

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 342 OF 2020**

**TEGNUS E. PULAPULA..... APPLICANT**

***VERSUS***

**AGUNELA Z. SWEDI..... RESPONDENT**

*Date of last order: 11/02/2021*

*Date of Ruling: 09/04/2021*

**R U L I N G**

**MGONYA, J.**

This is an application made under **Order XXXIX Rule 19 of the Civil Procedure Code [Cap. 33 R.E. 2019]** and **section 95 of the same Act**, whereas the Applicant before this Court is seeking:

- a) That the Honorable Court may be pleased re-admit PC. Civil Appeal No. 58/2020 which was dismissed for want of prosecution.*
- b) Cost of this Application be costs in due course.*
- c) Any other order(s) as this Honorable Court may deem fit or/and just equitable to grant.*

This Court in cause of hearing the Application ordered the same be heard by way of written submission. The parties adhered to the Court's order, and complied to the schedule; hence this Ruling.

The Applicant submitted before this Court that **PC Civil Appeal No.58/2019** was dismissed for want of prosecution as a result of nonappearance of the Appellant who is the Applicant herein. After receiving such information of the dismissal, it is instantly that he then filed this application at hand.

The Applicant averred that the reason for his absence when the appeal was called for mention/hearing was not due to negligence but due to lack of information from Ulanga District Court and the High Court. It was when the Applicant had filed his second Appeal with the Ulanga District Court that he was informed that the file of Ulanga District Court and the Primary Court file will both be transferred to the High Court for his Appeal. And that he was informed to make follow ups at Ulanga District Court to see whether the records have been forwarded to the High Court.

The Applicant further states that he made follow ups at the Ulanga District Court two to three times without proper answers as to whether the records have been forwarded to the High Court for the appeal and issuance of summons. It is then

when the Applicant decided ask his brother living in Dar es salaam to make followups of the appeal and that is when he was informed that the same had been dismissed for nonappearance.

It was the Applicant's contention that in the Petition for his appeal he had provided his phone number for ease of communication but all the same he was not informed of anything neither by the Ulanga District Court nor the High Court until his appeal was dismissed in his absence on 18/06/2020. The Applicant further invites the Court to invoke the provisions of **Article 107A (e) of the Constitution** where the Court is urged not to be tied up with technicalities.

In reply, the Respondent submitted that the Applicant's Affidavit when read thoroughly does not contain any reasonable ground for this Court to grant the Applicant's prayer. On the contrary the law directs the Applicant to be the one to inform the Respondent of the Appeal he had filed before the Court and not the other way round the provisions of **Order XXXIX Rule 18 of the Civil Procedure Code (Supra)** was cited to support her argument.

Moreover, the Respondent averred that, the Applicant in his Affidavit and subsequently in his written submission did not provide any sufficient cause which prevented him from appearing before the Court on the date that the matter was

scheduled of which required his appearance and from the above the dismissed appeal should not be re-admitted. The provisions of **Order XXXIX Rule 19 of the Civil Procedure Code (Supra)** was cited to support the contention that the Applicant lacks sufficient cause for re admitting the appeal.

From the submissions of the parties as filed before this Court on argument for and against the Application by the Applicant, I am from this juncture at a position to rule over the prayers by the Applicant.

Having gone through the records before this Court where the Applicant seeks this Court to re admit an appeal that was dismissed for want of prosecution, the Applicant in his submission admits that it was for the reason of nonappearance that this Honorable Court dismissed the Appeal.

The Applicant states that, his nonappearance was neither negligence nor due diligence on his part but was on the part of the Ulanga District Court and the High Court. The Applicants states not to have been given proper answers on whether the records had been transferred to the High Court by the Ulanga District Court, and that the High Court where his Appeal was filed he had left his phone number for ease of communication and there was no communication that was made to him by such Court.

The Respondent claims that the Applicant herein was supposed to make efforts or make due diligence to make sure his appeal is a success, and it is unexplainable how one would not have done that for his appeal.

From the above it is clear that the Applicant throws blames for his failure to appear on the date that the matter was scheduled for mention/hearing to the Courts. First it is the Ulanga District Court that is blamed for not providing the Applicant with proper answers as to whether the records had been forwarded to the High Court. And secondly it is the High Court that is blamed for failure to communicate to him on the status of his appeal before the Court since he had left his phone number.

It is from the above that, I join hands with the Respondent that the Applicant had the duty to make sure he made followups on his case and not shoulder the Court with that duty on his behalf. It was the Applicant's duty to make followups at Ulanga District Court and if he was not being given proper answers, he had room to write a complaint letter and file it with the Court and a copy of the same attached to the Application to prove that he made followups at the Ulanga District Court.

Moreover, leaving a phone number for the purpose of communication was a proper step but the Applicant does not

state with whom he left his phone number with. Further, it is not mandatory that the Court will call every party to proceeding of which is quite impossible. The proper way is for the parties to make followups to their cases. Mere statements by the Applicant herein do not hold water or sufficient cause for the Applicant to have failed to appear before the Court.

I believe Courts of laws are established to dispense justice and doing so there are rules and procedures to be adhered to as provided by the law. Therefore, anyone who knocks the doors of the Court is required to abide with the rules and procedures as provided by the laws. Matters before the Courts are filed by parties and it is the parties that are required to move the Court to meet justice.

It was the duty of the Applicant to move the High Court upon his appeal to ensure justice is met. Therefore, the Applicant stating to have made followups and had no proper answers given to him and leaving his phone number **is not a sufficient reason for re admission of the Appeal**. It appears the Applicant was reluctant and did not make followups at the High Court nor the District Court at Ulanga the same appears to me to be an **afterthought** after the dismissal of his appeal.

Having said all of the above, **this Application is dismissed for lack of sufficient cause to re admit the appeal dismissed.**

It is so ordered.

Each party to bear their own cost.



**L. E. MGONYA  
JUDGE  
09/04/2021**



**Court:** Ruling delivered in my chamber in the presence of the both parties and Ms. Msuya Bench Clarke in my chamber today 09<sup>th</sup> April, 2021.



**L. E. MGONYA  
JUDGE  
09/04/2021**

