

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

MISC. CIVIL APPLICATION NO. 14 OF 2021

(Originating from Civil Reference No. 1/2020 from Sumbawanga High Court)

YUDA S/O NSWIMA APPLICANT

VERSUS

KABHEBHE KAFULAMA RESPONDENT

RULING

Date of last order: *29/9/2021*
Date of Ruling: *24/11/2021*

NDUNGURU, J.

The applicant one Yuda s/o Nswima is applying before this court for the order that this court be pleased to restore Civil Reference No. 01 of 2021 which was dismissed for want of prosecution by this court on 11/05/2021.

The applicant further prays for costs of this application be borne by the respondent and any other relief this court may deem fit just to grant.

The application is prompted under Order IX Rule 3 of the Civil Procedure Code Cap 33 RE 2019 and is duly supported by affidavit sworn by the applicant.

The reason for application is contained under paragraph 2, 3, and 4 of the applicant's affidavit.

At paragraph 2, the applicant states that he was aware Application No. 1/2021 was set for hearing on 11/05/2021 that he attended the High Court which was setting at TANROAD building following renovation which was going on at the court building,

At paragraph 3 of the applicant states that he did not know the fact that the court had shifted to its building thus he remained at TANROAD building waiting to be called by the clerk for a long time, till when he was informed that the court had shifted to its building. That he started matching to the location and found the case already dismissed for want of prosecution.

I have considered the reasons of non-appearance by the applicant. It is the fact that when the court building was under renovation, the court's activities were taking place at the TANROAD building, and it took a long time to shift back to the court's building.

That being the case the likelihood of the people going to TANROAD building is unavoidable, though when shifting to the court's building the announcement was posted at different posters.

In the circumstance I am of the view that the non-appearance by the appellant was inadvertent.

I allow the application. The Civil Reference No. 01/2021 is hereby restored. I make no order as to costs. Each part has to bear his own costs of his application.



A handwritten signature in blue ink, appearing to read "D. B. Ndunguru", is written over the printed name.

D. B. NDUNGURU

JUDGE

24/11/2021