

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**MISC. CIVIL APPLICATION NO. 40 OF 2020**

**GRACE MAHUMBUKA.....APPLICANT**

**VERSUS**

**THE BORD OF TRUSTEES NATIONAL SOCIAL  
SECURITY FUND (NSSF).....1<sup>ST</sup> RESPONDENT**

**THE REGIONAL MANAGER FOR KAGERA SOCIAL  
SECURITY FUND.....2<sup>ND</sup> RESPONDENT**

*(Application for readmission of Civil Appeal No. 20 of 2018  
dismissed on 19/11/2020 by this Court)*

**RULING**

**5 & 9 July, 2021**

**MGETTA, J:**

A brief background of this appeal is that on 30/04/2015, Civil Case No. 6 of 2007 which was instituted by Grace Mahumbuka, the then Plaintiff (henceforth the applicant) at the Resident Magistrate's Court of Kagera (henceforth the trial court) was dismissed for want of prosecution. When she became aware of the dismissal order, she found herself late to lodge application for setting aside that dismissal order. The only option she remained with was to file Misc. Application No. 89 of 2016 at the trial court, seeking for extension of time to file an application for setting aside the dismissal order of 30/4/2015. The application was filed on 3/8/2016. It was heard and finally a decision was reached by Hon.

P. J. Rwehabula, RM, on 10/5/2017, who gave her 30 days within which to file application at the trial court for setting aside dismissed order of 30/4/2015. She was supposed to file the application on or by 12/6/2017 (working days), that is to say that 30 days given to her on 10/5/2017 was to expire on 12/6/2017. She however did not comply with the trial court order. Instead of filing it within 30 days as ordered by the trial court, she filed the same on 6/2/2018. Although, she was late to file it for more than seven months, Hon. Kapokolo RM entertained it in Misc. application No. 5 of 2018 regardless that it was filed late in disregard of the given 30 days. He finally on 26/9/2018 delivered a ruling refusing to set aside the dismissal order and readmit Civil Case No. 6 of 2007.

She was aggrieved by Hon. Kapokolo RM's ruling of 26/9/2018; and, on 12/11/2018 she lodged an appeal to this court by way of memorandum of appeal in Civil Appeal No. 20 of 2018. When the appeal was called on for hearing on 26/10/2010, one Daudi Hassani appeared and informed the court that the appellant was sick and was in Mwanza receiving treatments. Hon. Kilekamajenga, J ordered that the appellant be advised to go to High Court Mwanza so that, the case would be heard by way of video conference. The appeal was therefore adjourned up to 27/10/2020. When the appeal was again called on for hearing for the second time, Daudi Hassani appeared again and informed the court that the appellant arrived in Mwanza and later on was

transferred to KCMC, Moshi where she was attending treatment. Once again, Hon. Kilekamajenga, J adjourned and set the appeal for hearing on 19/11/2020. When the appeal was called on for hearing for the third time on 19/11/2020, neither the said Daudi Hassani nor the appellant appeared. Furthermore, there was no any information of the whereabouts of the appellant. His lordship Kilekamajenga, J became intolerable. He did not adjourn it again, but found that, the appellant parked Civil Appeal No. 20 of 2018 and go. He decided to dismiss the appeal with cost.

On 18/12/2020, the applicant filed this application seeking for the restoration of Civil Appeal No. 20 of 2018 dismissed on 19/11/2020 by Hon. Kilekamajenga, J. She moved this court under **Order XXXIX rule 19 of the Civil Procedure Code Act of 1966** (henceforth the CPC) praying and I quote that:

*"That this Honourable Court be pleased to re-admit Civil Appeal No. 20/2018 which was dismissed for nonappearance on the 19<sup>th</sup> November, 2020".*

When the application was called on for hearing, the applicant appeared in person unrepresented; while the two respondents were represented by Ms Nancy G. Wanda, the learned state attorney. Actually, in order to convince this court, she ought to give sufficient reasons as to why she never appeared to prosecute

her appeal in Civil Appeal No. 20 of 2018. I went through her affidavit supporting her prayer. for ease of reference, I quote relevant part of her affidavit contents:

*"3. That the applicant has always been attending her appeal till July, 2020 when she became sick and required to attend treatment in India and wrote a letter to notify this honourable Court on the same and sent one Dauda B. Hassan who further notified this honourable Court on the same. The copy of latter is hereby annexed and marked "A" to form part of this application;*

*4. That her appeal was further adjourned and scheduled for hearing preliminary objection raised but the respondent on the 19<sup>th</sup> November, 2020;*

