

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL APPLICATION NO. 497 OF 2020
ELIZABETH RAYMOND..... APPLICANT
VERSUS
GEORGE RAYMOND MWANDIKE.....RESPONDENT**

Date of last order: 06/05/2021

Date of Ruling: 21/05/2021

R U L I N G

MGONYA, J.

This is an application made under **Order IX Rule 4 of the Civil Procedure Code Cap. 33 [R.E. 2019]**, whereas the Applicant before this Court is seeking for:

- 1.) This, Honorable Court be pleased to restore PC Civil Appeal No. 29 of 2020 dismissed for want of prosecution in order to be determined into merit.***
- 2.) Costs of the Application***

The Application at hand was made in support of an affidavit sworn by one **ELIZABETH RAYMOND**. When the matter was due for hearing the Respondent laid a prayer before the matter to be disposed of by way of written submission, a prayer that was granted by the Court.

The Applicant seeks before this Court an order for restoring **PC Civil Appeal No. 29 of 2020** which was dismissed for want of prosecution. The Applicant in the

submission states that after the order of this Court on the **09/07/2020**, the Applicant fell sick of the **13/07/2020** which was four days from the date of the order.

Moreover, such sickness was diagnosed to be streptococcal infection which led for the Applicant to be admitted in the Hospital and hence failed to comply with the scheduling order to have filed her submission. It is in the records before this Court that the Applicant has filed hospital documents to support the averments above.

In reply, the Respondent in the other hand prays that 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*** was cited to support such argument. And hence reminds the Court that it has the duty to ascertain if the Applicant has furnished sufficient reason.

The Respondent highly contends that the act by the Applicant to have failed to file the submission in time was to be stated in the affidavit of the initiatives taken within the four days before she fell sick. The Respondent states that the Applicant engaged an Advocate as stated in paragraph **6,7** and **8**, who perused the file and became aware of judgment to have been scheduled on **28/08/2020**, knowing that the Applicant had filed her submission. Further, still the Advocate

appeared in Court on **28/08/2020** to witness the matter being dismissed. This shows that the Applicant and the Advocate are playing with the precious time of the Court. Further, the Respondent maintains that the actions of the Applicant and the Advocate are not sufficient enough to deserve the mercy of this Court.

Having gone through the above submissions of the parties as submitted, the main issue at hand within this Application is for the Applicant to be granted an order for restoration of **PC Civil Appeal No. 29 of 2020** which was dismissed for want of prosecution upon satisfying this Court with the good cause. However, the prayer is as well opposed by the Respondent in the claim that the Applicant is not eligible to enjoy the grant of such order since she lacks sufficient reason.

Sufficient reason in one way means the principle that all events must ultimately be explicable in terms of the reasons a divine being would have had for choosing one alternative rather than another. In the case of **TANGA CEMENT COMPANY LIMITED VS. JUMANNE D. MASANGWA & AMOS A. MWALWANDA, Civil Application No. 6 of 2001**, the Court of Appeal stated briefly what can amount to sufficient cause to be:

"What amount to sufficient cause has not been defined. From decided cases a number of factors

has to be taken into account, including whether or not the application has been brought promptly, the absence of any or valid explanation for the delay; lack of diligence on the part of the applicant.”

Therefore, bearing in mind and considering the fact that the Applicant states to have been sick and hospitalized, and for the fact that sickness is an act above human nature or decision of the human being to plan on it, I am of the firm view that the reason of the Applicant being sick together with the hospital document that proves the sickness and since the Applicant had been admitted to me **amounts to sufficient reason in the circumstance of this case.** It is however evident that Applicant is suffering and is on ongoing treatment as seen in annexures.

Also, in the case of ***SHOCKED AND ANOTHER VS. GOLDSCHMIDTAND OTHERS [1998] 1 ALL ER.*** It was stated that the Applicant's conduct before the alleged nonappearance should be taken into consideration in an application of this nature. 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 determined on merits. See also in the case of ***MWANZA DIRECTOR M/S NEW REFRIGIRATION COMPANY & ANOTHER VS. AGNESS MASELE [1983] TLR 99.***

Having said all of the above for the reasons stated by Counsel for the Applicant I agree with the Counsel for the Applicant on reasons set forth for an order of restoration hence **this application is granted.**

Therefore, the order dated **28/08/2020** in **PC Civil Appeal No. 29 Of 2020** is hereby **set aside and the said appeal is restored to and shall proceed between the parties at a date appointed by this Honorable Court.**

Each party to bear their own costs.

It is so ordered.

Right of appeal explained.



L. E. MGONYA
JUDGE
21/05/2021

Court: Ruling delivered in chamber in the presence of the Applicant in person and Ms. Msuya, RMA this 21st day of May, 2021.



L. E. MGONYA
JUDGE
21/05/2021