

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION NO. 91 OF 2021

(Arising from PC. Matrimonial Appeal Case No. 15 of 2021)

MIHAYO MAISHA.....APPLICANT

versus

LUCIA MALANDO.....RESPONDENT

RULING

9th & 21st September, 2021

RUMANYIKA, J.:

The application brought under Order XXXIX Rule 21 of the Civil Procedure Code Cap. 33 RE. 2012 is for setting aside ex-parte judgment and decree in favour of Lucia Malando (the respondent) delivered on 22/07/2021. It is supported by affidavit of Mihayo Maisha (the applicant) whose contents Mr. Ngassa Maduhu learned counsel adopted on 09/09/2021 during audio teleconference. I heard them through mobile numbers 0677807042 and 0752251075 respectively.

Mr. N. Maduhu learned counsel submitted that as by court order the parties appeared on line but he missed the bench clerk's call, he went to her physically only to find that the court had proceeded exparte against the

instant applicant. That it would appear mistakenly through but contrary to Rule 9(b) of the Judicature and Application of Laws (Remote proceedings and Electronic Recording GN. No. 637 of 2021 the court only assumed that both parties were engaged and were online. It was not actually fault of counsel for the applicant. We pray for interest of justice. The learned counsel further contended. That is all.

Equally briefly the respondent submitted that there was no issue of the applicant's counsel not being engaged and connected online by the bench clerk.

Then in his rejoinder counsel for the applicant submitted that having had filed no counter affidavit the respondent should have argued points of law only. That is all.


The issue is whether the applicant has assigned a sufficient ground for setting aside the exparte judgment and decree. The answer is no.

At least the parties are agreed that pursuant to the court order of 18/08/2021 both were notified and by consent the matter was adjourned to 9.9.2021 but as it was during the hearing contended by him when the appeal was called on for he arising on the fateful date the learned missed

the bench clerk's call yes, but that on happening he should not have waited until at a later stage he report physically at the registry officer's desk. In other words now that he was served but admittedly he missed the call the issue of poor network connectivity it was neither here nor there and, if anything on that aspect the application should have been supported by a supplementary affidavit of the bench clerk be it in the affidavit or an oval submission name wasn't disclosed either what a coincidence.


The devoid of merits application is dismissed with costs. It is so ordered.

Right appeal explained.


S.M. RUMANYIKA
JUDGE
20/09/2021

The ruling delivered under my hand and seal of the court in chambers this 21/09/2021 in the absence of the parties.




S.M. RUMANYIKA
JUDGE
21/09/2021