

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 228 OF 2022

HONEST MARANDU APPLICANT

VERSUS

FARIDA RASHID RESPONDENT

(Appeal from the Order of this Court n Civil Case No. 88 of 2019)

RULING

13th and 15th June, 2022

KISANYA, J.:

By way of chamber summons made under Order VIII, Rule 20 (2), section 68 (e) and 95 of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC), the applicant moved this Court to grant the following orders: -

- (i) That this Honourable Court be pleased to set aside its order dated 23rd May, 2022 which struck out the Applicant's written statement of defence and counter-claim in Civil Case No. 88 of 2019 and allow the hearing of the suit to proceed inter-parties.*
- (ii) Costs of the Application to follow the event.*
- (iii) Any other reliefs that the Honourable court deems fit to grant.*

Briefly stated, the respondent sued the applicant in Civil Case No.88 of 2019. The applicant filed his written statement of defence in which he raised a

counter claim against the respondent. When the suit was placed before this Court for final pre-trial and scheduling conference (final PTC) on 23rd May, 2022, the applicant defaulted to appear. Consequently, the applicant's defence in the main suit was struck out and his counter-claim dismissed under Order VIII, Rule 20(1)(a) of the CPC. The Court went on to order the main case to proceed *ex-parte*.

The said order displeased the applicant, and thus, on 2nd June, 2022, he filed the present application for the foresaid orders. The application is supported by affidavits of David Mganga Chilo, Edrick Mshale and Rasheed Yusuf Mbaraka.

In terms of the supporting affidavits, the ground for the reliefs sought is to the effect that the applicant's counsel one, David Mganga Chilo failed to appear when the matter was called on for hearing on 23rd May, 2022 due to a car accident. Appended to the affidavit of Edrick Mshale are drawings and Particulars of the Road Accident (PF-90) issued by the Police Force. Noteworthy, the respondent did not file her counter-affidavit to contest the application.

At the hearing of this matter, the applicant enjoyed the legal services of Mr. David Chilo, learned advocate assisted by Mr. Philipo Ilungu, learned advocate. The matter proceeded in the absence of the respondent who defaulted to appear without notice.

Arguing in support of the application, Mr. Ilungu prayed to adopt the supporting affidavits to form part of his submissions. Placing reliance on the supporting affidavits, the learned counsel argued that a road accident is a reason beyond human control. He, therefore, urged me to find that the applicant had assigned sufficient reason warranting this Court to grant the application. Making reference to the case of **Sandon Mangaji vs Abdul Aziz Lalani and 2 Others**, Misc. Commercial Application No. 126 of 2016 (unreported), the learned counsel urged this Court to consider that the applicant had been appearing in court and that it was in the interest of justice that the suit be heard on merit.

I have keenly considered the submission made by the learned counsel for the applicant and the facts deposed in the supporting affidavits.

It is common ground that the order subject to this application was based on the reason that the applicant failed to appear when the main case was called on for final PTC. Admittedly, Order VIII, Rule 20(2) of the CPC does not provide for the factor to be considered in determining an application to set aside the order which affect a party to the case. In the circumstances of this case, I am of the view that the court may borrow a leaf from Order XIX, rule 3 and rule 4 of the CPC and consider whether the applicant has assigned good cause for his non-appearance.

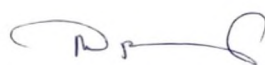
It is settled position that good cause or sufficient reason is determined basing on the circumstances of each case. In any case, the applicant is required to demonstrate that he or she failed to appear due to the reason which was beyond his control.

As stated earlier, the reason deposed in the supporting affidavits is to the effect that Counsel David Chilo who was assigned by B&E Ako Law to represent the applicant was involved in a road accident when he was on his way to this Court. This fact is also supported by the particulars of road accident and drawing issued by the Police Force. In absence of evidence to the contrary, I am convinced that the applicant has assigned good cause for his non-appearance when the matter came up for final PTC on 23rd May, 2022.

For the reasons stated afore, I find merit in this application and grant it. In consequence, the Order dated 23rd May, 2022 in Civil Case No. 88 of 2019 is hereby set aside. Therefore, it is ordered that Civil Case No. 88 of 2019 be heard inter-parties. Costs shall follow the event.

Order accordingly.

DATED at DAR ES SALAAM this 15th day of June, 2022.



S.E. Kisanya
JUDGE

COURT: Ruling delivered this 15th day of June, 2022 in the presence of Mr. Nashon Nkungu, learned counsel for the respondent and in the absence of the applicant. B/C Zawadi present.



A handwritten signature in black ink, appearing to read "S.E. Kisanya".

S.E. Kisanya
JUDGE
15/06/2022