*5. That the applicant was on the 18<sup>th</sup> November, 2020 at around 20:40 hours arrested by PCCB officer Karagwe District accompanied by Kayanga Ward Executive Officer and remanded at Kayanga Police Station and on the 19<sup>th</sup> November, 2020 was transported to the PCCB Regional officer at Bukoba. The copy of Kayanga WEO is hereby annexed and marked "AK" to form part of this application;*

*6. That the applicant further informed the PCCB officers and State Attorney on the existence of her appeal which was at the stage of hearing*

*preliminary objection raised by the respondents on the 19<sup>th</sup> November, 2020 which she was required to attend;*

*7. That, the above officers further promised to escort her to this court and later she was informed on the absence of female escort;*

*8. That the applicant was on the 19<sup>th</sup> November, 2020 brought before Bukoba Resident Magistrate Court and informed of Criminal allegations filed against her through criminal case No. 266 of 2020 by reading to her a charge and was later granted bail. The copy of charge sheet is hereby annexed and marked "AK1" to form part of this application.*

*9. That the applicant upon being granted bail she found her entire appeal already dismissed by this honourable court for her absence and requested for copy of order which was supplied to her on the 2<sup>nd</sup> December, 2020. The copy of order is hereby annexed and marked "AK2" to form part of this application".*

In her submission, she adopted the grounds contained in the affidavit. Ground No. 3 has no merits because for the first time what Daudi Hassan told the court on 26/10/2020 is that the appellant was in Mwanza attending treatment, the information that made Hon. Kilekamajenga, J to order the appeal to be heard in Mwanza High Court via Video Conference. That did not take place

because she was nowhere to be seen. The appeal was adjourned upto 27/10/2020 when again Daudi Hassani informed the court that she was transferred to KCMC Moshi where she was attending treatment. However, the Hon. Kilekamajenga, J by his wisdom adjourned the appeal again and set it for hearing on 19/11/2020, the date both the appellant and Daudi Hassani did not show up. The court had no information of her whereabouts and the appeal was accordingly dismissed.

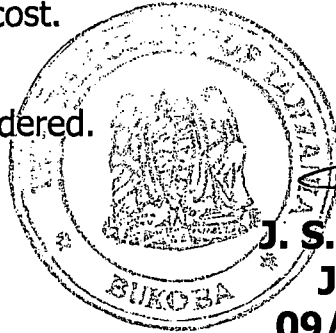
Yes, she notified this court in her letter dated 08/7/2020 she would travel to India for treatment and expected back to Tanzania on 27/01/2021. However, I expected her to bring travel ticket and or hospital chit indicating that indeed she travelled to India for treatment; or that she was in KCMC, Moshi being taken care of her sickness. I thus doubt her bare explanation.

As regards to her criminal charges at Resident Magistrate Court, I find no sufficient reasons proving that she was denied of female escort who could bring her in this court to attend to her Civil Appeal No. 20 of 2018 scheduled for hearing on the date it was dismissed.

By and large, I find the act and behaviors of the applicant intolerable. She seems to be not serious and has not demonstrated sufficient grounds to convince this court to give her what she has sought. Her affidavit contains only afterthought, but without plausible reasons.

In the event, I find the application not meritorious. It is accordingly dismissed with cost.

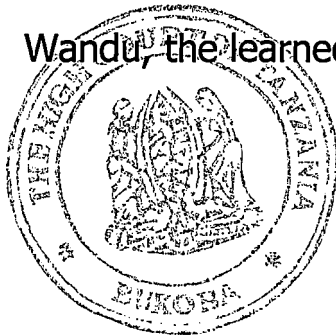
It is so ordered.



  
**J. S. MGETTA**  
**JUDGE**  
**09/7/2021**

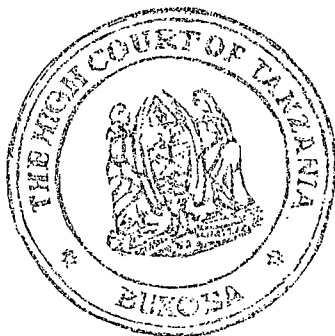
**COURT:** This ruling is delivered today this 9<sup>th</sup> July, 2021 in the presence of the applicant in person and in the presence of Ms Nancy G.

Wandu, the learned state attorney for the respondents.



  
**J. S. MGETTA**  
**JUDGE**  
**09/7/2021**

**COURT:** Right of appeal to the Court of Appeal is fully explained.



  
**J. S. MGETTA**  
**JUDGE**  
**09/7/2021**