reminds the Court that it has the duty to ascertain if the Applicant has furnished sufficient reason.

Having gone through the parties' submissions, the main issue before the court is whether the Applicant has furnished sufficient cause to command restoration of **Civil Case No. 26 of 2013** which was dismissed for want of prosecution.

It is provided under **Order IX Rule 9 of the Civil Procedure Code Cap 33 (R. E. 2019)** that: -

*"Where the suit is wholly or partly dismissed the plaintiff shall preclude from bringing a fresh suit in respect of the same cause of action, but he may apply for an order to set the dismissal aside and, **if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.**"*

(emphasize is mine)

From the record, it is evident that the Applicant was always present in court whenever the matter was called. This alone brings weight to the Applicant's Application. Moreover, after going through the pleadings and submissions hereto, this Court is satisfied with the reason advanced for delay. I have also considered the fact that it is **in the interest of Justice** and the practice of the Court that, unless there are special

reasons to the contrary, suits are to be determined on merits, it was held in the case of **MWANZA DIRECTOR M/S NEW REFRIGIRATION COMPANY & ANOTHER VS. AGNESS MASELE [1983] TLR 99.**

Having said all of the above, I agree with the Applicant on reasons set forth for non-appearance on the proceedings; hence an order of restoration accordingly **is granted.** In the event therefore, the **dismissal order dated 9/10/2017 in Civil Case No. 26 of 2013 is hereby set aside** and the said **Civil Case is hereby restored.** The same shall proceed between the parties on merits at a date to be appointed by this Honorable Court.

Each party to bear own costs.

It is so ordered.



L. E. MGONYA

JUDGE

24/11/2021

Court: Ruling delivered before the Applicant in person, Richard RMA and in the absence of the Respondent. This 24th day of November 2021.



L. E. MGONYA

JUDGE

24/11/2021