

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN SUB - REGISTRY OF MUSOMA
AT MUSOMA

PC CRIMINAL APPEAL NO 37 OF 2021

*(Arising from the Misc. Criminal Application No 10/2020 from District Court of Tarime
at Tarime and Originating from Nyamwaga Primary Court on Cr. Case No 4 of 2020)*

CHACHA MWITAAPPELLANT

Versus

NCHAGWA AMOSI SIBORA RESPONDENT

JUDGMENT

1ST & 8th October, 2021

Kahyoza, J.:

Aggrieved by the decision of the district court refusing to restore the suit dismissed for want of prosecution, **Chacha Mwita** has appealed to this Court raising two ground of appeal:-

- 1) That, the Magistrate erred both in law and fact in not considering the fact that stated by the appellant on his failure to attend the court proceedings in time.
- 2) That, the Magistrate erred both in law and fact by not allowing the appellant application on the ground that he did not attached travelling ticket to prove his allegation.

The background of the appeal is that **Chacha Mwita**, the appellant sued Nchagwa Amosi Sibora in the primary Court. The primary court found that the appellant did not prove Nchagwa Amosi Sibora's guilty to required standard. It dismissed the criminal charges against

Nchagwa Amosi Sibora, the respondent. Aggrieved, the appellant appealed to the District court. On the date fixed for hearing the appeal Chacha Mwita defaulted to appear. The district court dismissed the appeal for want of prosecution.

The appeal was heard *ex-parte* and raised two issues as follows:-

1. Did the district court fail to consider the appellant's ground for no-appearance?
2. Did the appellant prove the allegation?

Did the district court fail to consider the appellant's ground for no-appearance?

The appellant complained that the district court did not consider the ground for his failure to attend the court. The appellant had nothing to elaborate on this ground of complaint. I wish to state at the outset that this ground of appeal must fail. The ruling of the district court is clear, it shows that the district court considered the appellant's ground for non-appearance and found it without merit. The appellant's ground of appeal was that the car he boarded got a break down. The district court did not find merit in the appellant's ground for non-appearance, on the reason that the appellant did not substantiated his ground. I do not find any reason to fault the district court. I share the same views. Had it been true that the appellant was involved in the break down he would have reported to the court staff when he lately entered appearance. He did not do so. I dismiss the first ground of appeal for want of merit.

Did the appellant prove the allegation?

The appellant complained that the district court erred both in law and fact by not allowing the appellant's application on the ground that he did not attach the travelling tickets to prove his allegation. I


considered the complained, and found that it is baseless. There is nowhere stated in the ruling of the district court that the appellant did not attach ticket. The complaint is therefore unfounded. I dismiss it for want of merit.

This was an appeal, which this Court ought to have suitable summarily reject under section 28 of the **Magistrates Court Act**, [Cap. 11 R.E. 2019]. It was baseless appeal.

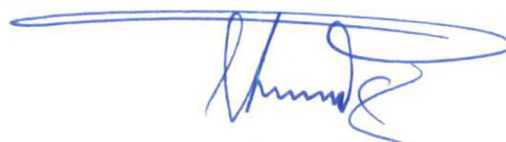
In the end, I uphold the decision of the District court and dismiss the appeal in its entire for want of merit.

I so order.




J. R. Kahyoza
JUDGE
8/10/2021

Court: Judgment delivered in the presence of the appellant and in the absence of the respondent. B/C Ms. Millinga Present.



J. R. Kahyoza
JUDGE
8/10/2021