

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. CIVL APPLICATION NO.22 OF 2021

(Arising from PC Civil Appeal No. 17 of 2021 of the High Court of Tanzania at Kigoma Before (A. MatumaJ.) Matrimonial Appeal Case No. 10/2020 of Kigoma District Court before Hon. K.M. Mutembei (RM) and original Matrimonial Cause no. 16/2019 of Mwandiga Primary Court Before K. V. Mwakitalu- RM)

TERESIA D/O MARWA FRANSIS.....APPLICANT

VERSUS

FRANSIS S/O MUSSA CHACHA.....RESPONDENT

RULING

25 & 25th October, 2021

A. MATUMA, J.

The Applicant is seeking to re-admit back to the register; PC Civil Appeal No. 17 of 2021 of the High Court of Tanzania, at Kigoma which was dismissed for want of prosecution on the 13th day of August, 2021.

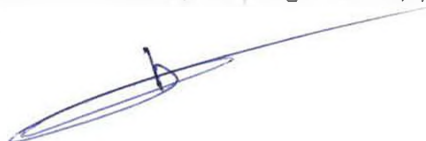
At the hearing of this application the Applicant was absent but was dully represented by Mr. Masendeka Anania Ndayanse learned Advocate who adopted his sworn affidavit in support of this application. The Respondent was present in person and represented by Mr. Ignatus R. Kagashe learned Advocate.

The applicant's counsel submitted reiterating the contents of his affidavit which was filed in support of the Chamber Summons stating

that on the fateful date, he arrived late by ten minutes or so and found the trial judge writing the dismissal order in consequence of the traffic jam. He elaborated the alleged "traffic jam" to mean that when he was on his way to this court boarding in the town hiece, Traffic Police Officers stopped such vehicle as it appeared it was indebted some unpaid fines. Thereat a fracas happened between the vehicle driver and the traffic officers which prolonged their stay thereat until when he decided to drop out and find another vehicle to this court. That when he reached here, he found that this case has already dismissed for want of prosecution. The learned advocate prayed that it is in the interest of justice this application to be allowed so that both parties are heard on merit.

Mr. Kagashe learned advocate for the respondent on his party opposed this application. He also adopted his counter affidavit to the effect that PC Civil Appeal No.17 of 2021 was dismissed on 13th August,2021 for want of prosecution on account of the Applicant's personal absence as well as that of her advocate without leave when the appeal was called on for hearing.

The learned advocate disputed the alleged traffic jam stating that it was not elaborated in the affidavit accompanying this application.



He further deposed that, the applicant has not adduced good and or sufficient cause for her non appearance on the hearing date.

Having heard the parties and having gone through the Applicant's affidavit, the ground upon which the applicant prays for restoration of the dismissed appeal and the submission by the Respondent's counsel, I will determine this application in the following manner;

First of all it should be remembered that restoration of an appeal dismissed for want of prosecution is only grantable when sufficient cause or causes are established. For the application of restoration of a dismissed matter for want prosecution to be granted, there must be sufficient account for none appearance to the effect that the cause or causes of such none appearance was beyond all powers and means of the applicant.

The applicant should also account for the initiatives he or she took to ensure that he attends the proceedings but could not on account of those reasons. Otherwise, parties will be defaulting appearance at their own wishes and later come to seek restoration on very flimsy stories. Allowing such trend we shall find ourselves engaging into endless proceedings.

It has been decided in various cases that traffic jam is not a justifiable defence for none appearance of a party to the suit. To put emphasis on

this the court of appeal in the case of ***Phares Wambura and 15 others versus Tanzania Electric Supply Company Limited*** Civil Application No. 186 of 2016 CAT at Dar es salaam (Unreported) held that;

“Traffic jam is not and has not been made a special circumstance justifying non-appearance of parties before the Court”.

Taking the matter to its seriousness, it is my firm finding that the learned advocate for the Applicant should have shown how couldn't he manage to overcome the alleged traffic jam. He was aware of the scheduled time for the hearing of his appeal and could thus not relaxed into the hiece listening to the scrambles between police officers and the hiece driver.

As rightly argued by advocate Kagashe, even those alleged hiece driver and conductor did not swear affidavits to support the averments of Mr. Ndayanse. They were material persons in the circumstances of this application as it was held in the case of ***John Chuwa versus Anthony Ciza (1992) TLR 233*** where the Court of Appeal ruled for the need of an affidavit of a person so material to be filed to authenticate the material fact so alleged.



Traffic jam as defined in the Dictionary it means **a line or lines of stationary or very slow-moving traffic caused by roadworks, an accident or heavy congestion**. The applicant's counsel did not elaborate in his affidavit the kind of traffic jam he encountered with.


He has only attempted to elaborate the same at the hearing of this application. That is wrong and unaccepted. It was held in the case of ***Morandi versus Petro (1980) TLR 49*** which I had also cited in the case of ***Joseph Juma versus Nasibu Hamisi, Misc. Civil Application No. 48 of 2018*** High Court of Tanzania at Tabora, that;

*'Submissions made by a party to an appeal in support of grounds of appeal, are not evidence but are arguments on the facts and law raised before the Court. **Such submissions are made without oath or affirmation, and a party making them is not subject to cross examination by his opponent**.'*

In the like manner the applicant's explanation on the kind of the alleged traffic jam at the hearing of this application cannot be entertained at this stage.

I accordingly dismiss this application for having been brought without sufficient cause. The same is dismissed with costs.

Whoever aggrieved with this ruling has the right to appeal to the Court of Appeal of Tanzania. It is so ordered



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A. Matuma

Judge

25/10/2021

Court: Ruling delivered in the presence of the Applicant's advocate Mr. Masendeka Anania Ndayanse and in the presence of the Respondent in person. Right of appeal explained.

Sgd: A. Matuma

Judge

25/10/2021