

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA**

**MISCELLANEOUS CIVIL APPLICATION NO. 24 OF 2020**

***(Arising from PC Probate Appeal No. 5 of 2019 before Utamwa J. in  
the High Court of the United Republic of Tanzania at Mbeya)***

**REHEMA ANTHONY MWAKYOMA ..... APPLICANT**

**VERSUS**

**TENI MWAKAJILA ..... RESPONDENT**

**RULING**

**05 & 06/08/2021**

**A.A. MBAGWA, J.**

This is an application for re-admission of an appeal made under Rule 17 of the Civil Procedure (Appeals in Proceedings Originating in Primary Courts) Rules of 1964, Government Notice No. 312 of 1964 herein after to be referred to as the Rules and Section 95 of the Civil Procedure Code [Cap. 33 R.E. 2019]

The applicant herein is seeking to have her appeal namely, PC. Probate Appeal No.5 of 2019 re-admitted after it was dismissed for non-appearance on 22<sup>nd</sup> April, 2020 by this Court (Hon. Utamwa J.)

The prayers by the applicant are contained in the chamber summons which is supported by affidavit sworn by the applicant. In her affidavit, the applicant states that on the material day i.e. on 22<sup>nd</sup> April, 2020 she just arrived in court at around 10:45hrs only to find that the appeal was already dismissed. She states further that the reason for delay was due to transport

challenges as on the material day she had to travel from Momba in Songwe region to Mbeya which is almost ninety (90) kilometers

When this application came for hearing the applicant appeared and had no legal representation whereas the respondent was present and had the services of Jeniffer Biko, learned Advocate.

Submitting in support of the application, the applicant reiterated what is stated in the affidavit. She submitted that she did not intend to be absent rather her late coming was due to transport difficulties which she encountered. She told the court that the means of transport from Nkala-Momba to Mbeya are a big challenge as they have to use cargo trucks in order to get to Mbeya. She prayed the court to re-admit her appeal so that the same be heard on merits.

The respondent's counsel Ms Jeniffer Biko vehemently opposed the application. It was her submission that the applicant has no sufficient grounds to warrant restoration of the appeal. She dismissed transport challenges as a good ground saying that had the applicant been diligent enough, she could have appeared in court on time for from Momba to Mbeya it is only ninety (90) kilometers. Jeniffer further submitted that the applicant failed to prove her contention as she could not produce fare tickets or death certificate to exhibit that she, in fact, travelled on the material day. In support of her submission, the learned counsel Jeniffer referred this court to the cases of **Wambura N. J. Waryuba vs The Principal Secretary Ministry of Finance & Another, Civil Application No. 320/01 of 2020** and **Felix Tumbo Kisima vs TTC Limited & Another 1997 [TLR] TLR 57**

Jeniffer stressed that the decisions in both cases are to the effect that the applicant must demonstrate sufficient reasons and where the applicant alleges travelling for funeral activities, he or she must produce fare tickets and death certificate, among other things.

As hinted above, this application is made under Rule 17 of the Rules as hinted above.

**17. *Re-admission of appeal dismissed for default***

***Where an appeal has been dismissed under subrule (2) of 13 in default of appearance by the appellant, he or his agent may apply to the appellate court for the re-admission of the appeal; and if the court is satisfied that he was prevented by any sufficient cause from appearing either personally or by agent when the appeal was called on for hearing it may re-admit the appeal on such terms as to costs or otherwise as it thinks fit.***

From the above provision, there is no gainsaying that the central issue for determination of this application is whether the applicant was prevented by any sufficient cause from appearing in court when the appeal was called on for hearing

I have thoroughly gone through the rival submissions, depositions of the parties and the court record in PC. Probate Appeal No.5 of 2019.

From the applicant's affidavit, it is clear that on 22<sup>nd</sup> April, 2020 the applicant came to court late due to transport predicaments. She arrived in court at 10:45hrs only to find that her appeal had already been called on and dismissed on the basis on non-appearance. Further, the court record in PC. Probate Appeal No.5 of 2019 tells it all that the matter came in court only once before it was dismissed. For the first time, the matter came on 6<sup>th</sup>

March 2020 when Ms Marry Gatuna, Adv appeared holding briefs of Mr. James Kyando for the respondent, on the one part, and the applicant was present in person, on the other part. Ms Marry Gatuna prayed for adjournment and the matter was fixed for hearing on 22<sup>nd</sup> April, 2020. When the appeal came for hearing on 22<sup>nd</sup> April, 2020 the applicant was absent as she was on her way from Momba to the Court at Mbeya. Marry Gatuna prayed the court to dismiss the appeal with costs, a prayer which was duly granted by the Court via its ruling dated 22<sup>nd</sup> April, 2020.

During her submission, Jeniffer Biko insisted that the applicant ought to tender fare tickets and death certificate. In rebuttal, the applicant submitted that she could not obtain fare tickets as they use cargo trucks to come to Mbeya hence it was next to impossible to get the tickets.

In the case of **Wambura N. J. Waryuba vs The Principal Secretary Ministry of Finance & Another, Civil Application No. 320/01 of 2020** which was cited by the respondent's counsel and the case **Jalia Felix Rutihwa vs Kalokola Bweshwa & Another, Civil Application No. 392/01 of 2020**, CAT at Dar es Salaam, though the matter in issue was of extension of time, the Court had occasion to deliberate on the question of sufficient or good cause. The Court held that there is no agreed definition of what amounts to a good cause instead the court invariably considers various factors.

From the holdings of the Court it is my considered view that a good cause is a factual issue of which determination depends on the particular circumstances of each case.

Ordinarily, courts start business at 9:00hrs thus, the applicant was late for one hour and forty-five minutes as she arrived in court at 10:45hrs.

As regards to non-production of fare tickets, I agree with the applicant that it is not always practicable to have fare tickets whenever a person travels from one place to another. The applicant said it well that she used cargo truck to travel to Mbeya hence she could not obtain fare ticket. On account of the circumstances in this case I am satisfied that the applicant's appearance was prevented by transport problems which, in my view, is a sufficient cause.


Alive to the overriding objective and considering that it was the first time for the applicant to miss the court and given that the delay was out of her control or influence, I am satisfied that, in the circumstances of this case, the applicant has demonstrated a sufficient cause to justify re-admission of PC. Probate Appeal No.5 of 2019.

I therefore find this application meritorious and consequently grant an order for re-admission. PC. Probate Appeal No.5 of 2019 is thus re-admitted. No order as to costs.

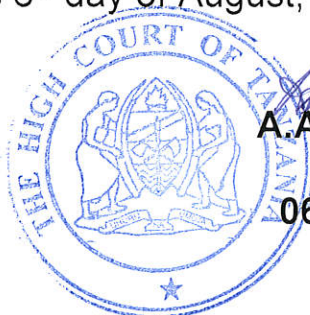
It is so ordered

Right of appeal is fully explained



  
**A.A. Mbagwa**  
Judge  
06/08/2021

This ruling has been delivered in the presence of the applicant and Advocate Edina Mwamlima holding briefs of Advocate Jeniffer Biko for the respondent this 6<sup>th</sup> day of August, 2021.



  
**A.A. Mbagwa**  
Judge  
06/08/2021