

**IN THE HIGH COURT THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**PC CIVIL APPEAL NO. 40 OF 2021**

*(Arising from the decision of Ukerewe District Court in Civil Appeal No. 05 of 2021 delivered on 20<sup>th</sup> May, 2021. Original Case No2. of 2021 of Nansio Primary Court dated 18<sup>th</sup> January, 2021)*

**SOSPETER TANU.....APPELLANT**

**VERSUS**

**HALIMA JUMA.....RESPONDENT**

**JUDGMENT**

**23<sup>rd</sup> June, 2022**

**DYANSOBERA, J.:**

The appellant was dissatisfied with the decision of the first appellate District Court in Civil Appeal No. 05 of 2021 dated 20<sup>th</sup> day of May, 2021 and on 17<sup>th</sup> day of June, 2021 lodged this appeal on only one ground as follows:

1. That the learned Resident Magistrate erred in law for failure to appreciate that the respondent's case was not proved to the required standard.

Before the trial Primary Court, the respondent had sued the appellant for Tshs. 2, 183, 300/= being the money she had paid to the respondent for fish business. The respondent carried the day. The appellant unsuccessfully appealed to the District Court hence the present appeal. On 12<sup>th</sup> day of August, 2021, the parties were ordered to be served and

the original records to be called for. The appeal was set for hearing on 2<sup>nd</sup> day of September, 2021. Both parties were present. While the respondent appeared in person, the appellant was represented by Mr. Mussa Nyamwero, learned Advocate. The respondent prayed to be given time so that she could get prepared for hearing. The matter was adjourned to 23<sup>rd</sup> day of September, 2021 whereby the appearance was the same as on the previous date. The matter then underwent several adjournments. For the subsequent two occasions, that is on 5<sup>th</sup> day of May, 2022 and 23<sup>rd</sup> day of June, 2022, the appellant defaulted appearance without notice. Today (23.6.2022) when the matter came before me for hearing, the appellant, as usual, defaulted appearance. The respondent who was present in person informed the court that the appellant is a resident of Ilemela and was aware of the date of hearing but has absented himself. Further that he is the one who brought this appeal to this court and that she, the respondent has been attending the court but the appeal has not taken off due to the non-attendance of the appellant. She prayed the court to do justice to her.

I have considered the appellant's concern and the record before me. The appellant has been a good defaulter and no notice or reasons have been assigned for his non-appearance to prosecute his appeal.

In view of the fact that this is a backlog case and the appellant has failed to prosecute his appeal, I see no ground for further adjourn this case. I take it that an adjournment must be a last resort of the court and should only be granted where only good reasons have been assigned by a party to the case. Our practice is to discourage was stated in the case of **Ezekiel E. Chenge v. Adam Kaita**, High Court Civil Case No. 40 OF 1998 at Mwanza (unreported) that litigations like life must have an end, prolonged litigations waste time, money, moral energy etc. This court borrowed the wisdom in the case of **Amratlal Damodar v. Att. Jariwalla** (1980) TLR. 31.

In dealing with adjournments, apart from observing the law of the land, this court is duty bound to take into consideration the guidance of the Court of Appeal on courts' discouragement of adjournments which decision is binding on this court. In the case of **Ibrahim Said Msabaha v. Lutter Symphorian Nelson and the Attorney General**, Civil Appeal No. 4 of 1997, the Court, at pp. 3 and 4 of the typed judgment observed:

*"we think the approach of this court which seeks to discourage adjournments of cases on flimsy or no grounds at all should be followed by all courts in this country, not only because delay amounts to a denial of justice, but also because it is common knowledge that*

*there is a widespread outcry by the people of this country against unnecessary and rampant adjournments of cases by the courts. We do emphasize the point that the discretion of a court to adjourn a case which is scheduled for hearing must always be exercised judicially, that is, for good cause which must be recorded."*

Besides, scheduling the case for hearing is one of the case management which is the mandate of a judge and parties to the case must abide by such orders. In **Ally Hussein Masunga v. Msingwa Abdallah Kibuzi**: High Court Civil Appeal No. 12 of 1986 at Tabora, this court observed that court orders in scheduling the hearing of matters in courts must be observed by parties otherwise court process will be rendered ridicule. I adopt that standing.

This case which is a backlog one must have an end.

For the reasons stated, I decline to grant the adjournment and, instead, order that this appeal be dismissed with costs for want of prosecution.

Order accordingly.




**W.P. Dyansobera**

**Judge**

**23.6.2022**

This judgment is delivered under my hand and the seal of this Court this 23<sup>rd</sup> day of June, 2022 in the presence of the respondent in person but in the absence of the appellant.



  
**W.P. Dyansobera**  
**Judge**