

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF DAR ES SALAAM
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 608 OF 2017**

**MULTI TRAVEL & TOURS LIMITED..... APPLICANT
*VERSUS***

**STELLA MAEDA.....1ST RESPONDENT
ELIAS NJAMAS.....2ND RESPONDENT
MUSTAFA OMARI.....3RD RESPONDENT
YASIN TENDEGA..... 4TH RESPONDENT**

Date of Last Order: 09/04/2021

Date of Ruling: 15/06/2021

R U L I N G

MGONYA, J.

The Applicant herein made this Application under **section 95 and Order IX Rule 9 (1) and (2) of the Civil Procedure Code [Cap. 33 R. E. 2019]**. The Applicant's application is supported by an affidavit affirmed by the Director of the Applicant Gulamabbas Hassanali Fazal Dewji seeking for an order:

- 1. That, this Honourable Court may be pleased to make an order setting aside the dismissal order to Civil Case No. 12 of 2014 dated the 4th day of September,2017 and a day be appointed for proceeding with the suit;***

In hearing, the Applicant who was represented by Mr. Roman Selasini Lamwai Learned Advocate prayed for the matter to be heard by way of written submission a prayer that was granted by this Court.

I have read thoroughly the pleadings and rival submissions of the parties of which I do not intend to reproduce but will take consideration of each. In the event therefore, I proceed in determining the Application for setting aside the dismissal order as herein below:

In regards to the Affidavit by the Applicant it falls within the contents of paragraph **7**, **8** and **9** which shows that the Applicant was sick and had to travel overseas for treatment. Yet paragraph **9** also reiterates that a witness that was expected to appear in Court to testify was also bereaved and hence the matter could not proceed for such reasons.

The Respondents on countering to such reasons as to why the matter could not proceed, are of the argument that the reasons stated by the applicant are not genuine and were intentionally planned so as to bar the matter from proceeding.

It is before this Court in records that the matter was dismissed before the Court for failure of the Plaintiff to prosecute the matter which was further referred to the abuse of Court process.

The Applicant before this Court in the submissions states that his health was deteriorating and needed to go for checkup and treatment in Turkey. It is the Applicant's claim that even if he was to appear in Court on the date fixed for hearing still, he could not proceed since the illness suffered required him to have attentive care.

In consideration of the averments in the affidavit, the applicant's submission and the reason set forth advanced to support the application as stated by the Applicant; and the fact that the medical letters and results have been availed before me by being attached to the affidavit, this application calls for granting of the said prayer. I say so as suffering from sickness is never one's choice. In this circumstance, it is my considered view that, the evidence before the court has proved that the Applicant was sick and tickets proved of his travel. It is from the reasons above, **this application is hereby granted.**

In the event therefore the dismissal order dated 04/09/2017 is hereby set aside and I direct that the matter proceed for hearing on merits.

It is so ordered.



**L. E. MGONYA
JUDGE
15/06/2021**

Court: Ruling delivered in my chambers in the presence of Ms. Jackline Massawe, Advocate for the Applicant and Ms. Msuya RMA, this 15th day of June, 2021.



A handwritten signature in blue ink, appearing to read "Mgonya", with a long horizontal stroke extending to the right.

L. E. MGONYA
JUDGE
15/06/2021