

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

MISC. CIVIL APPLICATION NO. 25 OF 2020

(Arising from Urambo District Court Civil Appeal No. 2/2018 from Original Civil Case No. 119/2018 at Urban Primary Court Urambo and PC. Civil Appeal No. 22/2019 High Court of Tabora)

NYANGU MASUNGAAPPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

Date: 04/8/2021-13/8/2021

BAHATI, J.:

By chamber summons filed on 3rd November, 2020, this application for the restoration of PC CIVIL No.22 of 2019 to grant an order for re-admission of an appeal which was preferred by the applicant named Nyangu s/o Masunga.

The application has been brought under Order XXXIX Rule 19 of the Civil Procedure Code, Cap. 33 and it is supported by the affidavit of Nyangu s/o Masunga. The subject application results from the dismissal

of the applicant's appeal by Bahati, J., for want of prosecution on 29/9/2020.

The applicant herein has filed this application praying for the following orders:

1. That, he was a defendant in matrimonial Case No. 119/2017 whereas the complainant was the plaintiff of the same.
2. That in the said matrimonial case, the plaintiff was claiming against him TZS. 4,000,000/= for an alleged commission of adultery or/and seduction over the widow MKELA SHIJA
3. That, the said case, was decided in favour of the plaintiff.
4. That upon having lost the case he appealed in the District Court under registration No. 02/2018.
5. That, in the District Court of Appeal he was representing himself and lost the case.
6. That, having lost the case in the District court he appealed to the High Court of Tanzania and engaged Theresia- Commissioner for oaths to represent him in his appeal.
7. That, unfortunately, the said advocate Theresia go into family problems which made her not appear before the High Court almost a year.

8. That, apart from not attending before the court sessions to run my case she shifted from Tabora Municipality to Dar es salaam city until today without his knowledge whereas she had instructions to him that it was not necessary to attend or to appear in the court.
9. That, the two actions of not appearing before the court to run his case and that of shifting residence from Tabora Municipality to Dar es Salaam city made his case dismissed for non-appearance.
10. That, there are issues worth of determination of this matter.
11. That, for the interest of justice and abidance to the Constitution of the United Republic of Tanzania, grant of this application could be a panacea to the restoration of justice to the applicant.

When the application was called for hearing. The applicant was unrepresented while the respondent was represented by Kanani Chombala, learned counsel.

The application proceeded orally. In his submissions, the applicant prayed to adopt the affidavit to form part of his submission.

In response, the counsel for the respondent had no objection. He prayed to this court to allow and decide the case on merit and for each party to bear costs.

Having carefully considered the arguments submitted by the applicant and since the respondent supported the applicant. The issue to be determined by this court is whether the applicant has established sufficient reasons for this court to re-admit an appeal out of time.

In principle, Order XXXIX Rule 19 of the Civil Procedure Code, Cap .33 provides that:

“ Where an appeal is dismissed under rule 11 Sub Rule (2) of rule 17 or 18, the appellant may apply to the court for the re-admission of the appeal, and where it is proved that he was prevented by any sufficient cause from appeal when the appeal was called for hearing, the appeal on such terms as to costs in otherwise as it thinks fit..” (emphasis supplied).

From the records of the Court, I am of the view that the applicant has satisfied this court that he was prevented by sufficient cause from appearing when he was called for hearing.

Since the applicant was not notified by his advocate, any adverse action would be unfair as this would amount to condemning him unheard. In the interest of justice, it is desirable to re-admit the appeal. This application is hereby granted. Each party to bear his own costs.

Order accordingly.

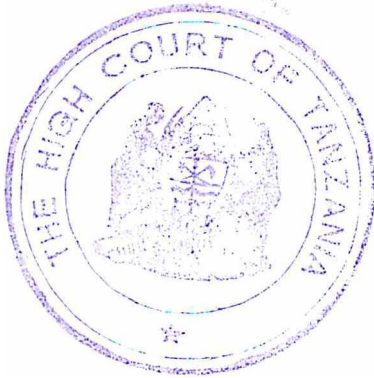


A.A.BAHATI

JUDGE

13/08/2021

Ruling delivered under my hand and seal of the court in the chamber, this 13 day August, 2021 in presence of the applicant.



A. A. BAHATI

JUDGE

13/8/2021