

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC CIVIL APPLICATION NO. 34 OF 2021

(Arising from Civil Case No. 15 of 2006)

CELINA MICHAELAPPLICANT

VERSUS

MTANZANIA NEWS PAPER LTD & 6 OTHERSRESPONDENTS

RULING

21st & 30th June, 2021

RUMANYIKA, J.:

The application is with respect to decision of this court (Mgeyekwa, J) dated 29/3/2021 brought under Order IX Rule 9 (1) of the Civil Procedure Code Cap 33 RE. 2019 for setting aside the dismissal order. It is supported by affidavit of Celina Michael (the applicant) whose contents, Ms. Hidaya Haruna learned counsel for applicant adopted during audio teleconference hearing on 21/6/2021.

Dr. George Mwaisondola learned counsel appeared for Mtanzania Newspaper Limited, Mwanaspoti Newspaper Limited, The Editor ITV, and The Editor Star TV (the 1st, 2nd, 3rd, 4th and 5th respondents) respectively.

However, when the application was, say for the 3rd round called on for hearing, once again The Editor Channel Ten and Rai Newspaper Limited

(the 6th and 7th respondents) respectively they were reported not traced therefore not served. Having had prayed for another two month's adjournment, but on reflection, once and for all the learned counsel for the applicant dropped the last two respondents.

It means therefore through mobile numbers 0766308358 and 0757094227 respectively I heard only the applicant and the five (5) respondents. Dr. Mwaisondola having had withdrawn a time-bar preliminary point of objection according to records formally filed on 19/5/2021.

Ms. Hidaya Haruna learned counsel submitted that for some reasons the matter having had been adjourned, and a registry officer one Evodia she always asked her to hold on till further notice, on further inquiries, but this time around the applicant found the case had been dismissed for want of prosecution but he had not actually been notified. We humbly submit and pray that for the interest of justice the application be granted. The learned counsel submitted. That is all.

On his side, but having had adopted contents of the counter affidavit Dr. G. Mwaisondola learned counsel submitted; **(1)** that under Order IX

Rule IX of the Civil Procedure Code Cap 33 RE.2019 the court had discretion yes, but the application lacked merits because no sufficient course was given for five rounds nonappearance of the applicant **(2)** that no affidavit of the alleged registry officer was appended to substantiate the allegations. We pray that the application be dismissed with costs. Dr. Mwaiondola learned counsel contended. That is all.

The central issue is whether, when the case was called on the fateful date 29/3/2021 for hearing the applicant was duly notified. The respective opening statement of the court reads thus;

"court; Following the global outbreak of the world wide Covid 19 pandemic (corona virus) and pursuant to the order 20/4/2020 parties are present suit is heard by way of Audio teleconference"

Then Dr. G. Mwaiondola learned counsel is on record having had blamed the applicant for the latter's absence and for that reasons he successfully prayed for a dismissal order.

I would agree with Dr. G. Mwaiondola learned counsel that the applicant was duty bound to always militantly following it up short of which the matter was liable to be dismissed yes, but subject to the court's orders,

direction and proof that the latter was duly notified but defaulted. However strong might be parties' militancy to case never extended to guessing when exactly was the case called on, who was the presiding judge and or the latter's availability etc. Parties may have had been aware that due to the deadly Corona Virus pandemic cases were, by way of digital platform in this case audio teleconferencing to be specific yes, but from the records available Dr. G. Mwaisondola learned counsel he did not, in his submissions or counter affidavit show the mobile number(s) though which applicant or her representative was, if at all served for 29/3/2021 much as, the applicant's complaints that for this one she was caught unaware it was not sufficiently disputed. After all the balance of conveniences would dictate that granting the instant application it prejudiced no party.

In the upshot, the application is granted. Each party shall bear their costs given peculiar circumstances of the matter.



S. M. RUMANYIKA

JUDGE

26/06/2021

The ruling delivered under my hand and seal of the court in chambers this 30/6/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE

30/06/2021