

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 684 OF 2020

(Arising from an order of this Court in PC Civil Appeal No.87 of 2019)

DANIEL MSELE MANYONYIAPPLICANT
VERSUS
PRISCA MNYAGA NYASURARESPONDENT

RULING

Date of Last Order: 24/2/2021

Date of Judgment: 10/3/2021

MASABO, J.:

The applicant herein was a respondent in Civil Appeal No 113 of 2018 before the District Court of Temeke. Being unhappy with the decree, he sought to appeal to this court whereby he filed his appeal at Temeke district court as per the procedures pertaining to matrimonial appeals. The appeal was transmitted and admitted in this court as PC Civil Appeal No. 87 of 2019. His appeal was dismissed for want of prosecution. Upon obtaining an order for extension of time, he is now before this court praying that the dismissal order be set aside and the appeal be heard on merit. In the chamber summons accompanying the application he has deposed that upon lodging the appeal at Temeke district Court he was told to wait for confirmation from this registry as to the transmission of his appeal to this court. Upon visiting the Registry, he was told that had the records been transmitted he would have

been notified through mobile phone. As he had received no notification already, he should go home and wait for one. He dutifully followed the advice but the notification never came only to discover latter that his appeal was dismissed for want of prosecution. The Respondent sternly contested through an affidavit. She argued that the dismissal order was for no other reason than the appellant's negligence as having filed the appeal in the district court he ever followed up to establish the status.

When the application was called on for hearing, the applicant appeared represented by Mr. Charles Alex learned counsel whereas the respondent appeared in person.

In support of the application, Mr. Alex adopted the applicant's affidavit and submitted that the dismissal order was occasioned by reasons other than the applicants negligence. He placed blame to the court for its failure to notify the applicant of the status of the appeal and especially, its transmission to this court. Based on this he invited me to grant the application and set aside the dismissal order so as to allow the parties to be heard on merit. On her party, the respondent submitted that the appellant cannot escape the label of negligence because, had he followed up the matter he would have been informed just as she was informed when she went to inquire on execution at the district court.

I have carefully considered the content of the affidavit, the counter affidavit as well as the submission rendered by both parties. This being an application

for restoration an appeal dismissed owing to the appellant's nonappearance on the date of hearing, is regulated by Order XXXIX rule 19 which states that:

19. Where an appeal is dismissed under sub-rule (2), of rule 11 or rule 17 or rule 18, the appellant may apply to the Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

Therefore, the only issue for determination is whether the applicant has demonstrated a good cause for his non-appearance on date of hearing. As it could be discerned from the affidavit and submission in support of the application the applicant has demonstrated one ground only, namely lack of notice as to the transmission of his appeal from the first appellate court. Having considered his disposition, I am convinced that the applicant has demonstrated a good cause. I am saying so because, as correctly deponed by the applicants, unlike normal appeals, appeals arising from matrimonial appeals are lodged in the court whose decision is appealed against. Thereafter, the appeal is transmitted to this court. In the absence of notification, the appellant would not know if the appeal has been transmitted. Since there is no proof that he was notified, I have found it to

be in the interest of justice that the appeal be restored so that the parties can be heard on merit.

Accordingly, the dismissal order is set aside and the appeal, PC Civil Appeal No. 87 of 2019 is hereby restored. Costs shall be shared.

Dated at Dar es Salaam this 10th day of March 2021.



J.L. MASABO
JUDGE